

2001 DRAFTING REQUEST

Bill

Received: **09/15/2000**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Mullikin**

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

Drafter: **isagerro**

May Contact:

Alt. Drafters:

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

Extra Copies: **DAK, PJK**

Pre Topic:

DOA:.....Mullikin -

Topic:

Liens on all real property for MA 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>
/1	isagerro 09/27/2000	gilfokm 09/27/2000	martykr 09/29/2000	_____	lrb_docadmin 09/29/2000		State
	isagerro 10/02/2000	gilfokm 10/09/2000		_____			
/2			martykr 10/10/2000	_____	lrb_docadmin 10/10/2000		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	isagerro 01/11/2001	gilfokm 01/11/2001	jfrantze 01/12/2001	_____	lrb_docadmin 01/12/2001		State

FE Sent For:

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10/11/2000
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2001 DRAFTING REQUEST

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For: Administration-Budget

By/Representing: Melissa Mullikin

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Alt. Drafters:

Subject: Public Assistance - med. assist.

Extra Copies: DAK, PJK

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FE Sent For:

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MM
01-0316

DHFS

Department of Health and Family Services
2001-2003 Biennial Budget Statutory Language Request
August 21, 2000

Recovery by Liens on All Real Property

Current Language

Under s. 49.496(2) Wis. Stats. the Department may only place a lien on the home of resident of an inpatient hospital who is required to contribute to his/her cost or care, and residents of nursing homes, who are not expected to return to their home to live. Real property other than a home, including property that is jointly owned, is not subject to the placement of a lien although federal law allows the recovery of all real property in which a recipient holds an interest.

Proposed Changes

A. Create a definition in s. 49.496(1)(cm), Stats., that defines real property.

(cm) "Real property" means all real property, including the home, in which the recipient has an ownership interest. *Real property includes home*

B. Amend s. 49.496(2)(intro.), Stats., to read "the department may obtain a lien on a recipient's ~~home~~ real property if the recipient ..."

have to amend

C. Do not amend s. 49.496(2)(b), Stats. The protections in that paragraph apply only to a recipient's home.

D. Amend s. 49.496(2)(c), Stats., to have that apply to "real property" and not just to "home." This protection is for all liens.

E. Amend s. 49.496(2)(d), Stats., to read "... of the county in which the home real property is located."

F. Amend s. 49.496(2)(e), Stats., to read " unless the recipient sells the home real property ..."

G. Do not amend s. 49.496(2)(f) thru (h), Stats.

have to amend
see 42USCS § 1396p(3)

Effect and Rationale for Change

To maintain MA eligibility, solely owned non-homestead property is considered an asset and must be listed for sale. When the property is sold, the recipient may voluntarily pay MA up to the amount of MA costs incurred and/or if the recipient's assets have increased beyond that allowed to maintain MA eligibility, the recipient usually leaves MA and becomes private pay. The inclusion of other real property in the lien process would negate the possibility that the proceeds from the sale of real property could be put into an annuity or other type of instrument that would exempt it from estate recovery at death.

In addition, recipients who currently own real property, other than a home, jointly with other parties may have this property excluded as an asset for eligibility purposes by providing documentation that the co-owners refuse to liquidate the asset. This protects the recipient's ownership value of the asset and in essence makes the asset unavailable for medical costs. At the point of death, this jointly owned real property can be transferred to the other owner(s) outside of the probate process (joint tenancy with the right of survivorship), and therefore is not an available asset for recovery.

Desired Effective Date:	Upon Passage
Agency:	DHFS
Agency Contact:	Richard T. Chao
Phone:	267-0356



[Handwritten signature]

DOA:.....Melissa Mullikin – Liens on all real property for MA estate recovery

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

[Handwritten: DNOTE]

[Handwritten: Fix Request Sheet]

1 ^{Don} AN ACT ...; relating to: the budget.

**Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES**

MEDICAL ASSISTANCE

Currently, DHFS is required to recover from the estate of certain medical assistance (MA) recipients the amount of MA paid on behalf of the recipient for certain MA services. To recover these amounts, DHFS is authorized to place a lien on the home of a recipient if the recipient resides in a nursing home or in a hospital and is required to contribute to the cost of care, the recipient is not reasonably expected to return home, and one of following individuals does not reside in the home:

1. The spouse of the recipient.
2. A child of the recipient who is under 21 years of age or disabled.
3. A sibling of the recipient who has an ownership interest in the home and has lived in the home continuously at least 12 months before the recipient was admitted to the nursing home or hospital.

Current law prohibits DHFS from enforcing a lien while the recipient is living unless the recipient sells the home and the recipient's spouse or the recipient's child who is under 21 or disabled is ~~not~~ ^{no longer} living. DHFS may enforce the lien upon the death of the recipient (the following individuals do not survive the recipient):

1. The spouse of the recipient.
2. A child of the recipient who is under 21 years of age or disabled.
3. A child of the recipient who is of any age, who has resided in the home for at least 24 consecutive months before the recipient was admitted to the nursing home

or hospital and who provided care to the recipient that delayed the recipient's admission into a nursing home or hospital.

Current law requires DHFS to notify the recipient in writing of its intent to impose a lien on the recipient's home and, if the recipient requests, provide the recipient with a hearing. If the recipient returns to live at home, DHFS must file a release of the lien.

Under This bill expands the estate recovery program by authorizing DHFS to place a lien on any real property in which a MA recipient has an interest, including the recipient's home, if the recipient resides in a nursing home, or in a hospital and is required to contribute to the cost of care and the recipient is not reasonably expected to return home. With respect to liens that DHFS imposes on any real property other than the recipient's home, DHFS may place a lien on the real property regardless of who resides in the real property, but DHFS may not enforce the lien while the recipient's spouse or child who is under 21 years old or disabled is living. Also under the bill, DHFS must notify the recipient in writing of its intent to place a lien on the recipient's real property, provide the recipient with an opportunity for a hearing, and file a release of the lien if the recipient returns to live at home. *The bill does not affect the current statutory requirements for liens on a recipient's home.*

may, in addition to placing a lien on a recipient's home,

the requirements that

also apply if DHFS imposes a lien on the recipient's other real property

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

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

1 SECTION 1. 49.496 (2) (a) of the statutes is amended to read:
2 49.496 (2) (a) Except as provided in par. (b), the department may obtain a lien
3 on a recipient's home and any other real property in which the recipient has an
4 interest if the recipient resides in a nursing home, or if the recipient resides in a
5 hospital and is required to contribute to the cost of care, and the recipient cannot
6 reasonably be expected to be discharged from the nursing home or hospital and
7 return home. The lien is for the amount of medical assistance paid on behalf of the
8 recipient that is recoverable under sub. (3) (a).

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

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

1 49.496 (2) (b) (intro.) The department may not obtain a lien on a recipient's
2 home under this subsection if any of the following persons lawfully ~~reside~~ ^{✓✓} resides in the
3 home:

4 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

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

5 49.496 (2) (c) (intro.) Before obtaining a lien ~~on a recipient's home~~ under this
6 subsection, the department shall do all of the following:

7 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

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

8 49.496 (2) (c) 1. Notify the recipient in writing of its determination that the
9 recipient cannot reasonably be expected to be discharged from the nursing home or
10 hospital, its intent to impose a lien on the recipient's home or other real property in
11 which the recipient has an interest and the recipient's right to a hearing on whether
12 the requirements for the imposition of a lien are satisfied.

13 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

13 **SECTION 5.** 49.496 (2) (d) of the statutes is amended to read:

14 49.496 (2) (d) The department shall obtain a lien under this subsection by
15 recording a lien claim in the office of the register of deeds of the county in which the
16 home property is located.

17 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

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

18 49.496 (2) (e) The department may not enforce a lien under this subsection
19 while the recipient lives unless the recipient sells the home property and does not
20 have a living child who is under age 21 or disabled or a living spouse.

21 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

21 **SECTION 7.** 49.496 (2) (f) 3. of the statutes is renumbered 49.496 (2) (fm) 1.

22 **SECTION 8.** 49.496 (2) (f) 4. [✓] of the statutes is renumbered 49.496 (2) (fm) 2.

23 **SECTION 9.** 49.496 (2) (fm) (intro.) of the statutes is created to read:

In addition to the restriction under par. (f),

1 49.496 (2) (fm) (intro.) The department may not enforce a lien on a recipient's
2 home under this subsection after the death of the recipient as long as any of the
3 following survive the recipient:

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

5 49.496 (2) (h) The department shall file a release of a lien imposed under this
6 subsection ~~on the recipient's home or other real property in which the recipient has~~
7 ~~an interest~~ if the recipient is discharged from the nursing home or hospital and
8 returns to live in the his or her home.

9 History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

(END)

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

LRB-0316/ldn

ISR:

Kmg

September 26, 2000

Melissa Mullikin:

is

The drafting instructions did not indicate whether the restrictions in s. 49.496 (2) (f) 3. and 4. should apply only to a lien on a recipient's home or whether the restrictions should also apply to all liens imposed by DHFS. Under federal law, these restrictions are only required to apply to a lien on a recipient's home, so I assumed that you would want the restrictions to also only apply to a lien on a recipient's home. See 42 USC 1396p (b) (2) (B). If this assumption ~~was~~ incorrect, please let me know.

Also, do you want DHFS to be able to impose a lien on any real property owned by a recipient in cases described in s. 49.496 (3) (c)? If this section is not amended, DHFS will only be able to impose a lien on a recipient's home.

Please review this draft carefully to ensure that it is consistent with your intent. If you have any questions or concerns, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0316/1dn
ISR:kmg:km

September 28, 2000

Melissa Mullikin:

The drafting instructions did not indicate whether the restrictions in s. 49.496 (2) (f) 3. and 4. should apply only to a lien on a recipient's home or whether the restrictions should also apply to all liens imposed by DHFS. Under federal law, these restrictions are only required to apply to a lien on a recipient's home, so I assumed that you would want the restrictions to also only apply to a lien on a recipient's home. See 42 USC 1396p (b) (2) (B). If this assumption is incorrect, please let me know.

Also, do you want DHFS to be able to impose a lien on any real property owned by a recipient in cases described in s. 49.496 (3) (c)? If this section is not amended, DHFS will only be able to impose a lien on a recipient's home.

Please review this draft carefully to ensure that it is consistent with your intent. If you have any questions or concerns, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

Sager-Rosenthal, Ivy

From: Chao, Richard
Sent: Monday, October 02, 2000 2:12 PM
To: Sager-Rosenthal, Ivy
Cc: Mullikin, Melissa
Subject: Re: FW: MA estate recovery statutory language request.



MA_ERP-IP-01-03-son.

doc

Hi Ivy:

Yes the department wants to apply recovery to all real property. The attached issue paper might bring some additional insight.

Thanks,

Rich

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

>>> Mullikin, Melissa 10/02/00 09:24AM >>>

Rich,

Please respond directly to Ivy and cc me.

Thanks!

Melissa

Melissa Mullikin
Executive Policy and Budget Analyst
State Budget Office
267-7980

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

From: Sager-Rosenthal, Ivy
Sent: Monday, October 02, 2000 9:22 AM
To: Mullikin, Melissa
Subject: RE: MA estate recovery statutory language request.

Melissa:

I have had a chance to review DHFS' answers in more depth and it wasn't clear to me that DHFS understands that under federal law s. 49.496 (2) (f) 3. and 4. do not have to apply to all real property. Federal law only requires that they apply to liens on a recipient's home. See 42 USCS 1396p(b)(2)(B). It is perfectly permissible to apply 49.496 (2)(f)3. and 4. to all real property, but I want to make sure that DHFS knows the restrictions don't have to apply to all real property. Could you please forward this to DHFS and confirm that they want 49.496 (2)(f)3. and 4. to apply to all real property? If there are questions, please call or email.

Thanks.

Ivy

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

From: Sager-Rosenthal, Ivy
Sent: Friday, September 29, 2000 9:38 AM
To: Mullikin, Melissa
Subject: RE: MA estate recovery statutory language request.

Melissa:

FYI: The Estate recovery draft is already on its way to you guys. The drafter's note may seem cryptic though in light of Rich's answers. The only changes that will need to be made are related to s. 49.496 (2) (f). The draft treats 49.496 (2) (f) differently than Rich suggests. I will redraft it once it is out of editing to reflect DHFS intent.

Ivy

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

From: Mullikin, Melissa
Sent: Friday, September 29, 2000 9:17 AM
To: Sager-Rosenthal, Ivy
Subject: FW: MA estate recovery statutory language request.

Here are DHFS responses to Estate Recovery language...

Melissa Mullikin
Executive Policy and Budget Analyst
State Budget Office
267-7980

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

From: Chao, Richard
Sent: Wednesday, September 27, 2000 5:35 PM
To: Mullikin, Melissa
Subject: MA estate recovery statutory language request.

Hi Melissa:

The following three questions were provided by Ivy at LRB. Please forward our responses to her. We have included some federal cites to help her with some background information. In addition, I've attached a copy of SLR request on real property. Please provide a copy of the draft when available. Thank you for the opportunity to comment.

Rich

1, Do you intend the restrictions on enforcing a lien in s. 49.496 (2) (f) to apply only to liens on a recipient's home or on all real property?

ANSWER:

We intend the restrictions in s. 49.496(2)(f) to apply to liens on all real property, not just homes. See 42 USC s. 1396p(b)(2) and 42 CFR s. 433.36(h)(2)

2. Do you intend s. 49.496 (2) (h) to require the department to file a release only if the lien is on the recipient's home or do you intend that all liens (on the home and any other real property) be released?

ANSWER:

We intend s. 49.496(2)(h) to require the department to release all liens that are on a recipient's property if the recipient returns home to live. See 42 USC s. 1396p(a)(3) and 42 CFR s. 433.36(g)(4)

3. Do you intend the department to be able to obtain a lien on any real property owned by a recipient in cases described in s. 49.496 (3) (c), stats? If we leave this section alone, the department will only be able to get a lien

on a recipient's home

ANSWER:

No. We do not intend to obtain a lien on any real property other than a home for cases described in 49.496(3)(c).

Estate Recovery

DIN 5404 (Chao)

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 improvements to the current program to provide increased recoveries 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, when they are not reasonably expected to return home to live. 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, who are not expected to return home, 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.

4. The Estate Recovery Program began in 1991 as an option available to states under federal Medicaid law. Originally, the Department recovered all services received by a recipient residing in a nursing home and all services received by a recipient age 65 and older residing in the community. After initial negative public reaction, the provisions relating to community recipients were repealed and recovery was only made for those recipients residing in nursing homes.
5. OBRA 93 mandated states to establish estate recovery programs to recover services for institutionalized persons residing in medical institutions and certain services for recipients age 55 and older who were participating in a home and community-based waiver program. In addition, states have the option to recover any service provided under the state plan for recipients age 55 and older. Wisconsin limited recovery to the minimum required by OBRA 93. However, due to early and incorrect direction from the Health Care Financing Administration, non-mandatory services (home health and private duty nursing) were included in the enabling legislation. Public reaction was considerably more subdued and almost mute.
6. Wisconsin Act 9, the 1999-91 Biennial Budget further expanded estate recovery to include personal care services. Notification to recipients regarding the recovery of personal care was mailed beginning March 20, 2000. To this date, there has not been a strong public reaction to the enacted change.
7. Currently, the ERP recovers benefits from three categories of MA recipients. Table 1 summarizes these categories. Table 2 summarizes the amount of MA recoveries for the past eight fiscal years:

Table 1. Summary of Medicaid ERP Categories

	Nursing Home Residents	Inpatient Institution Residents	Community Residents	
			MA Card Services	Home and 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 - Private Duty Nursing - Personal Care*	- All services received through home and community-based waiver - Related inpatient hospital services - Related prescription drugs

*Included in SFY 00.

Table 2. ERP Recoveries SFY 1993-00 (\$ millions)*

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000
Recoveries AF	\$3.0	\$5.7	\$8.7	\$9.4	\$12.4	\$13.2	\$13.4	\$15.0
Recoveries GPR	\$1.1	\$2.0	\$3.0	\$3.3	\$4.9	\$5.3	\$5.4	\$6.1

*FY 2000 recoveries projected.

5. The Estate Recovery Program unit has identified specific program areas that would increase savings and address the problem of inequitable policies in program administration:

A. Expand Services Covered by Estate Recovery Provisions.

A1. Currently in Wisconsin, only certain Medicaid services related to long-term or home care are subject to estate recovery. According to a November 1998 survey, Connecticut, Idaho, Washington, Delaware, Kentucky and Wisconsin recover for services beyond those required by OBRA93 but not necessarily for all MA paid services. However, many states recover for all MA services. Table 3 shows a list of these states.

Table 3. States which Recover for All MA Services

California	Maryland	Nebraska	Ohio
Florida	Minnesota	New Jersey	Utah
Indiana	Missouri	New York	Wyoming
Iowa	Montana	North Dakota	

A2. This request proposes to expand recoveries to all remaining benefits not currently covered by estate recovery provisions. This proposal will result in estimated savings of \$117,400 AF (\$48,700 GPR) in SFY 02 and \$942,000 AF (\$393,300 GPR) in SFY 03. At full implementation in five years, recoveries are expected to be \$1,804,500 AF (\$452,800 GPR). In addition the Department will require, beginning in SFY 03, an additional 2.0 FTE to administer the program.

B. Expansion of Property under Estate Recovery Provisions

B1. In the Estate Recovery Program, the State may place a lien on the homestead property of residents of inpatient hospitals who are required to contribute to their cost of care, and residents of nursing homes, who are not expected to return to their home to live. When the property is sold, the State's claim for certain services provided up to that point is recoverable through the proceeds of the sale. Currently however, real property other than a home is not subject to placement of a lien.

- B2. This proposal expands estate recovery provision by adding all real property, in which a recipient has an ownership interest, as subject to a lien under certain conditions. This is in addition to the current homestead property, which are subject to the lien process for certain MA recipients. The authority to expand this lien process to cover all real property, not just the homestead, is provided in federal law and regulations at the state's option. The fiscal impact is not known at this time, but is expected to be minimal. This statutory change would bring parity among recipients with ownership of real property.
- B3. To maintain MA eligibility, solely owned non-homestead property is considered an asset and must be listed for sale. When the property is sold, the recipient may reimburse MA for incurred MA costs. However, because the recipient's assets have increased beyond MA eligibility, the recipient usually leaves MA and becomes private pay. The inclusion of other real property in the lien process would negate the possibility that the proceeds from the sale of real property could be put into an annuity or other type of instrument that would exempt it from estate recovery at death.

Dahlia and Joe, besides their home, own lake property in northern Wisconsin worth \$50,000. Dahlia enters a nursing home and transfers her share of assets to Joe her community spouse. Dahlia has resided in the nursing home for 8 years at a cost to MA of \$2500 per month, a total cost of \$240,000. Joe dies and leaves the homestead and the lake property to Dahlia who is not expected to return home to live. The state may place a lien on her homestead. However, it may not place a lien on the real property on the lake. The properties are listed for sale and the lake property sells first for \$50,000. Dahlia is over the asset limit for MA and her MA eligibility ends. Dahlia gives her niece \$20,000. This is divestment and makes Dahlia ineligible for MA for 5 months. Notwithstanding, Dahlia must nevertheless reduce her assets before she can become MA eligible again. She pays the private cost of care rate of \$4500 per month for 6 months, at which time she is again eligible for MA. However, the State has lost the opportunity to recover for past and future care from the sale of the non-homestead land.

- B4. In addition, recipients who currently own real property, other than a home, jointly with other parties may have this property excluded as an asset for eligibility purposes by providing documentation that the co-owners refuse to liquidate the asset. This protects the recipient's ownership value of the asset and in essence makes the asset unavailable for medical costs. At the point of death, this jointly owned real property can be transferred to the other owner(s) outside of the probate process (joint tenancy with the right of survivorship), and therefore is not an available asset for recovery. This is a method by which MA recipients can protect assets from estate recovery by transferring it to the joint tenant outside of probate when the MA recipient dies.

Dora, who is widowed, and her son John own a lakeside cottage with joint tenancy. The assessed value of the property is \$100,000. Dora enters a nursing home and MA pays her monthly cost of care of \$2500 for 2 years, or \$60,000. John refuses to sell his share of the cottage. Therefore, the value of Dora's share of the property is unavailable to contribute to her cost of medical care or to determine her MA eligibility. When Dora dies, John becomes sole owner of the lakeside cottage through a transfer by "Termination of Decedent's Property Interest" and Dora's share of the assessed value of \$100,000 is also unavailable for recovery.

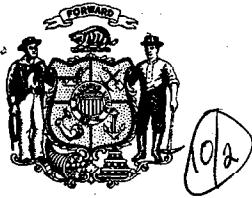
C. Include Pace and Partnership Programs to be covered by Estate Recovery Provisions

- C1. Currently in Wisconsin, only certain Medicaid services related to long term or home care are subject to estate recovery. This includes recipients residing in nursing homes and those participating in home and community-based waiver programs. The PACE and the Partnership programs were not included in the Estate Recovery Program when MA community-based waiver recoveries were included. It could be argued that they should have been since the federal mandate for recoveries is to recover "home and community-based services" for persons age 55 years or older.
- C2. In addition, recipients participating in the PACE and the Partnership Program have similar eligibility standards as recipients requiring "institutionalized" level of care, who are subject to estate recovery. Moreover, these programs provide long-term care services similar to those received by recipients living in nursing homes or participating in a home and community-based waiver program. The amount of monthly capitated payments appear to be roughly equivalent with the costs paid for both waiver and nursing home recipients after the cost share or patient liability have been applied. Recovery of these payments would result in both savings and the equitable application of estate recovery to all similarly situated recipients.
- C3. Staff from DHCF and OSF strongly recommend that, to promote efficient program administration, the amount to be recovered is the capitation payment made to the PACE and the Partnership Program provider, not the provider's actual cost of services provided. It should be noted that recovery of the capitation payment differs from the amounts that are recoverable under the Family Care program. Under Family Care, the Care Management Organization's actual costs of services are subject to recovery rather than the capitation payment.
- C4. To this date, the Health Care Financing Administration (HCFA) has not officially issued direction on how estate recovery is to be made in managed care situations. However an April 24, 2000 draft section of the State Medicaid Manual, distributed for state review and comment, clearly states that if the State has elected to recover for MA services provided in a managed care setting, then recovery should be the capitation rate (or portion of the capitation rate) for the period the beneficiary was enrolled in the managed care organization.
- C5. This proposal will result in estimated savings of \$47,700 AF (\$19,600 GPR) in SFY 02 and \$360,100 AF (\$147,600 GPR) in SFY 03. At full implementation in five years, recoveries are expected to be \$543,300 AF (\$222,700 GPR).

Recommendations

Provide a decrease of \$68,500 GPR and \$95,600 FED and an increase of \$165,100 PR in FY 02 and a decrease of \$481,600 GPR and \$702,900 FED and an increase of 1.0 GPR FTE, 1.0 FED FTE, and \$1,302,300 PR in FY 03 to support expansion of Medicaid estate recovery provisions to include:

- ✓ All remaining benefits not currently covered by estate recovery provisions.
- ✓ The capitation payment for the Pace and Partnership Programs.
- ✓ All real property, in which a recipient has an ownership interest, as subject to a lien under certain conditions.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0316/T 2

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DOA:.....Mullikin - Liens on all real property for MA estate recovery

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

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SEN-CAT

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

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1. The spouse of the recipient.
2. A child of the recipient, who is under 21 years of age or disabled.
3. A sibling of the recipient, who has an ownership interest in the home and has lived in the home continuously for at least 12 months before the recipient was admitted to the nursing home or hospital.

Current law prohibits DHFS from enforcing a lien while the recipient is living unless the recipient sells the home and the recipient's spouse or the recipient's child who is under 21 or disabled is no longer living. DHFS may enforce the lien upon the death of the recipient if the following individuals do not survive the recipient:

1. The spouse of the recipient.
2. A child of the recipient, who is under 21 years of age or disabled. (who currently resides in the home)
3. A child of the recipient, who is of any age, who has resided in the home for at least 24 consecutive months before the recipient was admitted to the nursing home

*
*

currently resides in the home and who
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A sibling of the recipient who has resided in the home at least 12 months before the recipient was admitted to the nursing home or hospital, and who provided care to the recipient that delayed the recipient's admission into a nursing home or hospital.

Current law requires DHFS to notify the recipient in writing of its intent to impose a lien on the recipient's home and, if the recipient requests, provide the recipient with a hearing. If the recipient returns to live at home, DHFS must file a release of the lien.

Under this bill, DHFS may, in addition to placing a lien on a recipient's home, place a lien on any other real property in which a MA recipient has an interest, if the recipient resides in a nursing home, or in a hospital and is required to contribute to the cost of care, and the recipient is not reasonably expected to return home. With respect to a lien that DHFS may impose on real property other than the recipient's home, DHFS may place the lien on the real property regardless of ~~the requirements~~ who resides in the property, but DHFS may not enforce the lien ~~while the recipient's spouse or child who is under 21 years old or disabled is living~~. Also under the bill, that DHFS notify the recipient in writing of its intent to place a lien on the recipient's home, provide the recipient with an opportunity for a hearing, and file a release of the lien if the recipient returns to live at home also apply if DHFS imposes a lien on the recipient's other real property.

insert A

the requirements

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

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

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6 reasonably be expected to be discharged from the nursing home or hospital and
7 return home. The lien is for the amount of medical assistance paid on behalf of the
8 recipient that is recoverable under sub. (3) (a).

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1 49.496 (2) (b) (intro.) The department may not obtain a lien on a recipient's
2 home under this subsection if any of the following persons lawfully ~~reside~~ resides in
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4 **SECTION 3.** 49.496 (2) (c) (intro.) of the statutes is amended to read:

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6 subsection, the department shall do all of the following:

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10 hospital, its intent to impose a lien on the recipient's home or other real property in
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12 the requirements for the imposition of a lien are satisfied.

13 **SECTION 5.** 49.496 (2) (d) of the statutes is amended to read:

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16 home property is located.

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

18 49.496 (2) (e) The department may not enforce a lien under this subsection
19 while the recipient lives unless the recipient sells the home property and does not
20 have a living child who is under age 21 or disabled or a living spouse.

21 **SECTION 7.** 49.496 (2) (f) 3. of the statutes is renumbered 49.496 (2) (fm) 1.

22 **SECTION 8.** 49.496 (2) (f) 4. of the statutes is renumbered 49.496 (2) (fm) 2.

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1 ~~49.496 (2) (fm) (intro.) In addition to the restriction under par. (f), the~~
2 ~~department may not enforce a lien on a recipient's home under this subsection after~~
3 ~~the death of the recipient as long as any of the following survives the recipient:~~

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

5 49.496 (2) (h) The department shall file a release of a lien imposed under this
6 subsection if the recipient is discharged from the nursing home or hospital and
7 returns to live in the his or her home.

8 (END)

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Not if any of the following individuals ~~survive~~ ^{✓ survives} the recipient:

1. The spouse of the recipient.
2. A child of the recipient, who is under 21 years of age or disabled.
3. A child of the recipient, who is of any age, who currently resides in the property on which the lien was imposed, who has resided in the property for at least 24 months before the recipient was admitted to the nursing home or hospital, and who provided care to the recipient that delayed the recipient's admission into a nursing home or hospital.
4. A sibling of the recipient, who currently resides in the property on which a lien was imposed, and who has resided in the property for at least 12 months before the recipient was admitted to the nursing home or hospital.

✓ Insert 4-4

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

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

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9.

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

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*Per DHFS (ok by Melissa Mullikin) 1/10/01
- Peggy

to
- restrictions in (2)(f) 3. and 4. / only apply
to homes, not other real property



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DOA:.....Mullikin - Liens on all real property for MA estate recovery
FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

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1 AN ACT relating to: the budget.

**Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES**

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4. A sibling of the recipient who currently resides in the home and who has resided in the home at least 12 months before the recipient was admitted to the nursing home or hospital.

Current law requires DHFS to notify the recipient in writing of its intent to impose a lien on the recipient's home and, if the recipient requests, provide the recipient with a hearing. If the recipient returns to live at home, DHFS must file a release of the lien.

Under this bill, DHFS may, in addition to placing a lien on a recipient's home, place a lien on any other real property in which a MA recipient has an interest, if the recipient resides in a nursing home, or in a hospital and is required to contribute to the cost of care, and the recipient is not reasonably expected to return home. ^{any} With respect to a lien that DHFS may impose on real property other than the recipient's home, DHFS may place ~~the~~ a lien on ~~the~~ real property regardless of who resides in the property, but DHFS may not enforce the lien ^{if any of the following individuals survives the recipient?}

1. The spouse of the recipient.

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Also under the bill, the requirements that DHFS notify the recipient in writing of its intent to place a lien on the recipient's home, provide the recipient with an opportunity for a hearing, and file a release of the lien if the recipient returns to live at home also apply if DHFS imposes a lien on the recipient's other real property.

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

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

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

(END)

Insert 4-10

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0316/3dn

ISR:.....

January 11, 2001

Melissa Mullikin:

Per redraft instructions from DHFS, under this redraft, the restrictions on enforcing a lien that are in s. 49.496 (2) (f) 3. and 4. only apply to liens that are imposed on an individual's house. This redraft is the same as LRB-0316/1.

Please feel free to contact me if you have any questions.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
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LRB-0316/3dn
ISR:kmg:jf

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DOA:.....Mullikin – Liens on all real property for MA estate recovery
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