

1999 DRAFTING REQUEST

Bill

Received: **12/15/98**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies: **DAK, PJK**

Topic:

DOA:.....Geisler - Expanded estate recovery

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	yacketa 12/25/98	ygeller 12/28/98	martykr 12/30/98	_____	lrb_docadmin 12/30/98		S&L
/1	yacketa 01/19/99	ygeller 01/19/99	hhagen 01/19/99	_____	lrb_docadmin 01/19/99		S&L
/2	yacketa 01/27/99	ygeller 01/27/99	ismith 01/28/99	_____	lrb_docadmin 01/28/99		S&L

FE Sent For:

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/1	yacketa 01/19/99	jgeller 01/19/99	hhagen 01/19/99	_____	lrb_docadmin 01/19/99		S&L

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Please Submit

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Kennedy, Debora

From: Geisler, Jeffrey [jeffrey.geisler@doa.state.wi.us]
Sent: Friday, December 11, 1998 4:06 PM
To: Miller, Steve
Cc: Kennedy, Debora
Subject: Geisler 1999-01 Statutory Language Drafting Request #9



EstateRecovery.doc



statlang.doc



statlang2.doc



statlan3.doc

Steve,

Yet another drafting request.

Attached is a paper that describes some estate recovery measures submitted by DHFS to DOA.

<<EstateRecovery.doc>>

It is likely that much of this paper will be incorporated in the budget.

In response to the question, "What statutory language changes are needed to implement the estate recovery reductions?", DHFS submits the following three documents:

<<statlang.doc>> <<statlang2.doc>> <<statlan3.doc>>

Please prepare a draft.

If there are questions, please call.

Jeffrey A. Geisler
267-7980
DOA State Budget Office

Drafting instructions for probating estates and foreclosures

The purpose of this proposed language would be to amend/create language to allow the Department to pursue probating estates and foreclosing on liens when the family or potential personal representatives are unable or unwilling to start probate or sell the recipient's former home property. This includes estates of Medicaid, Community Options Program and Wisconsin Chronic Disease Program recipients.

Language should be drafted to allow that the Department may petition the court for the administration of an estate in all forms of probate (formal, informal, summary settlement, summary assignment, etc.) to recover for services as provided in s. 46.27(7g), 49.496 and 49.682.

Additionally, the Department may need statutory language authority to contract for services necessary to initiate a probate.

Drafting Instructions on Expanding the Definition of Estate

Section 49.496, Wis. Stats. must be amended to allow the Department to recover traditionally non-probate assets. OBRA 93 allows the states, at their option, to expand the definition of estate to allow recovery of these type of assets. The Department would like to recover some types of these assets, but currently is unsure of the best mechanism or language to effect recovery or value the assets. The Department will need carefully crafted language to allow it to recover from these assets after the death of the medical assistance recipient's surviving spouse. The Department is currently prohibited from recovering from the estate of a surviving spouse due to a Wisconsin appellate court decision, *In the Matter of the Estate of Paul Budney*. Since this proposed change to state law has the strong possibility of being litigated, draft language should also be reviewed and approved by the Office of Attorney General.

"Estate" must be defined to include all real and personal property and other assets in which the deceased medical assistance recipient had any legal title or interest in at the time of death including assets conveyed to a survivor, heir or assign of the deceased medical assistance recipient through joint tenancy, tenancy in common, or survivorship. (This language is contained in OBRA 93.)

"Time of Death" must be defined as the instant of the medical assistance recipient's death; in no case, however, shall the Time of Death be construed to mean a time after which an interest in real or personal property or other assets may:

- a) Pass by survivorship or other operation of law due to the death of the medical assistance recipient;
- OR
- b) Terminate by reason of the medical assistance recipient's death.

This expansion of "estate" includes assets and property that are not subject to probate administration. The Department will continue to file claims in deceased medical assistance recipient's estates to recover from assets and property subject to probate administration. However, the process must be described on how recoveries will be made from survivors, heirs and assigns of a deceased medical assistance recipient who receive property or assets conveyed through joint tenancy, tenancy in common, or survivorship. The description must differentiate between how recovery of these types of assets will be made when:

- a) The person who received the deceased medical assistance recipient's property is the surviving spouse.
- b) The person who received the deceased medical assistance recipient's property is someone other the medical assistance recipient's surviving spouse.

When a surviving spouse is present, recovery will be deferred until after the death of the surviving spouse and be pursued as a claim against the medical assistance recipient's estate filed in the surviving spouse's estate. The recovered amount

will be limited to the value of the property the surviving spouse received from the medical assistance recipient's estate.

If the person who received the deceased medical assistance recipient's property is someone other than the surviving spouse, the Department will seek recovery from that person. If no arrangement has been made with the Department to satisfy the Department's claim within 6 months after the medical assistance recipient's death, the Department may bring an action in district court against that person to effect recovery. The Department's claim will be limited to the value of the property that person received from the medical assistance recipient's estate.

The description of the recovery of these non-probate assets must specify that it will be assumed that the full amount of the department's claim is recoverable unless it can be shown that the value of the property and assets received from the deceased medical assistance recipient is less than the claim amount. It must be specified that it is the legal burden of the person who receives property or other assets from a deceased medical assistance recipient to establish the extent and value of the recipient's legal title or interest in the property or assets, if that value is less than the claim amount.

A mechanism should be created to allow a surviving spouse to establish the value of the deceased medical assistance recipient's estate. Prior to the Department pursuing its claim, the surviving spouse, may act to establish and limit the Department's claim by providing convincing evidence to the Department that proves the extent and value of the assets and property received from the deceased medical assistance recipient. The surviving spouse must act to set and limit the Department's claim within 12 months of the medical assistance recipient's death. This provision should also allow the surviving spouse to request a fair hearing to appeal the Department's determination on the value of the deceased medical assistance recipient's estate.

Additional language may be needed to aid the Department in determining the value of the deceased medical recipient's title and interest in assets and property at the Time of Death.

In addition, Section 858.07, Wis. Stats. should be amended to state that when the deceased is a medical assistance recipient, the estate inventory must also include all assets that pass by survivorship or other operation of law and that a copy of the inventory must be provided to the Department.

Estate Recovery

Summary of Program

Through the Medicaid Estate Recovery Program (ERP) the state seeks repayment of certain long-term care Medicaid benefits provided to recipients. Recovery is made from the estates of recipients and from liens placed on homes. The recovered funds are returned to the Medicaid Program.

Problem Description

The ERP has proposed six specific improvements to the current program to provide increased recoveries, improve administrative efficiencies and allow equitable implementation of the estate recovery provision among Medicaid recipients.

Background

1. The ERP recovers MA benefits through two methods: 1) claims submitted against the estate during the probate process; and 2) liens filed against the recipient's home. In addition to the MA costs, the ERP also recovers Community Options Program (COP) costs and Wisconsin Chronic Disease Program (WCDP) costs.
2. **Claims** - Probate refers to the legal process that settles an individual's estate by distributing the estate to creditors, heirs and beneficiaries. Creditors file claims during the probate process against the estate to ensure payment of a debt owed. As a creditor, the Department's MA program is paid before the distribution of any assets to heirs or beneficiaries. When there is no court proceeding, the state files a claim directly with the individual executing the estate using a probate process known as "transfer by affidavit." The Department may not file a claim against the estate of a decedent if the recipient's spouse or minor, disabled or blind child survives the recipient. Under current federal law, the Department may not recover from the estate of a surviving spouse for Medicaid benefits.
3. **Liens** - A lien is evidence of a debt or obligation filed against a home or property with the Register of Deeds. The Department currently files liens against the homes of permanent nursing home residents in order to recover MA benefits. The lien is paid and the Department recovers MA benefits upon sale of the property. A lien does not require the recipient to sell his/her home. Similar to the claims process, the Department may not file a lien against the home of a nursing home resident if a spouse or minor, disabled or blind child resides in the home. Furthermore, the state can only file a lien while the recipient is living.

4. Currently, the ERP recovers benefits from four categories of MA recipients. Table 1 summarizes these categories, and Table 2 summarizes the MA recoveries for the past six fiscal years:

Table 1: Summary of Medicaid ERP Categories

	Nursing Home Residents	Inpatient Institution Residents	Community Residents	Community Residents – services received through community-based waiver
Age Limit	None	None	55 or older	55 or older
Effective Date	October 1, 1991	July 1, 1995	July 1, 1995	July 1, 1995
Recoverable Services	-all MA services	-all MA services	- Home Health (some services) - Private Duty Nursing	- Services received through home and community-based waiver - Related inpatient hospital services - Related prescription drugs

Table 2: ERP Recoveries FY 1993-98 (\$ millions)

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
Recoveries AF	\$3.0	\$5.7	\$8.7	\$9.4	\$12.4	\$13.2
Recoveries GPR	\$1.1	\$2.0	\$3.0	\$3.3	\$4.9	\$5.3

5. The Estate Recovery Program unit has identified six program areas that would improve the Department's effectiveness, increase savings, and address the problem of inequitable policies in program administration.

✓. Estate Recovery of Personal Care Services

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A1. The Department currently recovers expenditures of certain home health services from all recipients age 55 and older. It also recovers home and community-based waiver benefits received by recipients age 55 and older. Included in home and community-based waiver services are supportive home care services, which are very similar to personal care services. There are incidences where a recipient has home care services (e.g. supportive home care) recovered from his or her estate because these services were paid through a waiver program. However, another recipient who received similar services such as personal care, does not have services recovered because these services were paid through the Medicaid card. Recovering personal care services paid through MA card services would be consistent with the recovery of other home health services.

A2. The Bureau of Health Care Financing proposes that statutory authority be provided for estate recovery of Medicaid personal care services received by recipients age 55 and older. As a

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result of the proposed change, the Department could process approximately 125 extra estate claims per year. It is estimated that this change would increase savings of \$45,100 AF (\$18,600) in SFY 2000 and \$361,900 AF (\$149,400 GPR) in SFY 2001. At full implementation in SFY 2004, maximum recovery is expected to be \$693,200 AF (\$286,1000).

B. Probating Inactive Estates and Foreclosing on Liens

B1. Wisconsin ^{incidents!} law does not require probate of a deceased person's estate. Currently, there are incidences of heirs and beneficiaries not probating estates of deceased recipients because the Department's claims in those estates exceed the estates' assets. Many of these estates include homes that are encumbered by Medicaid liens. Heirs or beneficiaries can pay taxes on a property and continue to reside in the property or otherwise enjoy its use without transferring the property through probate. Estates that are probated more than six years after the date of the deceased person's death are free from creditor's claims including estate recovery.

Example: A recipient passes away after receiving \$75,000 in home and community-based waiver services, and leaves a home valued at \$65,000. The recipient's only heir, her daughter, realizes that the Department has a claim in an amount that would require the home be sold. She decides not to start probate and since there are no creditors willing to start probate, the estate lays inactive. Seven years later, the estate is probated. Section 893.93 (1) (c) bars any claims against the estate because no probate was started with six years of the deceased's death. The property is transferred to the daughter free of the Department's claim.

B2. The Bureau proposes to pursue probating estates and foreclosing on liens when the family or potential personal representatives are unable or unwilling to start probate or sell the recipient's former home property. This includes estates of Medicaid, Community Options Program and Wisconsin Chronic Disease Program recipients. Preliminary estimates based on pending Medicaid liens indicate savings in the amount of \$429,000 AF (\$177,000 GPR) from existing cases and \$120,000 AF (\$49,500 GPR) per fiscal year on an ongoing basis. It is anticipated the additional recoveries will be made from the estates of recipients who received home and community-based services.

which?
B3. It should be noted that in order to achieve these saving the Department will need to develop an appropriate administrative process along with changes in statutory language. Two possible options are: 1) Require each county's Corporate Counsel to process the estate/foreclosure (with the usual and customary fee deducted from proceeds of the estate/foreclosure prior to any balance of funds being returned to the Medicaid program); or 2) Create a waiver to the procurement and statutory restrictions that would allow the State to hire an attorney under local jurisdiction to act on behalf of the State in proceedings relating to the initiation of forclosure proceedings or to probate an estate.

C. Change dollar amounts for personal property exemptions.

C1. State law provides that the court may reduce the Department's claim in an estate by up to \$3,000 to allow heirs and beneficiaries to retain certain personal effects of the deceased, with

up to \$1,000 being other tangible property not used in trade, agriculture or other business. Current Medicaid estate recovery provisions regarding limits on the dollar amounts of personal property that can be exempted from creditor's claims are not consistent with family rights provisions found in Wisconsin Statute.

- C2. Current statutory language, stating amounts and types of property relating to personal property exemptions, was patterned after Wisconsin Statute s. 861.33. Recent legislation has altered many aspects of Wisconsin's probate law. One change increased the amounts stated in s. 861.33, from \$3,000 and \$1,000 to \$5,000 and \$3,000 respectively.
- C3. BHCf proposes to amend estate recovery provisions to cross-reference the probate law that limits the dollar amount of personal property that can be exempted from creditor's claims. Specifically the Bureau proposes to change language in ss. 49.496 (3)(am), 46.27 (7g) (c) 3., and 49.682 (2) (c), Wis. Stats. to cross-reference s. 861.33 (2) and language in ss. 49.496 (3) (am) 3, 46.27 (7g) (c) 3. c., and 49.682 (2) (c) 3., Wis. Stats., to cross-reference s. 861.33 (1) (a) 4., Wis. Stats. The proposed budget request would automatically tie the estate recovery exemption to these statutory amounts to assure comparable treatment of personal effects for Medicaid and probate purposes.
- C4. Although this proposal could have a minimal fiscal impact, from a program administration perspective, personal property recovery is not a high priority. It is rare for the Department to actually attempt to recover personal property. As a result, the Bureau estimates that the change will have no fiscal impact. In addition, the change will bring Departmental estate recovery statutes in line with family rights statutes and would ease recipient concerns regarding comparable limits for the transfer of heirloom items to family or beneficiaries under Medicaid and probate laws.

D. Maximize Lien Recoveries

- D1. Many recipients receive home and community based waiver care or home health care prior to being placed in a nursing home. Once they reside in a nursing home, their homes may be subject to a Medicaid lien. Under current law, the Department is limited to recovering from a lien only the Medicaid costs paid on the recipient's behalf while the recipient resided in a nursing home. Many times, a recipient's home is sold shortly after the recipient enters the nursing home. The Department recovers only for the nursing home care provided to that point. The recipient receives the balance of the sale proceeds even though other recoverable services have been received in the community.

Example: A recipient receives \$25,000 in home and community-based waiver benefits prior to being placed in a nursing home. The recipient is not expected to return home and a lien is placed on the home property. Three months after entering the nursing home, the home sells for \$85,000. The Department recovers \$8,000 from the lien, which represents all Medicaid paid while the recipient resided in a nursing home. The recipient receives the remaining \$77,000. The \$25,000 paid for home and community-based services cannot be recovered from the lien. The Department can eventually file a claim in the recipient's estate to attempt to recover these services, providing the recipient leaves an estate.

D2. While the recipient usually loses eligibility in these situations due to excess assets, he or she quickly spends down at the private pay rate and becomes eligible for Medicaid again. In some cases, however, the recipient will maintain Medicaid eligibility by turning the sale proceeds into either exempt assets or assets that limit the recipient's liability toward the cost of his or her care and estate recovery (e.g. immediate annuities payable to a beneficiary). Permitting the Department to include home and community-based services as benefits recoverable from a lien will increase savings as well as speed the return of funds to the Medicaid budget.

D3. The Bureau proposes to maximize the amounts recovered from Medicaid liens placed on the homes of nursing home residents by changing state law to allow the Department to recover all recoverable Medicaid services received by the recipient, including home and community-based services received prior to the lien being filed. No additional liens will result from this change. Additional time will be needed to assemble and calculate lien amounts. Due to the dynamic nature of real estate closings, quicker access to waiver service information from the Human Services Reporting System (HSRS) will be needed. Potential savings are estimated to be \$146,000 AF (\$60,300 GPR) per fiscal year.

E. Expand the use of Liens to Recover for a Medicaid Recipient Institutionalized in an Inpatient Hospital

E1. Under current law, the Department is limited to placing liens on the homes of only those recipients residing in nursing homes. A recipient who is permanently institutionalized in an inpatient hospital is not subject to the lien provisions. The Department may only recover MA benefits from the estate of these recipients through the use of a claim on the decedent's estate.

Example: A ventilator-dependent recipient needs to be institutionalized because resources are not available to provide the required 24 hour care in the recipient's home. There are no nursing homes available with facilities to provide the needed care so the recipient is placed in an inpatient hospital. The recipient is not expected to return home and the home is put up for sale. Six months later, the recipient's home is sold for \$85,000. The recipient receives the entire proceeds from the home sale. The Department can eventually file a claim in the recipient's estate to attempt to recover benefits, providing the recipient leaves an estate.

E2. The Department may only file a claim in that recipient's estate. If that recipient sells the home, he or she will receive all the proceeds from the sale. While the recipient usually loses eligibility due to excess assets, he or she quickly spends down at the private pay rate and becomes eligible for Medicaid again. In some cases, however, the recipient will maintain Medicaid eligibility by turning the sale proceeds into either exempt assets or assets that limit the recipient's liability toward the cost of his or her care and estate recovery (e.g. immediate annuities payable to a beneficiary). Allowing the Department to file liens on the homes of recipients institutionalized in inpatient hospitals will increase savings and result in equitable application of the estate recovery lien provisions.

E3. The Bureau proposes to amend state law to allow the Department to file a lien on the home of a recipient who is institutionalized in an inpatient hospital and is not expected to return home. Currently, only recipients in a nursing home may have a lien placed on their home. Additional liens will result from this change. This suggestion was proposed in the 1997-1999 Biennial Budget but was not included in the Department's budget submission. The fiscal impact is not know at this time, however, this statutory change would bring parity among all recipients living in an institutional setting.

F. Expand the Definition of Estate for Medicaid Recipients

F1. Currently, the Department is limited to recovering from a recipient's estate only those assets that are included in the state's probate definition of estate. This definition does not include property that is conveyed by joint tenancy, survivorship or similar arrangement. At death, these assets pass to the surviving joint tenant or survivor, usually a spouse. This occurs outside of the probate process. Since an estate proceeding is not opened for the recipient, the Department does not have an opportunity to either recover from these assets or secure them for future recovery after the death of the surviving spouse.

F2. By expanding the definition of a Medicaid recipient's estate and defining the process of valuing and recovering assets, the Department can recover a recipient's assets at such a time when the assets are no longer needed for the support of the surviving spouse, i.e. after the spouse's death.

Example: A husband and wife jointly own a home and several certificates of deposits. The home is valued at \$130,000 and the certificates of deposit are valued at \$50,000. The husband is placed in a nursing home and Medicaid benefits are provided under spousal impoverishment provisions. Upon the husband's death the Department would have a claim against the husband's half interest in those joint assets. The husband's interest would be valued at \$90,000. The Department would wait until after the death of the wife to assert its claim against the \$90,000 conveyed to the wife by survivorship. Without the change, the Department will not have the opportunity to recover any of the benefits paid on the husband's behalf.

F3. In the past the Department has pursued recoveries of services for Medicaid recipients from estates of surviving spouses. A recent circuit court decision ruled against this departmental practice. Currently there is a pending class action suit filed against the Department from other estates, which the Department collected surviving spousal recoveries. It is anticipated that the Department will need to return these recoveries made from 1991-95 for approximately \$760,000 AF (\$312,700 GPR). Opposition for this proposal may come from advocates for the elderly, who could interpret this action as a method to circumvent the recent circuit court decision.

F4. Other states have expanded their definition of a Medicaid recipient's estate to include these types of assets. At present, estate recovery primarily applies only to the estates of single or widowed recipients. Expanding the definition of a Medicaid recipient's estate would result in savings and the equitable application of estate recovery.

F5. The Bureau proposes to change state law to expand the definition of estate for a Medicaid recipient, as allowed by OBRA 93, to include assets that the recipient had an interest in at the time of death, including assets that pass to heirs or beneficiaries through joint tenancy, survivorship or similar arrangement. In addition, the Bureau proposes to provide language that describes how these assets will be valued and how they will be recovered from heirs, beneficiaries, or the estates of surviving spouses of recipients. It is estimated that the change would generate savings of \$0 in the first year and \$500,900 AF (\$206,700 GPR) in the second fiscal year.

Recommendations

1. Request that statutory authority be provided for estate recovery of Medicaid personal care services received by recipients age 55 and older. The changes would increase estimated estate recovery savings by \$45,100 AF (\$18,600 GPR) in SFY 2000 and \$361,900 AF (\$149,400 GPR) in SFY 2001. After full implementation maximum recovery is expected to be \$693,200 AF (\$286,100 GPR) in SFY 2004.
2. Amend state law to allow the Department to pursue probating estates and foreclosing on liens when the family or potential personal representatives are unable or unwilling to start probate or sell the recipient's former home property. This includes estates of Medicaid, Community Options Program and Wisconsin Chronic Disease Program recipients. Preliminary estimates based on pending Medicaid liens indicate a one-time saving in the amount of \$429,000 AF (\$177,000 GPR) from existing estates and liens and \$120,000 AF (\$49,500 GPR) per fiscal year on an ongoing basis.
3. Amend estate recovery provisions to cross-reference the probate law that limits the dollar amount of personal property that can be exempted from creditor's claims. The proposed request would automatically tie the estate recovery exemption to these statutory amounts to assure comparable treatment of personal effects for Medicaid and probate purposes. This request has the potential to cause a minimal decrease in recoveries, however, the Department estimates that the change will have no fiscal effect.
4. Amend state law to allow the Department to maximize the amounts recovered from Medicaid liens placed on the homes of nursing home residents by recovering all recoverable Medicaid services received by the recipient, including home and community-based services received prior to the lien being filed. Potential savings are estimated at \$146,000 AF (\$60,300 GPR) per fiscal year.
5. Expand the use of liens in the ERP to recover benefits from institutionalized recipients in an inpatient hospital. This expansion should result in a larger number of recoveries. It would also result in consistent application of liens to all permanently institutionalized MA recipients. The estimated fiscal impact of this alternative is currently unknown.
6. Amend state law to expand the definition of estate for a Medicaid recipient, as allowed by OBRA 93, to include assets that the recipient had an interest in at the time of death, including

assets that pass to heirs or beneficiaries through joint tenancy, survivorship or similar arrangement. In addition, provide language that describes how these assets will be valued and how they will be recovered from heirs, beneficiaries, or the estates of surviving spouses of recipients. It is estimated that the change would generate savings of \$500,900 AF (\$206,700 GPR) per fiscal year.

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7. These alternatives generate a total of \$462,600 in FY00 and \$465,900 in FY01 in gross GPR savings. Part of these savings are offset by incentive payments to counties, resulting in a net GPR savings of \$452,700 in FY00 and \$456,500 in FY01.

Expand the use of Liens to Recover for a Medicaid Recipient Institutionalized in an Inpatient Hospital

49.496 (2) Liens on the homes of nursing home residents.

(a) Except as provided in par. (b) , the department may obtain a lien on a recipient's home if the recipient resides in a nursing home or medical institution and cannot reasonably be expected to be discharged from the nursing home or medical institution and return home. The lien is for the amount of medical assistance paid on behalf of the recipient while the recipient resides in a nursing home or medical institution.

(b) The department may not obtain a lien under this subsection if any of the following persons lawfully reside in the home:

1. The recipient's spouse.
2. The recipient's child who is under age 21 or is disabled.
3. The recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the recipient was admitted to the nursing home or medical institution.

(c) Before obtaining a lien on a recipient's home under this subsection, the department shall do all of the following:

1. Notify the recipient in writing of its determination that the recipient cannot reasonably be expected to be discharged from the nursing home or medical institution, its intent to impose a lien on the recipient's home and the recipient's right to a hearing on whether the requirements for the imposition of a lien are satisfied.
2. Provide the recipient with a hearing if he or she requests one.

(d) The department shall obtain a lien under this subsection by recording a lien claim in the office of the register of deeds of the county in which the home is located.

(e) The department may not enforce a lien under this subsection while the recipient lives unless the recipient sells the home and does not have a living child who is under age 21 or disabled or a living spouse.

(f) The department may not enforce a lien under this subsection after the death of the recipient as long as any of the following survive the recipient:

1. A spouse.
2. A child who is under age 21 or disabled.
3. A child of any age who resides in the home, if that child resided in the home for at least 24 months before the recipient was admitted to the nursing home or medical institution and provided care to the recipient that delayed the recipient's admission to the nursing home or medical institution.
4. A sibling who resides in the home, if the sibling resided in the home for at least 12 months before the recipient was admitted to the nursing home or medical institution.

(g) The department may enforce a lien imposed under this subsection by foreclosure in the same manner as a mortgage on real property.

(h) The department shall file a release of a lien imposed under this subsection if the recipient is discharged from the nursing home or medical institution and returns to live in the home.

Maximize Lien Recoveries

49.496 (2) Liens on the homes of nursing home residents.

- (a) Except as provided in par. (b) , the department may obtain a lien on a recipient's home if the recipient resides in a nursing home and cannot reasonably be expected to be discharged from the nursing home and return home. The lien is for the amount of medical assistance paid on behalf of the recipient ~~while the recipient resides in a nursing home~~ that is recoverable under s.49.496 (3) (a).

Estate Recovery of Personal Care Services

49.496 (3) Recovery from estates.

(a) Except as provided in par. (b) , the department shall file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient for all of the following unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a medical institution and was required to contribute to the cost of care.
2. The following medical assistance services paid on behalf of the recipient after the recipient attained 55 years of age:
 - a. Home-based or community-based services under 42 USC 1396d (a) (7), ~~and (8)~~ and (24) and under any waiver granted under 42 USC 1396n (c) (4) (B) or 42 USC 1396u.
 - b. Related hospital services, as specified by the department by rule.
 - c. Related prescription drug services, as specified by the department by rule.

Or Alternatively

49.496 (3) Recovery from estates.

(a) Except as provided in par. (b) , the department shall file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient for all of the following unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a medical institution and was required to contribute to the cost of care.
2. The following medical assistance services paid on behalf of the recipient after the recipient attained 55 years of age:
 - 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.
 - b. Related hospital services, as specified by the department by rule.
 - c. Related prescription drug services, as specified by the department by rule.
 - d. Personal care services under s. 49.46 (2) (b) 6. j.

Change Dollar Amounts for Personal Property Exemptions

46.27(7g)(c)3. The court shall reduce the amount of a claim under subd. 1. by up to ~~\$3,000~~ the amount under s. 861.33 (2) if necessary to allow the client's heirs or the beneficiaries of the client's will to retain the following personal property:

- a. The decedent's wearing apparel and jewelry held for personal use.
- b. Household furniture, furnishings and appliances.
- c. Other tangible personal property not used in trade, agriculture or other business, not to exceed ~~\$1,000~~ in value the amount under s. 861.33 (1) (a) 4.

49.496 (3) (am) The court shall reduce the amount of a claim under par. (a) by up to ~~\$3,000~~ the amount under s. 861.33 (2) if necessary to allow the recipient's heirs or the beneficiaries of the recipient's will to retain the following personal property:

- 1. The decedent's wearing apparel and jewelry held for personal use.
- 2. Household furniture, furnishings and appliances.
- 3. Other tangible personal property not used in trade, agriculture or other business, not to exceed ~~\$1,000~~ in value the amount under s. 861.33 (1) (a) 4.

49.682(2)(c) The court shall reduce the amount of a claim under par. (a) by up to ~~\$3,000~~ the amount under s. 861.33 (2) if necessary to allow the client's heirs or the beneficiaries of the client's will to retain the following personal property:

- 1. The decedent's wearing apparel and jewelry held for personal use.
- 2. Household furniture, furnishings and appliances.
- 3. Other tangible personal property not used in trade, agriculture or other business, not to exceed ~~\$1,000~~ in

~~value~~ the amount under s. 861.33 (1) (a) 4.

(3) Recovery from estates.

(a) Except as provided in par. (b), the department shall file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient for all of the following unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a medical institution and was required to contribute to the cost of care.

2. The following medical assistance services paid on behalf of the recipient after the recipient attained 55 years of age:

a. Home-based or community-based services under 42 USC 1396d (a) (7), ~~and (8)~~ and (24) and under any waiver granted under 42 USC 1396n (c) (4) (B) or 42 USC 1396u.

b. Related hospital services, as specified by the department by rule.

c. Related prescription drug services, as specified by the department by rule.

(ag) The affidavit of a person designated by the secretary to administer this subsection is evidence of the amount of the claim.

(am) The court shall reduce the amount of a claim under par. (a) by up to ~~\$3,000~~ the amount under s. 861.33 (2) if necessary to allow the recipient's heirs or the beneficiaries of the recipient's will to retain the following personal property:

1. The decedent's wearing apparel and jewelry held for personal use.

2. Household furniture, furnishings and appliances.

3. Other tangible personal property not used in trade, agriculture or other business, not to exceed ~~\$1,000 in value~~ the amount under s. 861.33 (1) (a) 4.

21 December 1998

To: Tina Yacker, Legislative Attorney

From: Dan Ritsche, Legislative Analyst

Subject: Federal law permitting recovery of non-probate, joint assets in medical assistance (medicaid) cases

According to the Estate Recovery Policy expert at the federal Department of Health and Human Services, **Ingrid Osborne**, OBRA '93 gave states 2 options in estate recovery: 1) probate law and 2) an expanded definition of estates including real and personal property conveyed to heirs and survivors, etc.

She is sending me a copy of the State Medicaid Manual (Transmittal 63, September 1994) that discusses this law (*which I will pass on to you*). She also said it would be fine for you to contact her for help/explanations at **(410) 786-4461**. The HHS web site is www.hcfa.gov/medicaid/medicaid.htm.

4TH SECTION of Level 1 printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH THE 11/11/98 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 42 -- PUBLIC HEALTH
CHAPTER IV -- HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF
HEALTH AND
HUMAN SERVICES
SUBCHAPTER C -- MEDICAL ASSISTANCE PROGRAMS
PART 433 -- STATE FISCAL ADMINISTRATION
SUBPART A -- FEDERAL MATCHING AND GENERAL ADMINISTRATION PROVISIONS

42 CFR 433.36

§ 433.36 Liens and recoveries.

(a) Basis and purpose. This section implements sections 1902(a)(18) and 1917(a) and (b) of the Act, which describe the conditions under which an agency may impose a lien against a recipient's property, and when an agency may make an adjustment or recover funds in satisfaction of the claim against the individual's estate or real property.

(b) Definition of property. For purposes of this section, "property" includes the homestead and all other personal and real property in which the recipient has a legal interest.

(c) State plan requirement. If a State chooses to impose a lien against an individual's real property (or as provided in paragraph (g)(1) of this section, personal property), the State plan must provide that the provisions of paragraphs (d) through (i) of this section are met.

(d) Procedures. The State plan must specify the process by which the State will determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home as provided in paragraph (g)(2)(ii) of this section. The description of the process must include the type of notice to be given the individual, the process by which the individual will be given the opportunity for a hearing, the hearing procedures, and by whom and on what basis the determination that the individual cannot reasonably be expected to be discharged from the institution will be made. The notice to the individual must explain what is meant by the term lien, and that imposing a lien does not mean that the individual will lose ownership of the home.

(e) Definitions. The State plan must define the following terms used in this section:

(1) Individual's home.

(2) Equity interest in home.

42 CFR 433.36

(3) Residing in the home for at least 1 (or 2) year(s).

(4) On a continuing basis.

(5) Discharge from the medical institution and return home.

(6) Lawfully residing.

(f) Exception. The State plan must specify the criteria by which a son or daughter can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution, as provided in paragraph (h)(2)(iii)(B) of this section.

(g) Lien provisions--(1) Incorrect payments. The agency may place a lien against an individual's property, both personal and real, before his or her death because of Medicaid claims paid or to be paid on behalf of that individual following a court judgement which determined that benefits were incorrectly paid for that individual.

(2) Correct payments. Except as provided in paragraph (g)(3) of this section, the agency may place a lien against the real property of an individual at any age before his or her death because of Medicaid claims paid or to be paid for that individual when--

(i) An individual is an inpatient of a medical institution and must, as a condition of receiving services in the institution under the State plan, apply his or her income to the cost of care as provided in §§ 435.725, 435.832 and 436.832; and

(ii) The agency determines that he or she cannot reasonably be expected to be discharged and return home. The agency must notify the individual of its intention to make that determination and provide an opportunity for a hearing in accordance with State established procedures before the determination is made. The notice to an individual must include an explanation of liens and the effect on an individual's ownership of property.

(3) Restrictions on placing liens. The agency may not place a lien on an individual's home under paragraph (g)(2) of this section if any of the following individuals is lawfully residing in the home:

(i) The spouse;

(ii) The individual's child who is under age 21 or blind or disabled as defined in the State plan; or

(iii) The individual's sibling (who has an equity interest in the home, and who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution).

(4) Termination of lien. Any lien imposed on an individual's real property under paragraph (g)(2) of this section will dissolve when that individual is discharged from the medical institution and returns home.

(h) Adjustments and recoveries. (1) The agency may make an adjustment or recover funds for Medicaid claims correctly paid for an individual as follows:

42 CFR 433.36

(i) From the estate of any individual who was 65 years of age or older when he or she received Medicaid; and

(ii) From the estate or upon sale of the property subject to a lien when the individual is institutionalized as described in paragraph (g)(2) of this section.

(2) The agency may make an adjustment or recovery under paragraph (h)(1) of this section only:

(i) After the death of the individual's surviving spouse; and

(ii) When the individual has no surviving child under age 21 or blind or disabled as defined in the State plan; and

(iii) In the case of liens placed on an individual's home under paragraph (g)(2) of this section, when there is no--

(A) Sibling of the individual residing in the home, who has resided there for at least one year immediately before the date of the individual's admission to the institution, and has resided there on a continuous basis since that time; or

(B) Son or daughter of the individual residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution.

(i) Prohibition of reduction of money payments. No money payment under another program may be reduced as a means of recovering Medicaid claims incorrectly paid.

HISTORY:

[43 FR 45201, Sept. 29, 1978, as amended at 47 FR 43647, Oct. 1, 1982; 47 FR 49847, Nov. 3, 1982]

AUTHORITY:

Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1903(w), 1912, 1917, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), 1396k and 1396(p)).

NOTES:

NOTES APPLICABLE TO ENTIRE CHAPTER:

EDITORIAL NOTE: Nomenclature changes affecting chapter IV appear at 45 FR 53806, Aug. 13, 1980; 50 FR 12741, Mar. 29, 1985; 50 FR 33034, Aug. 16, 1985; 51 FR 41338, Nov. 14, 1986; 53 FR 6634, Mar. 2, 1988; 53 FR 47201, Nov. 22, 1988; 56 FR 8852, Mar. 1, 1991.

987 words

1ST CASE of Level 1 printed in FULL format.

IN THE MATTER OF THE ESTATE OF PAUL BUDNEY, DECEASED: STATE OF WISCONSIN,
DEPARTMENT OF HEALTH AND SOCIAL SERVICES, Appellant, v. ESTATE OF PAUL BUDNEY,
Respondent.

No. 95-0982-FT

COURT OF APPEALS OF WISCONSIN

197 Wis. 2d 948; 541 N.W.2d 245; 1995 Wisc. App. LEXIS 1349

July 5, 1995, Submitted On Briefs

October 31, 1995, Opinion Released

October 31, 1995, Opinion Filed

PRIOR HISTORY: [***1] APPEAL from a judgment of the circuit court for Milwaukee County: WILLIS J. ZICK, Reserve Judge.

it does. Accordingly, we affirm the trial court's summary judgment [***2] in favor of the estate.

DISPOSITION: Affirmed.

n1 This is an expedited appeal under RULE 809.17, STATS.

CORE TERMS: medical assistance, recipient

COUNSEL:

For the appellant the cause was submitted on the briefs of James E. Doyle, attorney general by Donald P. Johns, assistant attorney general.

Grace Budney was a resident of a nursing home and a recipient of medical assistance. She died after residing in the home for over a year. A year after her death, her husband Paul Budney died. After Paul Budney's death, the department filed a claim against his estate for \$ 54,042 pursuant to § 49.496(3)(a), STATS., seeking to recover medical assistance benefits [*950] paid on behalf of Grace Budney. The estate objected to the claim on the ground that federal law prohibits the recovery of medical assistance benefits paid on behalf of a predeceased spouse. The trial court concluded that the Wisconsin statute violated 42 U.S.C. § 1396p(b) (1995) and granted summary judgment in favor of the estate. The department appeals.

For the respondent the cause was submitted on the briefs of Angela E. Canellos of Wauwatosa.

JUDGES: Before Wedemeyer, P.J., Sullivan and Fine, JJ.

OPINIONBY: WEDEMEYER

OPINION: [*949] [**245]

WEDEMEYER, P.J.

The Department of Health and Social Services appeals from the trial court's judgment. n1 [**246] The trial court ruled that the department could not recover from Paul Budney's estate medical assistance benefits paid on behalf of Grace Budney, his predeceased wife, because federal law does not authorize the recovery of benefits. The issue is whether § 49.496(3)(a), STATS., which allows the department to recover medical assistance benefits paid on behalf of a person from the estate of that person's surviving spouse, violates federal law. We conclude that

The State of Wisconsin has enacted legislation which allows the Department of Health and Social Services to file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient for [***3] the amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home. Section 49.496(3)(a), STATS. n2 Federal law mandates that State plans for medical assistance comply with the provisions of 42 U.S.C. § 1396p with respect to recovering medical assistance correctly paid. See 42 U.S.C. § 1396(a)(18). 42 U.S.C. 1396p(b) provides:

197 Wis. 2d 948, *950; 541 N.W.2d 245, **246;
1995 Wisc. App. LEXIS 1349, ***3

n2 Section 49.496(3), STATS., provides:

RECOVERY FROM ESTATES. (a) Except as provided in par. (b), the department shall file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient for all of the following unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a medical institution and was required to contribute to the cost of care.

(1) No adjustment or recovery of any medical assistance correctly paid on [***4] behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

....

[*951]

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any

In the first section, the statute plainly prohibits a State from recovering medical assistance benefits except in certain situations. The statute provides that "[no] adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made ... except in the case of the following individuals...." After this initial prohibition, the statute does not specifically authorize a State to recover medical assistance benefits from a recipient's surviving spouse's estate. Because the statute does not counter the initial blanket prohibition [***5] by specifically authorizing a State to recover medical assistance benefits paid on behalf of a recipient from a surviving spouse's estate, we conclude that § 49.496(3)(a), STATS., which allows such recovery, exceeds the authority provided by the federal statute. Accord *Estate of Craig*, 82 N.Y.2d 388, 624 N.E.2d 1003, 604 N.Y.S.2d 908 (N.Y. 1993) (Federal law does not expressly provide for recovery of Medicaid payments on behalf of a predeceased spouse from the secondarily dying spouse's estate). The trial court properly rejected the department's claim to recover from Paul Budney's [**247] estate medical assistance paid on behalf of Grace Budney.

By the Court.—Judgment affirmed.



(Soon) (D-NOTE)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1295/P1

TAY.....

RMR jlg

DOA:.....Geisler - Expanded estate recovery

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1

do not gen
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES ✓

MEDICAL ASSISTANCE ✓

Under current law, the department of health and family services (DHFS) is directed to recover from the estate of a deceased medical assistance (MA) recipient the amount of MA paid on behalf of the recipient while the recipient was a resident in a nursing home or was an inpatient in a medical institution and the amount of MA paid on behalf of the recipient for certain services received by the recipient after the recipient was over the age of 55. One mechanism for recovery is claim filed against the estate. Another mechanism is a lien placed on the home of a recipient who is nursing home resident and is not expected to return home. Currently, a lien may only be for the amount of MA paid on behalf of the recipient while the recipient resides in a nursing home.

This bill expands the estate recovery program as follows:

1. The bill creates a definition of estate to include all property in which the recipient had an interest immediately before his or her death. Thus, property that passes by right of survivorship, property held as a joint tenant and any other property that passes to an heir, regardless of whether that property is subject to administration under the probate provisions, is considered part of the estate of the recipient (to the extent of the recipient's interest in the property) and is therefore subject to recovery.

2. In addition to obtaining a lien on the home of a nursing home resident who is not expected to return home, the bill directs DHFS to obtain a lien on the home of an inpatient in a medical institution who is not expected to return home. The lien, in both cases, is for the amount of MA paid on behalf of that recipient that is generally recoverable, rather than only the amount paid while the recipient was in the nursing home (or medical institution).

3. Under the bill, DHFS is directed to recover expenditures for personal care services, which include assistance with meals, dressing, movement, bathing or other personal needs or maintenance. Currently, these expenditures are not recovered by the DHFS.

Under current law, a court may reduce DHFS's claim in an estate by up to \$3,000 to allow heirs and beneficiaries to retain certain personal property, including up to \$1,000 in tangible personal property that is not used in trade, agriculture or other business.

This bill increases the amount by which a court may reduce DHFS's claim in an estate. Under the bill, a court may reduce the claim by up to \$5,000, including \$3,000 in tangible personal property that is not used in trade, agriculture or other business. These amounts are consistent with the amounts specified in the probate provisions.

For further information see the *state and local* 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.** 46.27 (7g) (c) 3. (intro.)[✓] of the statutes is amended to read:

2 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under
3 subd. 1. by up to ~~\$3,000~~ the amount specified in s. 861.33 (2)[✓] if necessary to allow the
4 client's heirs or the beneficiaries of the client's will to retain the following personal
5 property:

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237.

6 **SECTION 2.** 46.27 (7g) (c) 3. c. of the statutes is amended to read:

7 46.27 (7g) (c) 3. c. Other tangible personal property not used in trade,
8 agriculture or other business, not to exceed \$1,000 in value the amount specified in
9 s. 861.33 (1) (a) 4.[✓]

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237.

10 **SECTION 3.** 49.43 (8m) of the statutes is created to read:

1 49.43 (8m) "Medical institution" has the meaning specified by the department
2 by rule.

3 SECTION 4. 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (am).

4 SECTION 5. 49.496 (1) (ag) of the statutes is created to read:

5 49.496 (1) (ag) "Decedent" means a recipient who is deceased.

6 SECTION 6. 49.496 (1) (at) of the statutes is created to read:

7 49.496 (1) (at) "Estate" means all income and assets in which a decedent had
8 any legal title or interest, to the extent of that interest, immediately prior to the
9 death of the decedent regardless of whether the income or assets are subject to
10 probate administration.

11 SECTION 7. 49.496 (2) (title) of the statutes is amended to read:

12 49.496 (2) (title) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS
13 AT MEDICAL INSTITUTIONS.

14 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. ~~27~~
15 SECTION 8. 49.496 (2) (a) of the statutes is amended to read:

16 49.496 (2) (a) Except as provided in par. (b), the department may obtain a lien
17 on a recipient's home if the recipient resides in a nursing home or medical institution
18 and cannot reasonably be expected to be discharged from the nursing home or
19 medical institution and return home. The lien is for the amount of medical
20 assistance paid on behalf of the recipient ~~while the recipient resides in a nursing~~
~~home that is recoverable under 49.496 (3) (a).~~ ^{Sub.}

21 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.
22 SECTION 9. 49.496 (2) (b) 3. of the statutes is amended to read:

1 49.496 (2) (b) 3. The recipient's sibling who has an ownership interest in the
2 home and who has lived in the home continuously beginning at least 12 months
3 before the recipient was admitted to the nursing home or medical institution.[✓]

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. [✗]

4 **SECTION 10.** 49.496 (2) (c) 1. of the statutes is amended to read:

5 49.496 (2) (c) 1. Notify the recipient in writing of its determination that the
6 recipient cannot reasonably be expected to be discharged from the nursing home[✓]or
7 medical institution, its intent to impose a lien on the recipient's home and the
8 recipient's right to a hearing on whether the requirements for the imposition of a lien
9 are satisfied.

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. [✗]

10 **SECTION 11.** 49.496 (2) (f) 3. of the statutes is amended to read:

11 49.496 (2) (f) 3. A child of any age who resides in the home, if that child resided
12 in the home for at least 24 months before the recipient was admitted to the nursing
13 home[✓]or medical institution and provided care to the recipient that delayed the
14 recipient's admission to the nursing home or medical institution.[✓]

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. [✗]

15 **SECTION 12.** 49.496 (2) (f) 4. of the statutes is amended to read:

16 49.496 (2) (f) 4. A sibling who resides in the home, if the sibling resided in the
17 home for at least 12 months before the recipient was admitted to the nursing home
18 or[✓]medical institution.

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. [✗]

19 **SECTION 13.** 49.496 (2) (h) of the statutes is amended to read:

20 49.496 (2) (h) The department shall file a release of a lien imposed under this
21 subsection if the recipient is discharged from the nursing home[✓]or medical institution
22 and returns to live in the home.

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. [✗]

23 **SECTION 14.** 49.496 (3) (a) (intro.)[✗] of the statutes is amended to read:

1 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file
2 a claim against the estate of a recipient ~~or against the estate of the surviving spouse~~
3 ~~of a recipient~~ for all of the following unless already recovered by the department
4 under this section:

5 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

SECTION 15. 49.496 (3) (a) 2. a. ^X of the statutes is amended to read:

6 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC
7 1396d (a) (7) and (8) and under any waiver granted under 42 USC 1396n (c) (4) (B)
8 or 42 USC 1396u.

9 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

SECTION 16. 49.496 (3) (a) 2. d. ^X of the statutes is created to read:

10 49.496 (3) (a) 2. d. Personal care services under s. [✓]49.46 (2) (b) 6. j.

11 **SECTION 17.** 49.496 (3) (am) (intro.) ^{✓X} of the statutes is amended to read:

12 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.
13 (a) by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) [✓] if necessary to allow the
14 recipient's heirs or the beneficiaries of the recipient's will to retain the following
15 personal property:

16 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

SECTION 18. 49.496 (3) (am) 3. ^X of the statutes is amended to read:

17 49.496 (3) (am) 3. Other tangible personal property not used in trade,
18 agriculture or other business, not to exceed ~~\$1,000~~ in value the amount specified in
19 s. [✓]861.33 (1) (a) 4.

20 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

SECTION 19. 49.496 (3) (ap) ^X of the statutes is created to read:

21 49.496 (3) (ap) There is a rebuttable presumption that the amount in the
22 decedent's estate is sufficient to cover the claim under par. (a). [✓] That presumption

1 may be rebutted by a sufficient showing by the objector that the valuation of the
2 decedent's estate is incorrect.

3 **SECTION 20.** 49.496 (3) (b) ^X of the statutes is amended to read:

4 49.496 (3) (b) A claim under par. (a) is not allowable if [✓]while the decedent has
5 a surviving child who is under age 21 or disabled or a surviving spouse.

6 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27. ^X
SECTION 21. 49.496 (3) (bm) of the statutes is created to read:

7 49.496 (3) (bm) After the decedent's surviving spouse dies and the decedent no
8 longer has any surviving children who are under the age of 21 or disabled, the claim
9 under par. (a) [✓]is allowable and shall be made against the decedent's estate, including
10 that part of the decedent's estate that was filed in the surviving spouse's estate or
11 passed to a surviving child who was under the age of 21 or disabled. The amount
12 recoverable from that portion of the decedent's estate that was filed in the surviving
13 spouse's estate or passed to the decedent's child is limited to the value of the property
14 that the surviving spouse or child received from the decedent's estate at the time of
15 death of the decedent.

16 **SECTION 22.** 49.682 (2) (c) (intro.) ^X of the statutes is amended to read:

17 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
18 (a) by up to [✓]\$3,000 the amount specified in s. 861.33 (2) [✓]if necessary to allow the
19 client's heirs or the beneficiaries of the client's will to retain the following personal
20 property:

21 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. ^X127, 128.
SECTION 23. 49.682 (2) (c) 3. [✓] of the statutes is amended to read:

1 49.682 (2) (c) 3. Other tangible personal property not used in trade, agriculture
2 or other business, not to exceed \$1,000 in value the amount specified in s. 861.33 (1)
3 (a) 4.

4 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128.

4 **SECTION 24.** 858.07 of the statutes is amended to read:

5 **858.07 Contents of inventory.** The personal representative shall include in
6 the inventory all property subject to administration. The personal representative
7 shall include a statement of any encumbrance, lien or other charge upon each item.
8 If the decedent was a recipient of medical assistance under subch. IV of ch. 49, the
9 personal representative shall attach to the inventory a listing of all property that
10 passes by survivorship or other operation of law and shall provide the department
11 of health and family services with a copy of the inventory, statement and attachment.

12 History: 1975 c. 331, 421; 1997 a. 83.

12 **SECTION 9323. Initial applicability; health and family services.**

13 (1) ESTATE RECOVERY. The treatment of sections 49.496 (1) (at), (2) (title), (a),
14 (b) 3., (c) 1., (f) 3. and 4. and (h) and (3) (ap) and (bm) and 858.07 of the statutes first
15 applies with respect to an individual who received medical assistance on the effective
16 date of this subsection.

17

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1295/P1dn

TAY...:.....

JG

Jeff Geisler :

Sincere

At the risk of sounding condescending, I ^{first,} ~~first want~~ ^{would like} to compliment the department for drafting such well-written, clear instructions. They were a drafter's dream. Please pass along my gratitude to the person or persons responsible.

When reviewing this draft, please note the following:

1. I did not require the personal representative to include in the inventory all assets that pass by survivorship or other operation of law. I could not determine what effect inclusion of that property in the inventory would have on such things as filing fees and I was uncertain that the department intended it to have any effect other than to alert the department to the existence of survivorship property. Therefore, I instead required the personal representative to attach a listing of survivorship and similar property to the inventory and send the inventory and attachment to the department (in the case of the estate of a decedent who was a medical assistance recipient).

2. The department offers two different suggestions for probating inactive estates and foreclosing on liens (see Item B3 in the 1999-2001 issue paper). The selection of an option is a matter of policy, which either you or the department must make. Please let me know which option you or the department wishes to have drafted.

3. I noticed that the term "medical institution" is used but undefined both in the current statutes and the drafting instructions. I also noticed that the department has defined "medical institution" in its rules. Therefore, I have included a definition of "medical institution" that refers to the department's definition. OK? Would you prefer to have a full definition in the statutes?

4. The department requested that the definition of "estate" be expanded for purposes of MA recovery. "Estate" is not actually defined in the statutes; therefore, I created a definition of the word in s. ~~49.496(1)(a)~~ ^{49.496(1)(at)}. Please review the definition to ensure that I captured the department's intent.

I am not certain that it is necessary to spell out in the statutes that the department will pursue recovery from someone other than a surviving spouse (and, I presume, a surviving child who is under 21 or who is disabled). With the created definition of "estate" I believe the department would be authorized to seek recovery from that part of the decedent's estate that passes by survivorship, etc. Please let me know if the department disagrees. I would be happy to meet with someone in the department to work out language that would effect the department's intent.

5. I included an initial applicability section. Please review it to ensure that it comports with the department's intent. The effect of that section is that the expanded recovery will not apply to estates of recipients who die before the effective date of the bill.

6. Do you want a delayed effective date?

Finally, I agree with the department that you should obtain an opinion from the Attorney General regarding the definition of "estate." Although federal law clearly permits a state to recover from assets in an estate that pass by survivorship, joint tenancy, etc., it seems a bit facile to create a definition of "estate" and thereby avoid the ruling of the Court of Appeals in *In the Matter of the Estate of Paul Budney*, 197 Wis. 2d 948. On the other hand, I know of no other way that the federal law may be effected. As long as the department's claim is against the estate of the recipient, not the estate of the surviving spouse (or anyone else's estate, for that matter), the claim appears to fall within the permissive language of the federal law.

Tina A. Yacker
Legislative Attorney
261-6927

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1295/P1dn
TAY:jlg:km

December 29, 1998

Jeff Geisler:

First, I would like to compliment the department for drafting such well-written, clear instructions. They were a drafter's dream. Please pass along my sincere gratitude to the person or persons responsible.

When reviewing this draft, please note the following:

1. I did not require the personal representative to include in the inventory all assets that pass by survivorship or other operation of law. I could not determine what effect inclusion of that property in the inventory would have on such things as filing fees and I was uncertain that the department intended it to have any effect other than to alert the department to the existence of survivorship property. Therefore, I instead required the personal representative to attach a listing of survivorship and similar property to the inventory and send the inventory and attachment to the department (in the case of the estate of a decedent who was a medical assistance recipient).

2. The department offers two different suggestions for probating inactive estates and foreclosing on liens (see Item B3 in the 1999-2001 issue paper). The selection of an option is a matter of policy, which either you or the department must make. Please let me know which option you or the department wishes to have drafted.

3. I noticed that the term "medical institution" is used but undefined both in the current statutes and the drafting instructions. I also noticed that the department has defined "medical institution" in its rules. Therefore, I have included a definition of "medical institution" that refers to the department's definition. OK? Would you prefer to have a full definition in the statutes?

4. The department requested that the definition of "estate" be expanded for purposes of MA recovery. "Estate" is not actually defined in the statutes; therefore, I created a definition of the word in s. 49.496 (1) (at). Please review the definition to ensure that I captured the department's intent.

I am not certain that it is necessary to spell out in the statutes that the department will pursue recovery from someone other than a surviving spouse (and, I presume, a surviving child who is under 21 or who is disabled). With the created definition of "estate" I believe the department would be authorized to seek recovery from that part of the decedent's estate that passes by survivorship, etc. Please let me know if the department disagrees. I would be happy to meet with someone in the department to work out language that would effect the department's intent.

5. I included an initial applicability section. Please review it to ensure that it comports with the department's intent. The effect of that section is that the expanded recovery will not apply to estates of recipients who die before the effective date of the bill.

6. Do you want a delayed effective date?

Finally, I agree with the department that you should obtain an opinion from the Attorney General regarding the definition of "estate." Although federal law clearly permits a state to recover from assets in an estate that pass by survivorship, joint tenancy, etc., it seems a bit facile to create a definition of "estate" and thereby avoid the ruling of the Court of Appeals in *In the Matter of the Estate of Paul Budney*, 197 Wis. 2d 948. On the other hand, I know of no other way that the federal law may be effected. As long as the department's claim is against the estate of the recipient, not the estate of the surviving spouse (or anyone else's estate, for that matter), the claim appears to fall within the permissive language of the federal law.

Tina A. Yacker
Legislative Attorney
261-6927

Yacker, Tina

From: Geisler, Jeffrey [jeffrey.geisler@doa.state.wi.us]
Sent: Monday, January 18, 1999 12:12 PM
To: Yacker, Tina
Subject: Responses to Drafter's note in LRB 1295/P1



LRB-ERP-responses.doc

Tina,

The Governor wants this draft changed so that it does not attempt to define "estate."

So, we would like removed all of the material that relates to "Drafting Instructions on Expanding the Definition of Estate."

In your analysis of the bill, this means removing point #1, but retaining points 2 and 3.

As for your other questions, please see the attached DHFS reply. I ask that you make the changes they request in points #2 & #3 in that attached document.

Please call if your have questions.

<<LRB-ERP-responses.doc>>

Jeffrey A. Geisler
267-7980
DOA State Budget Office

Department Responses to the Expansion of Estate Recovery Program
statutory language request, LRB 1295/P1.

Each number corresponds to the specific numbered question provider by LRB.

Please note that the Department is requesting and assumes removal of drafted language created/amended to deal with the request to, "Expand the Definition of Estate for Medicaid Recipients."

1. This question refers to the withdrawn request for expansion of the definition of estate.
2. The Department would like to proceed with language which would allow the Program to contract with local attorneys to proceed with probating inactive estates - lacking any other interested parties doing so. All recovery programs (49.496, 46.27 (7g) and 49.682) would need an exception to ss. 20.930 for the explicit purpose of soliciting services (most likely those of an attorney) to probate these types of inactive estates. Fees due as a result of services rendered would be paid per the standard probate court process where fees are deducted from the estate's funds prior to the balance in the estate being made available to satisfy the State's claim.
3. The Department has-reviewed our original request to amend the current statutory language to include medical institution and have now determined that a more appropriate word to use would be hospital. As a result, in the 12/29/98 LRB draft, delete creation of 49.43(8m) and throughout the remainder of the drafted language, use the word "hospital" instead of medical institution".

Example:

49.496 (2)(a) Except as provided in par. (b), the department may obtain a lien on a recipient's home if the recipient resides in a nursing home or while the recipient resides in a hospital and is required to contribute to the cost of care and cannot reasonably be expected to be discharged from the nursing home or hospital and return home. The lien is for the amount of medical assistance paid on behalf of the recipient ~~while the recipient resides in a nursing home~~ that is recoverable under sub. (3)(a).

Note that the first bolded **and** used above is a modifier to indicate that we are referring only to those recipients residing in a hospital and are required to contribute to their cost of care. In the paragraph, the subsequent two conditions – being "discharged" and "return home"- must both be met by either a recipient residing in a nursing home or a recipient residing in a hospital who is required to contribute to the cost of care. This type of clarification is consistent with the wording of S.49.496(3)(a)1.

In all other instances in the drafted language, "medical institution" should be changed to "hospital". Additionally, 49.496(3)(a)1. will require an amendment to change the existing language from "medical institution" to "hospital".

4. This question refers to the withdrawn request for expansion of the definition of estate.
5. The Department is satisfied with the drafted language
6. No, the Department does not wish for delayed effective date.

Final comment from the drafter refers to the withdrawn request for expansion of the definition of estate.



(Soon)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1295/P1 /
TAY:jlg:km

DOA:.....Geisler – Expanded estate recovery

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, the department of health and family services (DHFS) is directed to recover from the estate of a deceased medical assistance (MA) recipient the amount of MA paid on behalf of the recipient while the recipient was a resident in a nursing home or was an inpatient in a medical institution and the amount of MA paid on behalf of the recipient for certain services received by the recipient after the recipient was over the age of 55. One mechanism for recovery is claim filed against the estate. Another mechanism is a lien placed on the home of a recipient who is nursing home resident and is not expected to return home. Currently, a lien may only be for the amount of MA paid on behalf of the recipient while the recipient resides in a nursing home.

This bill expands the estate recovery program as follows:

1. The bill creates a definition of estate to include all property in which the recipient had an interest immediately before his or her death. Thus, property that passes by right of survivorship, property held as a joint tenant and any other property that passes to an heir, regardless of whether that property is subject to administration under the probate provisions, is considered part of the estate of the recipient (to the extent of the recipient's interest in the property) and is therefore subject to recovery.

hospital

1. In addition to obtaining a lien on the home of a nursing home resident who is not expected to return home, the bill directs DHFS to obtain a lien on the home of an inpatient in a ~~medical institution~~ who is not expected to return home. The lien, in both cases, is for the amount of MA paid on behalf of that recipient that is generally recoverable, rather than only the amount paid while the recipient was in the nursing home (or ~~medical institution~~).

2. Under the bill, DHFS is directed to recover expenditures for personal care services, which include assistance with meals, dressing, movement, bathing or other personal needs or maintenance. Currently, these expenditures are not recovered by the DHFS.

Under current law, a court may reduce DHFS's claim in an estate by up to \$3,000 to allow heirs and beneficiaries to retain certain personal property, including up to \$1,000 in tangible personal property that is not used in trade, agriculture or other business.

This bill increases the amount by which a court may reduce DHFS's claim in an estate. Under the bill, a court may reduce the claim by up to \$5,000, including \$3,000 in tangible personal property that is not used in trade, agriculture or other business. These amounts are consistent with the amounts specified in the probate provisions.

For further information see the *state and local* 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:

✓
INSERT
2-1

1 SECTION 1. 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

2 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under
3 subd. 1. by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
4 client's heirs or the beneficiaries of the client's will to retain the following personal
5 property:

6 SECTION 2. 46.27 (7g) (c) 3. c. of the statutes is amended to read:

7 46.27 (7g) (c) 3. c. Other tangible personal property not used in trade,
8 agriculture or other business, not to exceed \$1,000 in value the amount specified in
9 s. 861.33 (1) (a) 4.

✓
INSERT
2-9

10 ~~SECTION 3. 49.43 (8m) of the statutes is created to read:~~

1 49.43(8m) "Medical institution" has the meaning specified by the department
2 by rule.

3 SECTION 4. 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (am).

4 SECTION 5. 49.496 (1) (ag) of the statutes is created to read:

5 49.496 (1) (ag) "Decedent" means a recipient who is deceased.

6 SECTION 6. 49.496 (1) (at) of the statutes is created to read:

7 49.496 (1) (at) "Estate" means all income and assets in which a decedent had
8 any legal title or interest, to the extent of that interest, immediately prior to the
9 death of the decedent regardless of whether the income or assets are subject to
10 probate administration.

11 SECTION 7. 49.496 (2) (title) of the statutes is amended to read:

12 49.496 (2) (title) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS

13 ~~AT MEDICAL INSTITUTIONS~~

HOSPITALS ← CS

hospital and is required to contribute to the cost of care

14 SECTION 8. 49.496 (2) (a) of the statutes is amended to read:

15 49.496 (2) (a) Except as provided in par. (b), the department may obtain a lien
16 on a recipient's home if the recipient resides in a nursing home ~~or medical institution~~
17 and ^{the recipient} cannot reasonably be expected to be discharged from the nursing home or
18 ~~medical institution~~ ^{hospital} and return home. The lien is for the amount of medical
19 assistance paid on behalf of the recipient while the recipient resides in a nursing
20 home that is recoverable under sub. (3) (a).

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

22 49.496 (2) (b) 3. The recipient's sibling who has an ownership interest in the
23 home and who has lived in the home continuously beginning at least 12 months
24 before the recipient was admitted to the nursing home or ~~medical institution~~ ^{hospital}

25 SECTION 10. 49.496 (2) (c) 1. of the statutes is amended to read:

1 49.496 (2) (c) 1. Notify the recipient in writing of its determination that the
 2 recipient cannot reasonably be expected to be discharged from the nursing home or
 3 ~~medical institution~~ ^{hospital} its intent to impose a lien on the recipient's home and the
 4 recipient's right to a hearing on whether the requirements for the imposition of a lien
 5 are satisfied.

6 **SECTION 11.** 49.496 (2) (f) 3. of the statutes is amended to read:

7 49.496 (2) (f) 3. A child of any age who resides in the home, if that child resided
 8 in the home for at least 24 months before the recipient was admitted to the nursing
 9 home or ~~medical institution~~ ^{hospital} and provided care to the recipient that delayed the
 10 recipient's admission to the nursing home or ~~medical institution~~ ^{hospital}.

11 **SECTION 12.** 49.496 (2) (f) 4. of the statutes is amended to read:

12 49.496 (2) (f) 4. A sibling who resides in the home, if the sibling resided in the
 13 home for at least 12 months before the recipient was admitted to the nursing home
 14 or ~~medical institution~~ ^{hospital}.

15 **SECTION 13.** 49.496 (2) (h) of the statutes is amended to read:

16 49.496 (2) (h) The department shall file a release of a lien imposed under this
 17 subsection if the recipient is discharged from the nursing home or ~~medical institution~~ ^{hospital}
 18 and returns to live in the home.

19 **SECTION 14.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

20 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file
 21 a claim against the estate of a recipient ~~or against the estate of the surviving spouse~~
 22 ~~of a recipient~~ for all of the following unless already recovered by the department
 23 under this section:

23 ✓
 INSERT
 + B 24

24 **SECTION 15.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

1 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC
2 1396d (a) (7) and (8) and under any waiver granted under 42 USC 1396n (c) (4) (B)
3 or 42 USC 1396u.

4 **SECTION 16.** 49.496 (3) (a) 2. d. of the statutes is created to read:

5 49.496 (3) (a) 2. d. Personal care services under s. 49.46 (2) (b) 6. j.

6 **SECTION 17.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

7 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.
8 (a) by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
9 recipient's heirs or the beneficiaries of the recipient's will to retain the following
10 personal property:

11 **SECTION 18.** 49.496 (3) (am) 3. of the statutes is amended to read:

12 49.496 (3) (am) 3. Other tangible personal property not used in trade,
13 agriculture or other business, not to exceed ~~\$1,000~~ in value the amount specified in
14 s. 861.33 (1) (a) 4.

15 **SECTION 19.** 49.496 (3) (ap) of the statutes is created to read:

16 49.496 (3) (ap) There is a rebuttable presumption that the amount in the
17 decedent's estate is sufficient to cover the claim under par. (a). That presumption
18 may be rebutted by a sufficient showing by the objector that the valuation of the
19 decedent's estate is incorrect.

20 **SECTION 20.** 49.496 (3) (b) of the statutes is amended to read:

21 49.496 (3) (b) A claim under par. (a) is not allowable if while the decedent has
22 a surviving child who is under age 21 or disabled or a surviving spouse.

23 **SECTION 21.** 49.496 (3) (bm) of the statutes is created to read:

24 49.496 (3) (bm) After the decedent's surviving spouse dies and the decedent no
25 longer has any surviving children who are under the age of 21 or disabled, the claim

1 under par. (a) is allowable and shall be made against the decedent's estate, including
 2 that part of the decedent's estate that was filed in the surviving spouse's estate or
 3 passed to a surviving child who was under the age of 21 or disabled. The amount
 4 recoverable from that portion of the decedent's estate that was filed in the surviving
 5 spouse's estate or passed to the decedent's child is limited to the value of the property
 6 that the surviving spouse or child received from the decedent's estate at the time of
 7 death of the decedent.

7 ✓
 INSERT
 6-7 →

8 **SECTION 22.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

9 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
 10 (a) by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
 11 client's heirs or the beneficiaries of the client's will to retain the following personal
 12 property:

13 **SECTION 23.** 49.682 (2) (c) 3. of the statutes is amended to read:

14 49.682 (2) (c) 3. Other tangible personal property not used in trade, agriculture
 15 or other business, not to exceed ~~\$1,000~~ in value the amount specified in s. 861.33 (1)
 16 (a) 4.

16 ✓
 INSERT
 5-16 →

17 **SECTION 24.** 858.07 of the statutes is amended to read:

18 **858.07 Contents of inventory.** The personal representative shall include in
 19 the inventory all property subject to administration. The personal representative
 20 shall include a statement of any encumbrance, lien or other charge upon each item.
 21 If the decedent was a recipient of medical assistance under subch. IV of ch. 49, the
 22 personal representative shall attach to the inventory a listing of all property that
 23 passes by survivorship or other operation of law and shall provide the department
 24 of health and family services with a copy of the inventory, statement and attachment.

25 **SECTION 9323. Initial applicability; health and family services.**

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1295/lins
TAY.....

insert 2-1

SECTION 1. 20.930[✓] of the statutes is amended to read:

20.930 Attorney fees. No Except as provided in ss. 46.27 (7g) (h)[✓], 49.496 (3)[✓] (f)[✓] and 49.682 (6)[✓], no state agency in the executive branch may employ any attorney until such employment has been approved by the governor.

History: 1979 c. 221; 1989 a. 119 s. 1; Stats. 1989 s. 20.930; 1993 a. 490.

insert 2-9

SECTION 2. 46.27 (7g) (h)[✓] of the statutes is created to read:

46.27 (7g) (h) The department may contract with or employ an attorney to probate inactive estates to recover under this subsection[✓] the costs of care.

insert 4-23

SECTION 3. 49.496 (3) (a) 1.[✓] of the statutes is amended to read:

49.496 (3) (a) 1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a ~~medical institution~~ hospital[✓] and was required to contribute to the cost of care.

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

insert 6-7

SECTION 4. 49.496 (3) (f)[✓] of the statutes is created to read:



49.496 (3) (f) The department may contract with or employ an attorney to probate inactive estates to recover under this subsection[✓] the costs of care.

insert 6-16

SECTION 5. 49.682 (6)^{✓x} of the statutes is created to read:

49.682 (6) The department may contract with or employ an attorney to probate inactive estates to recover under this section[✓] the costs of care.

Yacker, Tina

From: Geisler, Jeffrey
Sent: Tuesday, January 26, 1999 11:04 AM
To: Yacker, Tina
Subject: FW: Statutory language for estate recovery program - LRB 1295/1

Tina,
The attached document contains a request for changes to this draft.
I endorse all of the requested changes (but leave the last change--because it deals with the analysis narrative--to your discretion).
Please tell me if you see any problems with these changes.
Thanks
Jeffrey A. Geisler
267-7980
DOA State Budget Office

-----Original Message-----

From: Chao, Richard
Sent: Friday, January 22, 1999 4:37 PM
To: Geisler, Jeffrey
Subject: RE: Statutory language for estate recovery program

Dear Jeff:
It was good to see you today.
Attached is the second set of comments for the newly revised stat lang for the ERP. Thanks for the opportunity to comment. Rich

Richard T. Chao
Budget Section
Department of Health and Family Services
(608) 267-0356



LRB12951Comments2ndtime.doc

Comments to Draft LRB-1295/1

In reviewing the draft, DHFS offers the following comments:

- √1) **Sections 4, 23 and 26** deal with contracting with or employing an attorney to probate estates. We would prefer that **the word “inactive” be deleted** from the aforementioned Sections as there is no definition of “inactive” in probate law and it would create confusion. The Department only intends to probate estates when no one else is willing or able to probate the estate. When a creditor can initiate probate is already governed in probate law.
- 2) **Section 6** creates a definition for **“decedent” for s. 49.496**. While this does not hamper the program – it is not necessary and could be **deleted**. **HOWEVER**, if it does stay in, **parallel construction** should be completed for s.46.27 (7g) and also s. 49.682.
- 3) **Sections 20, 22 and 27** should be **deleted**, as they are remnants from the first LRB draft which dealt with the request to “expand the Definition of Estate for Medicaid Recipients” which has since been withdrawn.
- 4) In **Section 9323** (Initial Applicability), **strike** the reference to **49.496 (3)(ap) and (BM) and 858.07** as a result of deleting Sections 20, 22 and 27.
- 5) In **Section 9323**, **add** an applicability date for purposes of recovery of personal care services: **“The treatment of section 49.496(3)(a) 2.d. of the statutes first applies with respect to services rendered on and after [the effective date of this bill].”**
- 6) Finally, in the analysis of the language – on the top of page two, add the following underscored phrase for clarification regarding recovery of personal care: **Currently, these expenditures are not recovered by the DHFS, but similar services provided under home and community-based waiver programs (supportive home care) are recovered.**

Verifies on promotion - Larry.



(Soon) (D-NOTE)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1295~~4~~ 2

TAY:jlg:hmh

RMR

DOA:.....Geisler - Expanded estate recovery

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, the department of health and family services (DHFS) is directed to recover from the estate of a deceased medical assistance (MA) recipient the amount of MA paid on behalf of the recipient while the recipient was a resident in a nursing home or was an inpatient in a medical institution and the amount of MA paid on behalf of the recipient for certain services received by the recipient after the recipient was over the age of 55. One mechanism for recovery is claim filed against the estate. Another mechanism is a lien placed on the home of a recipient who is nursing home resident and is not expected to return home. Currently, a lien may only be for the amount of MA paid on behalf of the recipient while the recipient resides in a nursing home.

This bill expands the estate recovery program as follows:

1. In addition to obtaining a lien on the home of a nursing home resident who is not expected to return home, the bill directs DHFS to obtain a lien on the home of an inpatient in a hospital who is not expected to return home. The lien, in both cases, is for the amount of MA paid on behalf of that recipient that is generally recoverable, rather than only the amount paid while the recipient was in the nursing home (or hospital).

2. Under the bill, DHFS is directed to recover expenditures for personal care services, which include assistance with meals, dressing, movement, bathing or other

personal needs or maintenance. Currently, these expenditures are not recovered by the DHFS.

Under current law, a court may reduce DHFS's claim in an estate by up to \$3,000 to allow heirs and beneficiaries to retain certain personal property, including up to \$1,000 in tangible personal property that is not used in trade, agriculture or other business.

This bill increases the amount by which a court may reduce DHFS's claim in an estate. Under the bill, a court may reduce the claim by up to \$5,000, including \$3,000 in tangible personal property that is not used in trade, agriculture or other business. These amounts are consistent with the amounts specified in the probate provisions.

For further information see the *state and local* 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.** 20.930 of the statutes is amended to read:

2 **20.930 Attorney fees.** No Except as provided in ss. 46.27 (7g) (h), 49.496 (3)
3 (f) and 49.682 (6), no state agency in the executive branch may employ any attorney
4 until such employment has been approved by the governor.

5 **SECTION 2.** 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

6 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under
7 subd. 1. by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
8 client's heirs or the beneficiaries of the client's will to retain the following personal
9 property:

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

11 46.27 (7g) (c) 3. c. Other tangible personal property not used in trade,
12 agriculture or other business, not to exceed \$1,000 in value the amount specified in
13 s. 861.33 (1) (a) 4.

14 **SECTION 4.** 46.27 (7g) (h) of the statutes is created to read:

1 46.27 (7g) (h) The department may contract with or employ an attorney to
2 probate ~~inactive~~ estates to recover under this subsection the costs of care.

3 ~~SECTION 5. 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (am).~~

4 ~~SECTION 6. 49.496 (1) (ag) of the statutes is created to read:~~

5 ~~49.496 (1) (ag) "Decedent" means a recipient who is deceased~~

6 SECTION 7. 49.496 (2) (title) of the statutes is amended to read:

7 49.496 (2) (title) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS

8 AT HOSPITALS.

9 SECTION 8. 49.496 (2) (a) of the statutes is amended to read:

10 49.496 (2) (a) Except as provided in par. (b), the department may obtain a lien
11 on a recipient's home if the recipient resides in a nursing home, or if the recipient
12 resides in a hospital and is required to contribute to the cost of care, and the recipient
13 cannot reasonably be expected to be discharged from the nursing home or hospital
14 and return home. The lien is for the amount of medical assistance paid on behalf of
15 the recipient while the recipient resides in a nursing home that is recoverable under
16 sub. (3) (a).

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

18 49.496 (2) (b) 3. The recipient's sibling who has an ownership interest in the
19 home and who has lived in the home continuously beginning at least 12 months
20 before the recipient was admitted to the nursing home or hospital.

21 SECTION 10. 49.496 (2) (c) 1. of the statutes is amended to read:

22 49.496 (2) (c) 1. Notify the recipient in writing of its determination that the
23 recipient cannot reasonably be expected to be discharged from the nursing home or
24 hospital, its intent to impose a lien on the recipient's home and the recipient's right
25 to a hearing on whether the requirements for the imposition of a lien are satisfied.

1 **SECTION 11.** 49.496 (2) (f) 3. of the statutes is amended to read:

2 49.496 (2) (f) 3. A child of any age who resides in the home, if that child resided
3 in the home for at least 24 months before the recipient was admitted to the nursing
4 home or hospital and provided care to the recipient that delayed the recipient's
5 admission to the nursing home or hospital.

6 **SECTION 12.** 49.496 (2) (f) 4. of the statutes is amended to read:

7 49.496 (2) (f) 4. A sibling who resides in the home, if the sibling resided in the
8 home for at least 12 months before the recipient was admitted to the nursing home
9 or hospital.

10 **SECTION 13.** 49.496 (2) (h) of the statutes is amended to read:

11 49.496 (2) (h) The department shall file a release of a lien imposed under this
12 subsection if the recipient is discharged from the nursing home or hospital and
13 returns to live in the home.

14 **SECTION 14.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

15 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file
16 a claim against the estate of a recipient ~~or against the estate of the surviving spouse~~
17 ~~of a recipient~~ for all of the following unless already recovered by the department
18 under this section:

19 **SECTION 15.** 49.496 (3) (a) 1. of the statutes is amended to read:

20 49.496 (3) (a) 1. The amount of medical assistance paid on behalf of the
21 recipient while the recipient resided in a nursing home or while the recipient was an
22 inpatient in a ~~medical institution~~ hospital and was required to contribute to the cost
23 of care.

24 **SECTION 16.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

1 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC
2 1396d (a) (7) and (8) and under any waiver granted under 42 USC 1396n (c) (4) (B)
3 or 42 USC 1396u.

4 **SECTION 17.** 49.496 (3) (a) 2. d. of the statutes is created to read:

5 49.496 (3) (a) 2. d. Personal care services under s. 49.46 (2) (b) 6. j.

6 **SECTION 18.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

7 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.
8 (a) by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
9 recipient's heirs or the beneficiaries of the recipient's will to retain the following
10 personal property:

11 **SECTION 19.** 49.496 (3) (am) 3. of the statutes is amended to read:

12 49.496 (3) (am) 3. Other tangible personal property not used in trade,
13 agriculture or other business, not to exceed \$1,000 in value the amount specified in
14 s. 861.33 (1) (a) 4.

15 **SECTION 20.** 49.496 (3) (ap) of the statutes is created to read:

16 49.496 (3) (ap) There is a rebuttable presumption that the amount in the
17 decedent's estate is sufficient to cover the claim under par. (a). That presumption
18 may be rebutted by a sufficient showing by the objector that the valuation of the
19 decedent's estate is incorrect.

20 **SECTION 21.** 49.496 (3) (b) of the statutes is amended to read:

21 49.496 (3) (b) A claim under par. (a) is not allowable if while the decedent has
22 a surviving child who is under age 21 or disabled or a surviving spouse.

23 **SECTION 22.** 49.496 (3) (bm) of the statutes is created to read:

24 49.496 (3) (bm) After the decedent's surviving spouse dies and the decedent no
25 longer has any surviving children who are under the age of 21 or disabled, the claim

1 under par. (a) is allowable and shall be made against the decedent's estate, including
2 that part of the decedent's estate that was filed in the surviving spouse's estate or
3 passed to a surviving child who was under the age of 21 or disabled. The amount
4 recoverable from that portion of the decedent's estate that was filed in the surviving
5 spouse's estate or passed to the decedent's child is limited to the value of the property
6 that the surviving spouse or child received from the decedent's estate at the time of
7 death of the decedent.

8 **SECTION 23.** 49.496 (3) (f) of the statutes is created to read:

9 49.496 (3) (f) The department may contract with or employ an attorney to
10 probate ~~probate~~ estates to recover under this subsection the costs of care.

11 **SECTION 24.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

12 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
13 (a) by up to \$3,000 the amount specified in s. 861.33 (2) if necessary to allow the
14 client's heirs or the beneficiaries of the client's will to retain the following personal
15 property:

16 **SECTION 25.** 49.682 (2) (c) 3. of the statutes is amended to read:

17 49.682 (2) (c) 3. Other tangible personal property not used in trade, agriculture
18 or other business, not to exceed \$1,000 in value the amount specified in s. 861.33 (1)
19 (a) 4.

20 **SECTION 26.** 49.682 (6) of the statutes is created to read:

21 49.682 (6) The department may contract with or employ an attorney to probate
22 ~~probate~~ estates to recover under this section the costs of care. *g*

23 **SECTION 27.** 858.07 of the statutes is amended to read:

24 **858.07 Contents of inventory.** The personal representative shall include in
25 the inventory all property subject to administration. The personal representative

g

1 shall include a statement of any encumbrance, lien or other charge upon each item.
 2 If the decedent was a recipient of medical assistance under subch. IV of ch. 49, the
 3 personal representative shall attach to the inventory a listing of all property that
 4 passes by survivorship or other operation of law and shall provide the department
 5 of health and family services with a copy of the inventory, statement and attachment.

6 **SECTION 9323. Initial applicability; health and family services.**

7 (1) ESTATE RECOVERY. ^(a) The treatment of sections ^e 49.496, (2) (title), (a), (b) 3., (c)
 8 1., (f) 3. and 4. and (h) ~~and 5. and 6. and 7. and 8. and 9.~~ of the statutes first applies
 9 with respect to an individual who received medical assistance on the effective date
 10 of this ~~subsection.~~ ^{paragraph}

11 AP (6)

(END)
D-NOTE
↓

of the statutes

The ^{treatment} ~~provisions~~ of section [✓] 49.496(3)(a) 2. d. ^{first} applies with respect to services provided under section 49.46 (2)(b) 6. j. [✓] of the statutes on the effective date of this paragraph.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1295/2dn

TAX.....

1
JG

Jeff Geisler:

I have made all the changes requested by the department except the one to the analysis. It's not a huge deal either way, but it struck me as slightly promotional (of the draft) and I try to stay away from promotional language. I removed the definition of "decedent." I had added it to distinguish between a decedent who was a recipient and a decedent who was the recipient's spouse. However, since the language that made that distinction necessary has been removed, there was no reason to keep the definition.

If you have any questions, feel free to call me.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1295/2dn
TAY:jlgijs

January 28, 1999

Jeff Geisler:

I have made all the changes requested by the department except the one to the analysis. It's not a huge deal either way, but it struck me as slightly promotional (of the draft) and I try to stay away from promotional language. I removed the definition of "decedent." I had added it to distinguish between a decedent who was a recipient and a decedent who was the recipient's spouse. However, since the language that made that distinction necessary has been removed, there was no reason to keep the definition.

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Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1295/2

TAY;jlg:ijs

DOA:.....Geisler - Expanded estate recovery

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, the department of health and family services (DHFS) is directed to recover from the estate of a deceased medical assistance (MA) recipient the amount of MA paid on behalf of the recipient while the recipient was a resident in a nursing home or was an inpatient in a medical institution and the amount of MA paid on behalf of the recipient for certain services received by the recipient after the recipient was over the age of 55. One mechanism for recovery is claim filed against the estate. Another mechanism is a lien placed on the home of a recipient who is nursing home resident and is not expected to return home. Currently, a lien may only be for the amount of MA paid on behalf of the recipient while the recipient resides in a nursing home.

This bill expands the estate recovery program as follows:

1. In addition to obtaining a lien on the home of a nursing home resident who is not expected to return home, the bill directs DHFS to obtain a lien on the home of an inpatient in a hospital who is not expected to return home. The lien, in both cases, is for the amount of MA paid on behalf of that recipient that is generally recoverable, rather than only the amount paid while the recipient was in the nursing home (or hospital).

2. Under the bill, DHFS is directed to recover expenditures for personal care services, which include assistance with meals, dressing, movement, bathing or other

personal needs or maintenance. Currently, these expenditures are not recovered by the DHFS.

Under current law, a court may reduce DHFS's claim in an estate by up to \$3,000 to allow heirs and beneficiaries to retain certain personal property, including up to \$1,000 in tangible personal property that is not used in trade, agriculture or other business.

This bill increases the amount by which a court may reduce DHFS's claim in an estate. Under the bill, a court may reduce the claim by up to \$5,000, including \$3,000 in tangible personal property that is not used in trade, agriculture or other business. These amounts are consistent with the amounts specified in the probate provisions.

For further information see the *state and local* 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.** 20.930 of the statutes is amended to read:

2 **20.930 Attorney fees.** No Except as provided in ss. 46.27 (7g) (h), 49.496 (3)
3 (f) and 49.682 (6), no state agency in the executive branch may employ any attorney
4 until such employment has been approved by the governor.

5 **SECTION 2.** 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

6 **46.27 (7g) (c) 3. (intro.)** The court shall reduce the amount of a claim under
7 subd. 1. by up to ~~\$3,000~~ the amount specified in s. 861.33 (2) if necessary to allow the
8 client's heirs or the beneficiaries of the client's will to retain the following personal
9 property:

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

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13 s. 861.33 (1) (a) 4.

14 **SECTION 4.** 46.27 (7g) (h) of the statutes is created to read:

1 46.27 (7g) (h) The department may contract with or employ an attorney to
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3 **SECTION 5.** 49.496 (2) (title) of the statutes is amended to read:

4 49.496 (2) (title) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS
5 AT HOSPITALS.

6 **SECTION 6.** 49.496 (2) (a) of the statutes is amended to read:

7 49.496 (2) (a) Except as provided in par. (b), the department may obtain a lien
8 on a recipient's home if the recipient resides in a nursing home, or if the recipient
9 resides in a hospital and is required to contribute to the cost of care, and the recipient
10 cannot reasonably be expected to be discharged from the nursing home or hospital
11 and return home. The lien is for the amount of medical assistance paid on behalf of
12 the recipient ~~while the recipient resides in a nursing home~~ that is recoverable under
13 sub. (3) (a).

14 **SECTION 7.** 49.496 (2) (b) 3. of the statutes is amended to read:

15 49.496 (2) (b) 3. The recipient's sibling who has an ownership interest in the
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17 before the recipient was admitted to the nursing home or hospital.

18 **SECTION 8.** 49.496 (2) (c) 1. of the statutes is amended to read:

19 49.496 (2) (c) 1. Notify the recipient in writing of its determination that the
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21 hospital, its intent to impose a lien on the recipient's home and the recipient's right
22 to a hearing on whether the requirements for the imposition of a lien are satisfied.

23 **SECTION 9.** 49.496 (2) (f) 3. of the statutes is amended to read:

24 49.496 (2) (f) 3. A child of any age who resides in the home, if that child resided
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1 home or hospital and provided care to the recipient that delayed the recipient's
2 admission to the nursing home or hospital.

3 **SECTION 10.** 49.496 (2) (f) 4. of the statutes is amended to read:

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6 or hospital.

7 **SECTION 11.** 49.496 (2) (h) of the statutes is amended to read:

8 49.496 (2) (h) The department shall file a release of a lien imposed under this
9 subsection if the recipient is discharged from the nursing home or hospital and
10 returns to live in the home.

11 **SECTION 12.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

12 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file
13 a claim against the estate of a recipient ~~or against the estate of the surviving spouse~~
14 ~~of a recipient~~ for all of the following unless already recovered by the department
15 under this section:

16 **SECTION 13.** 49.496 (3) (a) 1. of the statutes is amended to read:

17 49.496 (3) (a) 1. The amount of medical assistance paid on behalf of the
18 recipient while the recipient resided in a nursing home or while the recipient was an
19 inpatient in a ~~medical institution~~ hospital and was required to contribute to the cost
20 of care.

21 **SECTION 14.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

22 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC
23 1396d (a) (7) and (8) and under any waiver granted under 42 USC 1396n (c) (4) (B)
24 or 42 USC 1396u.

25 **SECTION 15.** 49.496 (3) (a) 2. d. of the statutes is created to read:

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2 **SECTION 16.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

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5 recipient's heirs or the beneficiaries of the recipient's will to retain the following

6 personal property:

7 **SECTION 17.** 49.496 (3) (am) 3. of the statutes is amended to read:

8 49.496 (3) (am) 3. Other tangible personal property not used in trade,

9 agriculture or other business, not to exceed ~~\$1,000~~ in value the amount specified in

10 s. 861.33 (1) (a) 4.

11 **SECTION 18.** 49.496 (3) (b) of the statutes is amended to read:

12 49.496 (3) (b) A claim under par. (a) is not allowable if while the decedent has

13 a surviving child who is under age 21 or disabled or a surviving spouse.

14 **SECTION 19.** 49.496 (3) (f) of the statutes is created to read:

15 49.496 (3) (f) The department may contract with or employ an attorney to

16 probate estates to recover under this subsection the costs of care.

17 **SECTION 20.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

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20 client's heirs or the beneficiaries of the client's will to retain the following personal

21 property:

22 **SECTION 21.** 49.682 (2) (c) 3. of the statutes is amended to read:

23 49.682 (2) (c) 3. Other tangible personal property not used in trade, agriculture

24 or other business, not to exceed ~~\$1,000~~ in value the amount specified in s. 861.33 (1)

25 (a) 4.

