

**2001 DRAFTING REQUEST****Bill**Received: **09/20/2000**Received By: **kahlepj**Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 7-7980**By/Representing: **Mullikin**This file may be shown to any legislator: **NO**Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Probate - miscellaneous  
Public Assistance - med. assist.**Extra Copies: **ISR****Pre Topic:**

DOA:.....Mullikin -

**Topic:**

Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

**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>
/?	kahlepj 09/25/2000	jdyer 09/26/2000					State
/P1			pgreensl 09/27/2000		gretskl 09/27/2000		State
/1	kahlepj 01/10/2001	jdyer 01/11/2001	rschluet 01/11/2001		lrb_docadmin 01/11/2001		State
/2	kahlepj 01/12/2001	jdyer 01/12/2001	martykr 01/12/2001		lrb_docadmin 01/12/2001		State
/3	kahlepj 01/26/2001	wjackson 01/26/2001	rschluet 01/28/2001		lrb_docadmin 01/28/2001		State
/4	kahlepj 02/02/2001	jdyer 02/02/2001	rschluet 02/02/2001		lrb_docadmin 02/02/2001		

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/1	kahlepj 01/10/2001	jdyer 01/11/2001	rschluet 01/11/2001	_____	lrb_docadmin 01/11/2001		State
/2	kahlepj	jdyer 14 2 1/2 jld	martykr 2-2-01	_____	lrb_docadmin		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>
	01/12/2001	01/12/2001	01/12/2001	_____	01/12/2001		
/3	kahlepj 01/26/2001	wjackson 01/26/2001	rschluet 01/28/2001	_____	lrb_docadmin 01/28/2001		

FE Sent For:

<END>

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/1	kahlepj 01/10/2001	jdyer 01/11/2001	rschluet 01/11/2001	_____	lrb_docadmin 01/11/2001		State
/2	kahlepj	jdyer 1/3 Wkj 1/26	martykr 	_____	lrb_docadmin		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jackcted</u>	<u>Required</u>
	01/12/2001	01/12/2001	01/12/2001	_____	01/12/2001		

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**Pre Topic:**

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**Topic:**

Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

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**Instructions:**

See Attached

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/1	kahlepj 01/10/2001	jdyer 01/11/2001	rschluet 01/11/2001	_____	lrb_docadmin 01/11/2001		

*1/2 1/2 jld*

*Rm 1/12 PG 1  
Rm 1/12*

**FE Sent For:**

**<END>**

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#### Topic:

Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

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#### Instructions:


See Attached

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/?	kahlepj 09/25/2000	jdyer 09/26/2000		_____			State
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/P1		<i>1/11 jld</i>	pgreensl 09/27/2000		gretskl 09/27/2000		
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FE Sent For:

  
1-11-1

  
P G  
1-11-1  
<END>



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1?	kahlepj	pi 9/26 jld	9/26 PS	PG/KF 9/27			

FE Sent For:

<END>

# DHFS

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

## Transfer by Affidavit Process Changes

### Current Language

Currently s. 867.035, Wis. Stats. disallows recovery through affidavit for interests in or liens on real property, all wearing apparel and jewelry, household furniture, furnishings and appliances, and motor vehicles and recreational vehicles.

### Proposed Changes

A. Amend s. 867.035(1)(bm)(intro.) Strike through the intro and replace it with "The department shall reduce the amount of its recovery up to the amount specified in 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:

B. Repeal s. 867.035(1)(bm)1.

C. Amend s. 867.035(1)(bm)2.

2. Wearing apparel and jewelry held for personal use.

D. Repeal and recreate s. 867.035(1)(bm)4. To read:

"4. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33(1)(a)4."

E. Create s. 867.035(2)(b) The department may record a lien on any interest in real property of a decedent that was transferred under s. 867.03(1g) for up to the amount recoverable under sub. (1)(a). The department may enforce a lien imposed under this paragraph by foreclosure in the same manner as a mortgage on real property.

### Effect and Rationale for Change

Wisconsin Act 94 created language in s. 867.03, Wis. Stats., that for the first time allows a deceased recipient's interests in real property to be transferred at death via affidavit if the solely owned assets of the decedent are \$20,000 or less. Current statute prevents the department from recovering against real property transferred via affidavit.

*can also  
repeal (1)(a)2.*

*I think only heirs are relevant to affidavits*

*by*

*See 49.496(3)(am)*

*how would this be determined?*

*1)(6)*

*Does DHFS have a lien?*

*is this the lien obtained under 49.496?*

*See 46.27(7g)(c)  
49.496(2) + (3)(c)*

*49.682  
(2)(e)*

The Department has its own affidavit process that it uses to recover benefits from the estates of Medicaid, Community Options Program, Wisconsin Chronic Disease Program and Family Care recipients, (s. 867.035 Wis. Stats.). The Department's affidavit process was patterned after the affidavit process used by the general public in that it can only be used on small estates (it cross-references the amount of the estate listed in s. 867.03, Wis. Stats.) and cannot be used to recover from interests in or liens on real estate. In addition, the Department's affidavit cannot be used to recover wearing apparel, jewelry, household furniture, furnishings and appliances, motor vehicles or recreational vehicles of a deceased recipient. These additional prohibitions were added to be similar to exemptions the Department provides in court supervised estates. Up to \$5,000 in assets may be exempted from the Department's claim in a court supervised estate to allow heirs and beneficiaries to retain certain personal property of the deceased [s. 49.496 (3) (am)].

If this change is not implemented, it is very likely that current recoveries will decrease. Estate Recovery will not have a vehicle through which to identify and recover real property valued up to \$20,000 that may be transferred outside the court supervised probate. This may affect the dollars recovered that would otherwise be utilized to serve additional recipients or to increase the level, type or cost of services provided to recipients.

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



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/6

PJK.....

P1  
jld

DOA:.....Mullikin – Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

SOON  
(9-26)  
D-note

do not gen cost

1 AN ACT *do not gen cost*; relating to: recovering from the estates of certain benefit recipients  
2 by affidavit.

*Analysis by the Legislative Reference Bureau*

✓ HEALTH AND HUMAN SERVICES

✓ OTHER HEALTH AND HUMAN SERVICES

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DHFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's

surviving spouse or children under certain circumstances (currently, \$5,000), if the reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

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. 867.035 (1) (a) (intro.)<sup>X</sup> of the statutes is amended to read:

2           867.035 (1) (a) (intro.) ~~Except as provided in~~<sup>✓</sup> Subject to par. (bm), the  
3 department of health and family services may collect from the property of a decedent,  
4 including funds of a decedent that are held by the decedent immediately before death  
5 in a joint account or a P.O.D. account, by affidavit under this section an amount equal  
6 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term  
7 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)  
8 1., the family care benefit that is recoverable under rules promulgated under s.  
9 46.286 (7), or the aid under s. 49.68, 49.683,<sup>✓</sup> or 49.685 that is recoverable under s.  
10 49.682 (2) (a) and that was paid on behalf of the decedent or the decedent's spouse,  
11 if all of the following conditions are satisfied:

History: 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27 ss. 7199y to 7206g, 9126 (19); 1997 a. 27; 1999 a. 9.

12           SECTION 2. 867.035 (1) (bm) (intro.)<sup>X</sup> of the statutes is amended to read:

13           867.035 (1) (bm) (intro.) The department of health and family services ~~may not~~  
14 ~~collect by affidavit under this section from any of~~ shall reduce the amount of its  
15 recovery under par. (a)<sup>✓</sup> by up to the amount specified in s. 861.33 (2)<sup>✓</sup> if necessary to  
16 allow the decedent's heirs or beneficiaries under the decedent's will to retain the  
17 following personal property of the decedent:

History: 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27 ss. 7199y to 7206g, 9126 (19); 1997 a. 27; 1999 a. 9.

18           SECTION 3. 867.035 (1) (bm) 1. of the statutes is repealed.



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

LRB-0433/7dn  
PJK.....

P1  
JL

1. I have a general question about DHFS's affidavit procedure under s. 867.035. Does DHFS present the affidavit to the same person to whom the affidavit is presented under s. 867.03 (i.e., a person who owes the decedent money, who has custody of the decedent's property, etc.) or to the heir who has presented an affidavit under s. 867.03 to that person and who now has the property, or to either one of them?

2. Do you want s. 867.035 (1) (a) 1. to be amended to include no filing for summary assignment of decedent's estate? (That subdivision currently includes no filing only for administration or summary settlement.)

3. I have not as yet included any language related to a lien on an interest in real property. I'm not sure what the proposed language is intended to do. I know that Ivy Sager-Rosenthal is working on a draft (LRB-0316) that will expand to all real property of a medical assistance beneficiary the lien that currently applies only to a beneficiary's home under s. 49.496 (2). (I assume that something similar is being done with regard to beneficiaries under the other programs listed in s. 867.035 (1) (a) (intro.)) Is the lien in this draft the same as the lien that applies under current law to a beneficiary's home and that is being expanded to all real property? If so, it seems to me that it is not necessary to include it in more than one place. In addition, the proposed language only addresses *recording* a lien. If this is not the same lien as the one that is being expanded under s. 49.496 (and, I assume, the ones being expanded under ss. 46.27 and 49.682), it seems to me that there must be language that creates the lien first. I need more information about the lien in this proposal.

4. Do you think that s. 867.035 (1) (a) 2. should be repealed, or is it possible that DHFS could still collect from the estate of someone who died before September 30, 1991?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

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

LRB-0433/P1dn  
PJK:jld:pg

September 27, 2000

1. I have a general question about DHFS's affidavit procedure under s. 867.035. Does DHFS present the affidavit to the same person to whom the affidavit is presented under s. 867.03 (i.e., a person who owes the decedent money, who has custody of the decedent's property, etc.) or to the heir who has presented an affidavit under s. 867.03 to that person and who now has the property, or to either one of them?

2. Do you want s. 867.035 (1) (a) 1. to be amended to include no filing for summary assignment of decedent's estate? (That subdivision currently includes no filing only for administration or summary settlement.)

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4. Do you think that s. 867.035 (1) (a) 2. should be repealed, or is it possible that DHFS could still collect from the estate of someone who died before September 30, 1991?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/14

PJK/ld:pg

v misner

DOA:.....Mullikin - Changes to transfer by affidavit process for recovery  
from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Soon  
(1-10)

1  
2

AN ACT *do not* ~~relating to: recovering from the estates of certain benefit recipients~~

*by affidavit. the budget*

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

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DHFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's

surviving spouse or children under certain circumstances (currently, \$5,000), if the reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

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

✓  
Inset  
A

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

1 SECTION 1. 867.035 (1) (a) (intro.) of the statutes is amended to read:

2 867.035 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (bm), the  
3 department of health and family services may collect from the property of a decedent,  
4 including funds of a decedent that are held by the decedent immediately before death  
5 in a joint account or a P.O.D. account, by affidavit under this section an amount equal  
6 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term  
7 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)  
8 1., the family care benefit that is recoverable under rules promulgated under s.  
9 46.286 (7), or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.  
10 49.682 (2) (a) and that was paid on behalf of the decedent or the decedent's spouse,  
11 if all of the following conditions are satisfied:

Inset 2-11

12 SECTION 2. 867.035 (1) (bm) (intro.) of the statutes is amended to read:

13 867.035 (1) (bm) (intro.) The department of health and family services ~~may not~~  
14 collect by affidavit under this section from any of shall reduce the amount of its  
15 recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to  
16 allow the decedent's heirs or beneficiaries under the decedent's will to retain the  
17 following personal property of the decedent:

18 SECTION 3. 867.035 (1) (bm) 1. of the statutes is repealed.

1 SECTION 4. 867.035 (1) (bm) 2. of the statutes is amended to read:

2 867.035 (1) (bm) 2. Wearing apparel and jewelry held for personal use.

3 SECTION 5. 867.035 (1) (bm) 3. of the statutes is amended to read:

4 867.035 (1) (bm) 3. Household furniture, furnishings, and appliances.

5 SECTION 6. 867.035 (1) (bm) 4. of the statutes is repealed and recreated to read:

6 867.035 (1) (bm) 4. Other tangible personal property not used in trade,  
7 agriculture, or other business, not exceeding in value the amount specified in s.

8 861.33 (1) (a) 4.

9 SECTION 9323. Initial applicability; health and family services.

10 (1) TRANSFERS BY AFFIDAVIT. The treatment of section 867.035 (1) (a) (intro.) and

11 (bm) (intro.), 1., 2., 3., and 4. of the statutes first applies to transfers by affidavit on  
12 account of deaths occurring on the effective date of this subsection.

13 (END)

Insert 3-8

and 1.

and (2m)

**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0433/lins  
PJK:jld:pg

**INSERT A**

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000<sup>✓</sup> in value may have any of the property, including real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that DHFS has a lien on any real property of a decedent's<sup>✓</sup> that was transferred to an heir by affidavit in the amount that it may recover for paying benefits on behalf of the decedent. The lien may be foreclosed in the same manner as a mortgage.

(END OF INSERT A)

**INSERT 2-11**

- 1           **SECTION 1.** 867.035 (1) (a) 1.<sup>✓</sup> of the statutes is amended to read:
- 2           867.035 (1) (a) 1. No person files a petition for administration or summary
- 3           settlement or assignment<sup>✓</sup> of the decedent's estate within 20 days of death.

History: 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27 ss. 7199y to 7206g, 9126 (19); 1997 a. 27; 1999 a. 9.

(END OF INSERT 2-11)

**INSERT 3-8**

- 4           **SECTION 2.** 867.035 (2m)<sup>✓</sup> of the statutes is created to read:
- 5           867.035 (2m) The department of health and family services shall have a lien
- 6           in the amount that it may recover under sub. (1) (a) on any interest in real property
- 7           of a decedent that was transferred under s. 867.03 (1g)<sup>✓</sup>, and may record the lien in
- 8           the office of the register of deeds of the county in which the real property is located.
- 9           The department of health and family services may enforce the lien by foreclosure in
- 10          the same manner as a mortgage on real property.

(END OF INSERT 3-8)

1-11  
0433

Case from DHFS

a provision like s. 49.496(3)(d)  
must be added to  
LRB - 0433

(limit on lien enforcement)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/2

PJK:jld:rs

*revision*

DOA:.....Mullikin - Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

*SOON  
(1-12)*

*do not  
you cut*

1 AN ACT <sup>x</sup>; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DHFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's surviving spouse or children under certain circumstances (currently, \$5,000), if the

enforced by statute

reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000 in value may have any of the property, including real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that DHFS has a lien on any real property of a decedent that was transferred to an heir by affidavit in the amount that it may recover for paying benefits on behalf of the decedent. The lien may be ~~imposed~~ in the same manner as a mortgage.

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. 867.035 (1) (a) (intro.) of the statutes is amended to read:

2 867.035 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (bm), the

3 department of health and family services may collect from the property of a decedent,

4 including funds of a decedent that are held by the decedent immediately before death

5 in a joint account or a P.O.D. account, by affidavit under this section an amount equal

6 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term

7 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)

8 1., the family care benefit that is recoverable under rules promulgated under s.

9 46.286 (7), or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.

10 49.682 (2) (a) and that was paid on behalf of the decedent or the decedent's spouse,

11 if all of the following conditions are satisfied:

12 SECTION 2. 867.035 (1) (a) 1. of the statutes is amended to read:

13 867.035 (1) (a) 1. No person files a petition for administration or summary

14 settlement or assignment of the decedent's estate within 20 days of death.

15 SECTION 3. 867.035 (1) (bm) (intro.) of the statutes is amended to read:

but may not be enforced while the decedent's spouse or child is alive

1           867.035 (1) (bm) (intro.) The department of health and family services ~~may not~~  
2 ~~collect by affidavit under this section from any of~~ shall reduce the amount of its  
3 recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to  
4 allow the decedent's heirs or beneficiaries under the decedent's will to retain the  
5 following personal property of the decedent:

6           **SECTION 4.** 867.035 (1) (bm) 1. of the statutes is repealed.

7           **SECTION 5.** 867.035 (1) (bm) 2. of the statutes is amended to read:

8           867.035 (1) (bm) 2. Wearing apparel and jewelry held for personal use.

9           **SECTION 6.** 867.035 (1) (bm) 3. of the statutes is amended to read:

10          867.035 (1) (bm) 3. Household furniture, furnishings, and appliances.

11          **SECTION 7.** 867.035 (1) (bm) 4. of the statutes is repealed and recreated to read:

12          867.035 (1) (bm) 4. Other tangible personal property not used in trade,  
13 agriculture, or other business, not exceeding in value the amount specified in s.  
14 861.33 (1) (a) 4.

15          **SECTION 8.** 867.035 (2m) of the statutes is created to read:

16          867.035 (2m) <sup>(a)</sup> The department of health and family services shall have a lien  
17 in the amount that it may recover under sub. (1) (a) on any interest in real property  
18 of a decedent that was transferred under s. 867.03 (1g), and may record the lien in  
19 the office of the register of deeds of the county in which the real property is located.

20          The department of health and family services may enforce the lien by foreclosure in  
21 the same manner as a mortgage on real property.

*Insert 3-20 ->*

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

*no 91*  
*Except as provided in par. (b),*





2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0433/2ins  
PJK:jld:rs

INSERT 3-21

- 1 (b) The department of health and family services<sup>✓</sup> may not enforce the lien under  
2 par. (a) while any of the following is alive:
- 3 1. The decedent's spouse.
  - 4 2. A child of the decedent if the child is under age 21 or disabled, as defined in  
5 s. 49.468 (1) (a) 1.<sup>✓</sup>

(END OF INSERT 3-21)

Subject: Re: statutory draft

Thanks Rich -

I've done a review of the draft we received this morning from you and compared it to the information dealing with protections that we had forwarded on Friday.

We would suggest, to keep 867.035 congruent with 49.496, that something similar to the suggested changes on page one of the attached be included. With that, the suggested changes for 867.035 (2m) (a) & (b) appear to be ok.

Peggy Wichmann is out today (ill) but is expected to be in on Wednesday, 1/17/01. As a result, she has not seen this as is always my preference when dealing with statutory language. Sorry!

>>> Richard Chao 1/16/01 9:13:22 AM >>>

This draft incorporates changes made on Thursday afternoon.

Thanks,  
Rich

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

SECTION 1. 867.035 (1) (a) (intro.) of the statutes is amended to read:

867.035 (1) (a) (intro.) Except as provided in Subject to par. (bm), the department of health and family services may collect from the property of a decedent, including funds of a decedent that are held by the decedent immediately before death in a joint account or a P.O.D. account, by affidavit under this section an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1., the family care benefit that is recoverable under rules promulgated under s. 46.286 (7), or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a) and that was paid on behalf of the decedent or the decedent's spouse, if all of the following conditions are satisfied:

SECTION 2. 867.035 (1) (a) 1. of the statutes is amended to read:

867.035 (1) (a) 1. No person files a petition for administration or summary settlement or assignment of the decedent's estate within 20 days of death.

? → 867.035 (1) (a) 3. is repealed.

no → 867.035 (1) (a) 4. is renumbered 867.035 (1) (a) 3.

867.035 (b) is created to read:

867.035 (b) The department may not collect under this section if the decedent is survived by a spouse, a child who is under age 21 or a child who is disabled as defined in s. 49.468 (1) (a) 1., unless the property being transferred includes an interest in a home as defined in s. 49.496 (1) (b). The department's recovery is limited to a lien as described in sub. (2m) (a) on the home.

no home  
42 USC § 1396p(b)(2)(B)

SECTION 3. 867.035 (1) (bm) (intro.) of the statutes is amended to read:

867.035 (1) (bm) (intro.) The department of health and family services (may not collect by affidavit under this section from any of) shall reduce the amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the decedent's heirs or beneficiaries under the decedent's will to retain the following personal property of the decedent:

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

SECTION 5. 867.035 (1) (bm) 2. of the statutes is amended to read:

867.035 (1) (bm) 2. Wearing apparel and jewelry held for personal use.

SECTION 6. 867.035 (1) (bm) 3. of the statutes is amended to read:

867.035 (1) (bm) 3. Household furniture, furnishings, and appliances.

SECTION 7. 867.035 (1) (bm) 4. of the statutes is repealed and recreated to read:

867.035 (1) (bm) 4. Other tangible personal property not used in trade, agriculture, or other business, not exceeding in value the amount specified in s. 861.33 (1) (a) 4.

SECTION 8. 867.035 (2m) of the statutes is created to read:

867.035 (2m) (a) The department of health and family services shall have a lien in the amount that it may recover under sub. (1) (a) on any interest in real property of a decedent that was transferred under s. 867.03 (1g), and may record the lien in the office of the register of deeds of the county in which the real property is located.

(b) The department may not enforce the lien as long as any of the following survive the decedent:

1. A spouse

2. A child who is under age 21 or disabled.

(c) The department of health and family services may enforce the lien by foreclosure in the same manner as a mortgage on real property.

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

– 4 – 2001 – 2002 Legislature LRB–0433/1

**SECTION 9323**

(1) TRANSFERS BY AFFIDAVIT. The treatment of section 867.035 (1) (a) (intro.) and 1. and (bm) (intro.), 1., 2., 3., and 4. and (2m) of the statutes first applies to transfers by affidavit on account of deaths occurring on the effective date of this subsection.

433  
**Kahler, Pam**

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**From:** Wichmann, Peggy  
**Sent:** Thursday, January 25, 2001 8:30 AM  
**To:** Kahler, Pam  
**Subject:** Comments re LRB 04332/2 and ½

Hi. I have finally returned and have reviewed your latest version with Kathy and Dan (handwritten and with insert).

I would still like to see s. 867.035(1)(a)3. repealed. It probably should have been out of there a long time ago. The reason is that now in order to send an affidavit we have to swear that there is no surviving spouse, disabled or minor child. The reality is that sometimes we know if there is one and many times we simply don't have that information yet. If we don't know there is a surviving spouse or minor or disabled child we send out an affidavit. Along with the affidavit we provide information to the heir who receives the affidavit that says that we cannot recover anything (when it was just cash) if there is a surviving spouse, disabled child or minor child. People then let us know if one of these people exists and we withdraw the affidavit.

With the changes I think it would be clearer to get rid of s. 867.035(1)(a)3. It would allow us to send out an affidavit before we know who survives or if we don't know what property is being transferred. If we have all the information we just won't send an affidavit. I think it would also be good for us to have a new provision that states positively that we cannot recover if there is a surviving spouse et al., unless there is a home in the estate, then we get a lien.

I think it would be better to have a positive statement re that rather than all the cross references.

Could (2m)(b)1. be written as follows:

1. The department may not collect under this section if the decedent is survived by a spouse, a child who is under age 21 or a child who is disabled as defined in s. 49.468(1)(a)1., unless the property being transferred includes an interest in a home as defined in s. 49.496(1)(b). .... (Then go on with basically what you have. I think that would work.) If an interest in real property that was the decedent's home, as defined in s. 49.496(1)(b), was transferred under s. 867.03(1g), the department of health and family services shall have a lien on the interest in the amount that it may recover under sub. (1)(a), if the decedent is survived by a spouse, a child who is under age 21, or a child who is disabled, as defined in s. 49.468(1)(a)1. (changed slightly) ..... (through the end of 2.b.

I should be in all day today and tomorrow morning if you want to call me. My number is 6-9727.

## Kahler, Pam

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**From:** Kahler, Pam  
**Sent:** Friday, January 26, 2001 12:25 PM  
**To:** Wichmann, Peggy  
**Subject:** RE: ReLRB-0433/3ins

No problem. I will reconfigure the first sentence of par. (b) so that it parallels the first sentence of par. (a). I was trying to emphasize different things with the different constructions, but if you think the difference between pars. (a) and (b) would be clearer if they were parallel, that's fine. Thank you for your help and patience!

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

**From:** Wichmann, Peggy  
**Sent:** Friday, January 26, 2001 12:00 PM  
**To:** Kahler, Pam  
**Cc:** Bailey, Kathleen; Wasilewski, Daniel  
**Subject:** ReLRB-0433/3ins

Believe it or not I only have one small request.

in s. 867.035(2m)(b) Would you move the phrase "If the conditions in ..." to the beginning so it would read:

"If the conditions in sub. (1)(a)1., 2., and 4. are satisfied and if any interest in real property that was the decedent's home....."

That would make (a) and (b) parallel and put it up front that (a) and (b) are different because of the conditions each deals with.

Thanks. We might be done!! Thanks so much for your help.





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/3  
PJK:jld:lp  
v m [unclear] [unclear]

DOA:.....Mullikin - Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

SOON  
(1-24)

No person has commenced a procedure for administering the decedent's estate

do not  
gen cat

1 AN ACT relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DHFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's surviving spouse or children under certain circumstances (currently, \$5,000), if the

reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000 in value may have any of the property, including real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that DHFS has a lien on any real property of a decedent that was transferred to an heir by affidavit in the amount that it may recover for paying benefits on behalf of the decedent. The lien may be enforced by foreclosure, in the same manner as a mortgage, but may not be enforced while the decedent's spouse, or child who is under age 21 or disabled, is alive.

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. 867.035 (1) (a) (intro.) of the statutes is amended to read:

2 867.035 (1) (a) (intro.) ~~Except as provided in Subject to~~ par. (bm), the  
3 department of health and family services may collect from the property of a decedent,  
4 including funds of a decedent that are held by the decedent immediately before death  
5 in a joint account or a P.O.D. account, by affidavit under ~~this section~~ an amount equal  
6 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term  
7 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)  
8 1., the family care benefit that is recoverable under rules promulgated under s.  
9 46.286 (7), or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.  
10 49.682 (2) (a) and that was paid on behalf of the decedent or the decedent's spouse,  
11 if all of the following conditions are satisfied:

12 SECTION 2. 867.035 (1) (a) 1. of the statutes is amended to read:

13 867.035 (1) (a) 1. No person files a petition for administration or summary  
14 settlement or assignment of the decedent's estate within 20 days of death.

sub. (2) or by lien under sub. (2m)

Insert A

1           **SECTION 3.** 867.035 (1) (bm) (intro.) of the statutes is amended to read:

2           867.035 (1) (bm) (intro.) The department of health and family services ~~may not~~  
3 collect by affidavit under this section from any of shall reduce the amount of its  
4 recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to  
5 allow the decedent's heirs or beneficiaries under the decedent's will to retain the  
6 following personal property of the decedent:

7           **SECTION 4.** 867.035 (1) (bm) 1. of the statutes is repealed.

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9           867.035 (1) (bm) 2. Wearing apparel and jewelry held for personal use.

10          **SECTION 6.** 867.035 (1) (bm) 3. of the statutes is amended to read:

11          867.035 (1) (bm) 3. Household furniture, furnishings, and appliances.

12          **SECTION 7.** 867.035 (1) (bm) 4. of the statutes is repealed and recreated to read:

13          867.035 (1) (bm) 4. Other tangible personal property not used in trade,  
14 agriculture, or other business, not exceeding in value the amount specified in s.  
15 861.33 (1) (a) 4.

16          **SECTION 8.** 867.035 (2m) of the statutes is created to read:

17          867.035 (2m) (a) The department of health and family services shall have a lien  
18 in the amount that it may recover under sub. (1) (a) on any interest in real property  
19 of a decedent that was transferred under s. 867.03 (1g), and may record the lien in  
20 the office of the register of deeds of the county in which the real property is located.  
21 Except as provided in par. (b), the department of health and family services may  
22 enforce the lien by foreclosure in the same manner as a mortgage on real property.

23          (b) The department of health and family services may not enforce the lien under  
24 par. (a) while any of the following is alive:

25           1. The decedent's spouse.

1 2. A child of the decedent if the child is under age 21 or disabled, as defined in  
2 s. 49.468 (1) (a) 1.

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

4 (1) TRANSFERS BY AFFIDAVIT. The treatment of section 867.035 (1) (a) (intro.) and  
5 1. and (bm) (intro.), 1., 2., 3., and 4. <sup>and (2)</sup> and (2m) of the statutes first applies to transfers  
6 by affidavit on account of deaths occurring on the effective date of this subsection.

7 (END)

*Inset 4-2<sup>d</sup>*

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0433/3ins  
PJK:jld:km

INSERT A

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000 in value may have any of the property, including an interest in real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that, if an interest in real property of a decedent is transferred to an heir by affidavit, DHFS has a lien on that interest in real property if the decedent does not have a surviving spouse or child who is under age 21 or disabled. If the decedent has a surviving spouse or child who is under age 21 or disabled, DHFS has a lien on the interest in real property only if the real property was the decedent's home. DHFS may enforce its lien by foreclosure, in the same manner as a mortgage, but not while the decedent's spouse, if any, or child who is under age 21 or disabled, if any, is alive.

(END OF INSERT A)

INSERT 4-2

1                   \*  
SECTION 1 867.035 (2) of the statutes is amended to read:

2                   867.035 (2) A person who possesses property of a decedent shall transmit the  
3                   property to the department of health and family services, if the conditions in sub. (1)  
4                   (a) 1. to 4. are satisfied, upon receipt of an affidavit by a person designated by the  
5                   secretary of health and family services to administer this section showing that the  
6                   conditions in sub. (1) (a) are satisfied department paid on behalf of the decedent or  
7                   the decedent's spouse recoverable benefits specified in sub. (1) (a). Upon transmittal,  
8                   the person is released from any obligation to other creditors or heirs of the decedent.

9                   History: 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27 ss. 7199y to 7206g, 9126 (19); 1997 a. 27; 1999 a. 9.

SECTION 2 867.035 (2m) of the statutes is created to read:

10                   867.035 (2m) (a) If the conditions in sub. (1) (a) 1., 2., and 4. are satisfied, the  
11                   department of health and family services shall have a lien in the amount that it may  
12                   recover under sub. (1) (a) on any interest in the decedent's home, as defined in s.  
13                   49.496 (1) (b), transferred under s. 867.03 (1g). The department may record the lien  
14                   in the office of the register of deeds of the county in which the real property is located

1 and, unless any of the following is alive, may enforce the lien by foreclosure in the  
2 same manner as a mortgage on real property:

3 1. The decedent's spouse.

4 2. A child of the decedent if the child is under age 21 or disabled, as defined in  
5 s. 49.468 (1) (a) 1. ✓

6 (b) If the conditions in sub. (1) (a) 1. to 4. are satisfied, the department of health  
7 and family services shall have a lien in the amount that it may recover under sub.  
8 (1) (a) on any interest in any real property of the decedent transferred under s. 867.03  
9 (1g). The department may record the lien in the office of the register of deeds of the  
10 county in which the real property is located and may enforce the lien by foreclosure  
11 in the same manner as a mortgage on real property.

(END OF INSERT 4-2)

## Kahler, Pam

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**From:** Wichmann, Peggy  
**Sent:** Thursday, February 01, 2001 4:50 PM  
**To:** Kahler, Pam  
**Subject:** RE: Final Comments re LRB 0433/3

I thought about it and I'm sorry but I would like 2 sentences. That way it is crystal clear.

Bye.

>>> Kahler, Pam 02/01/01 04:20PM >>>

Peggy:

Since Section 9 is really more important for you (DHFS) to understand, because the prohibition is against action on DHFS's part, I'm not paranoid about it. I would prefer not to do a redraft, but I will if you would be more comfortable with that.

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

**From:** Wichmann, Peggy  
**Sent:** Thursday, February 01, 2001 3:59 PM  
**To:** Kahler, Pam  
**Subject:** RE: Final Comments re LRB 0433/3

Hi,

1. The use of the term surviving spouse and child just struck me because if there is a surviving spouse or child there is no recovery at all so all property is transferred to them. Never mind though. That one is really your call.

2. I see your point about potential ambiguity. I guess I would ask for 2 sentences. Maybe its paranoia but I always like to make it as clear as possible that nothing (except a lien) will be done if there is a surviving spouse or minor or disabled child. If you're satisfied that it's clear enough then leave it.

I just wanted to let you know I appreciate your help and perseverance with us. I think we are down to the end. At least I am. Good luck in the next few weeks.

Peggy

>>> Kahler, Pam 02/01/01 03:19PM >>>

Hi, Peggy:

1. I intended the language that I used in the ananalysis (amount that may be transferred to a decedent's surviving spouse or children under certain circumstances) because in s 867.035 (1) (bm) (intro.)the amount is identified through the cross-reference to s. 861.33 (2), which is the maximum value of personal property that may be transferred to a surviving spouse, or children if there is no surviving spouse, under the circumstances specified in s. 861.33 (2). In other words, the amount specified in s. 861.33 (2) is the maximum amount of a transfer to a spouse or children, not to a decedent's heirs or beneficiaries.

2. Unless I am mistaken in my understanding, the language needs to stay the way that it is because it is the foreclosure, not the recording, of the lien that may not take place if those individuals are alive. (The lien may be

recorded even if they are alive.) The only way to avoid the impression that the lien may not even be recorded if they are alive would be to separate the two concepts into two sentences: recording in one sentence, enforcing in another. I tend to dislike many short, choppy sentences for an idea that can be expressed in one sentence. It is a matter of style. Would you strongly prefer two sentences for the last one?

Pam

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

From: Wichmann, Peggy

Sent: Thursday, February 01, 2001 2:03 PM

To: Kahler, Pam

Cc: Chao, Richard; Bailey, Kathleen

Subject: Final Comments re LRB 0433/3

Almost done. Two quick points.

1. In the second paragraph of the analysis, at the end of the second sentence shouldn't that be "...that may be transferred to a decedent's heirs or beneficiaries." Instead of "transferred to a decedent's surviving spouse or children..." Your call but take a quick look.

2. In Section 9 of the bill, The last sentence of (2m)(a), Would you be amenable to moving the phrase "unless any of the following is alive" to right in front of the colon. I think that phrase modifies the foreclosure language and makes a stronger statement that we cannot recover if there is a surviving spouse etc.

Thanks. Your patience is immense.

Peggy





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/4  
PJK:jld&wlj:rs

*v m is r m*

DOA:.....Mullikin - Changes to transfer by affidavit process for recovery from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

*SOON  
(2-2)  
p. 4*

*do not  
join cost*

1 AN ACT *relating to:* the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DHFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value, no person has commenced a procedure for administering the decedent's estate, and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's

surviving spouse or children under certain circumstances (currently, \$5,000), if the reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000 in value may have any of the property, including an interest in real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that, if an interest in real property of a decedent is transferred to an heir by affidavit, DHFS has a lien on that interest in real property if the decedent does not have a surviving spouse or child who is under age 21 or disabled. If the decedent has a surviving spouse or child who is under age 21 or disabled, DHFS has a lien on the interest in real property only if the real property was the decedent's home. DHFS may enforce its lien by foreclosure, in the same manner as a mortgage, but not while the decedent's spouse, if any, or child who is under age 21 or disabled, if any, is alive.

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

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

1           **SECTION 1.** 867.035 (1) (a) (intro.) of the statutes is amended to read:

2           867.035 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (bm), the  
3           department of health and family services may collect from the property of a decedent,  
4           including funds of a decedent that are held by the decedent immediately before death  
5           in a joint account or a P.O.D. account, by affidavit under ~~this section sub. (2) or by~~  
6           lien under sub. (2m) an amount equal to the medical assistance that is recoverable  
7           under s. 49.496 (3) (a), the long-term community support services under s. 46.27 that  
8           is recoverable under s. 46.27 (7g) (c) 1., the family care benefit that is recoverable  
9           under rules promulgated under s. 46.286 (7), or the aid under s. 49.68, 49.683, or  
10          49.685 that is recoverable under s. 49.682 (2) (a) and that was paid on behalf of the  
11          decedent or the decedent's spouse, if all of the following conditions are satisfied:

12          **SECTION 2.** 867.035 (1) (a) 1. of the statutes is amended to read:

1           867.035 (1) (a) 1. No person files a petition for administration or summary  
2 settlement or assignment of the decedent's estate within 20 days of death.

3           **SECTION 3.** 867.035 (1) (bm) (intro.) of the statutes is amended to read:

4           867.035 (1) (bm) (intro.) The department of health and family services ~~may not~~  
5 ~~collect by affidavit under this section from any of~~ shall reduce the amount of its  
6 recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to  
7 allow the decedent's heirs or beneficiaries under the decedent's will to retain the  
8 following personal property of the decedent:

9           **SECTION 4.** 867.035 (1) (bm) 1. of the statutes is repealed.

10          **SECTION 5.** 867.035 (1) (bm) 2. of the statutes is amended to read:

11          867.035 (1) (bm) 2. Wearing apparel and jewelry held for personal use.

12          **SECTION 6.** 867.035 (1) (bm) 3. of the statutes is amended to read:

13          867.035 (1) (bm) 3. Household furniture, furnishings, and appliances.

14          **SECTION 7.** 867.035 (1) (bm) 4. of the statutes is repealed and recreated to read:

15          867.035 (1) (bm) 4. Other tangible personal property not used in trade,  
16 agriculture, or other business, not exceeding in value the amount specified in s.  
17 861.33 (1) (a) 4.

18          **SECTION 8.** 867.035 (2) of the statutes is amended to read:

19          867.035 (2) A person who possesses property of a decedent shall transmit the  
20 property to the department of health and family services, if the conditions in sub. (1)  
21 (a) 1. to 4. are satisfied, upon receipt of an affidavit by a person designated by the  
22 secretary of health and family services to administer this section showing that the  
23 ~~conditions in sub. (1) (a) are satisfied~~ department paid on behalf of the decedent or  
24 the decedent's spouse recoverable benefits specified in sub. (1) (a). Upon transmittal,  
25 the person is released from any obligation to other creditors or heirs of the decedent.

1 SECTION 9. 867.035 (2m) of the statutes is created to read:

2 867.035 (2m) (a) If the conditions in sub. (1) (a) 1., 2., and 4. are satisfied, the  
3 department of health and family services shall have a lien in the amount that it may  
4 recover under sub. (1) (a) on any interest in the decedent's home, as defined in s.  
5 49.496 (1) (b), transferred under s. 867.03 (1g). The department may record the lien  
6 in the office of the register of deeds of the county in which the real property is located.

7 ~~shall~~ unless any of the following is alive, <sup>✓ of the department ✓</sup> may enforce the lien by foreclosure in the  
8 same manner as a mortgage on real property.

9 1. The decedent's spouse.

10 2. A child of the decedent if the child is under age 21 or disabled, as defined in  
11 s. 49.468 (1) (a) 1.

12 (b) If the conditions in sub. (1) (a) 1. to 4. are satisfied, the department of health  
13 and family services shall have a lien in the amount that it may recover under sub.  
14 (1) (a) on any interest in any real property of the decedent transferred under s. 867.03  
15 (1g). The department may record the lien in the office of the register of deeds of the  
16 county in which the real property is located and may enforce the lien by foreclosure  
17 in the same manner as a mortgage on real property.

18 SECTION 9323. Initial applicability; health and family services.

19 (1) TRANSFERS BY AFFIDAVIT. The treatment of section 867.035 (1) (a) (intro.) and  
20 1. and (bm) (intro.), 1., 2., 3., and 4., (2), and (2m) of the statutes first applies to  
21 transfers by affidavit on account of deaths occurring on the effective date of this  
22 subsection.

23 (END)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0433/4  
PJK:jld&wlj:rs

DOA:.....Mullikin – Changes to transfer by affidavit process for recovery  
from estate of certain benefits paid on behalf of decedent

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

Under current law, DHFS may recover from property left by a decedent who received certain benefits, such as medical assistance, up to the amount that DIIFS paid on behalf of the decedent for the benefits. If the decedent's solely owned property in this state does not exceed \$20,000 in value, no person has commenced a procedure for administering the decedent's estate, and the decedent is not survived by a spouse, disabled child, or child under the age of 21, DHFS may receive the decedent's property by presenting the person who has the property with an affidavit showing that the requirements for DHFS's recovery of benefits paid are fulfilled. DHFS is prohibited, however, from collecting from any of the decedent's property that consists of interests in or liens on real property; wearing apparel; jewelry; household furniture, furnishings, or appliances; motor vehicles; or recreational vehicles.

The bill removes the prohibition against DHFS from recovering from certain types of property of a decedent. Instead, under the bill, DHFS is required to reduce the amount that it may recover by up to the amount specified in the statutes as the maximum amount of personal property that may be transferred to a decedent's

surviving spouse or children under certain circumstances (currently, \$5,000), if the reduction is necessary to allow the decedent's heirs to retain property of the decedent consisting of wearing apparel and jewelry held for personal use; household furniture, furnishings, and appliances; and other tangible personal property, worth up to \$3,000, not used in trade, agriculture, or other business.

Under current law, an heir of a decedent who left solely owned property not exceeding \$20,000 in value may have any of the property, including an interest in real property, transferred to himself or herself by presenting the person holding the property with an affidavit containing certain information. The bill provides that, if an interest in real property of a decedent is transferred to an heir by affidavit, DHFS has a lien on that interest in real property if the decedent does not have a surviving spouse or child who is under age 21 or disabled. If the decedent has a surviving spouse or child who is under age 21 or disabled, DHFS has a lien on the interest in real property only if the real property was the decedent's home. DHFS may enforce its lien by foreclosure, in the same manner as a mortgage, but not while the decedent's spouse, if any, or child who is under age 21 or disabled, if any, is alive.

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

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

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2           867.035 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (bm), the  
3 department of health and family services may collect from the property of a decedent,  
4 including funds of a decedent that are held by the decedent immediately before death  
5 in a joint account or a P.O.D. account, by affidavit under ~~this section sub. (2) or by~~  
6 lien under sub. (2m) an amount equal to the medical assistance that is recoverable  
7 under s. 49.496 (3) (a), the long-term community support services under s. 46.27 that  
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10 49.685 that is recoverable under s. 49.682 (2) (a) and that was paid on behalf of the  
11 decedent or the decedent's spouse, if all of the following conditions are satisfied:

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6 recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to  
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22 secretary of health and family services to administer this section showing that the  
23 ~~conditions in sub. (1)(a) are satisfied~~ department paid on behalf of the decedent or  
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6 in the office of the register of deeds of the county in which the real property is located.  
7 The department may enforce the lien by foreclosure in the same manner as a  
8 mortgage on real property, unless any of the following is alive:

9           1. The decedent's spouse.

10          2. A child of the decedent if the child is under age 21 or disabled, as defined in  
11 s. 49.468 (1) (a) 1.

12          (b) If the conditions in sub. (1) (a) 1. to 4. are satisfied, the department of health  
13 and family services shall have a lien in the amount that it may recover under sub.  
14 (1) (a) on any interest in any real property of the decedent transferred under s. 867.03  
15 (1g). The department may record the lien in the office of the register of deeds of the  
16 county in which the real property is located and may enforce the lien by foreclosure  
17 in the same manner as a mortgage on real property.

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

19          (1) TRANSFERS BY AFFIDAVIT. The treatment of section 867.035 (1) (a) (intro.) and  
20 1. and (bm) (intro.), 1., 2., 3., and 4., (2), and (2m) of the statutes first applies to  
21 transfers by affidavit on account of deaths occurring on the effective date of this  
22 subsection.

23

(END)