

2007 SENATE BILL 144

April 13, 2007 – Introduced by Senators ROESSLER, DARLING and OLSEN, cosponsored by Representatives STRACHOTA, TOWNSEND and LEMAHIEU. Referred to Committee on Health and Human Services.

1 **AN ACT to renumber** 49.453 (1) (f) 1., 49.453 (1) (f) 2. and 49.453 (4) (a); **to**
2 **renumber and amend** 49.453 (3) (a), 49.453 (8) and 647.05; **to amend** 49.453
3 (1) (a), 49.453 (1) (d), 49.453 (1) (e), 49.453 (1) (f) (intro.), 49.453 (1) (fm), 49.453
4 (1) (i), 49.453 (3) (b) (intro.), 49.453 (4) (am), 49.453 (4) (b), 49.453 (4) (c), 49.47
5 (4) (a) (intro.), 49.47 (4) (b) 1., 647.02 (2) (g) and 647.04 (5); and **to create** 49.45
6 (6m) (m), 49.453 (1) (ar), 49.453 (1) (f) 2m., 49.453 (3) (a) 2., 49.453 (3) (bc),
7 49.453 (4) (ac), 49.453 (4) (cm), 49.453 (4) (d), 49.453 (4) (e), 49.453 (4) (em),
8 49.453 (4c), 49.453 (4m), 49.453 (8) (b), 49.47 (4) (bc), 49.47 (4) (bm), 49.47 (4)
9 (cr), 632.48 (3) and 647.05 (2m) of the statutes; **relating to:** changes relating
10 to assets and divestment for Medical Assistance eligibility.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) administers the Medical Assistance (MA) program, which provides federal and state moneys to pay for health care and long-term care services, including care in a nursing home, provided to MA recipients, who are, generally, low-income, elderly, or disabled persons who meet other specific eligibility requirements. To be eligible

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for MA for long-term care services, an individual must meet certain very low income and resource requirements, and may have to pay for his or her own long-term care until the eligibility requirements are met.

Current law provides rules, based on federal law, concerning divestment, which refers to the transferring of one's assets for less than fair market value for the purpose of reducing one's income and resources to become eligible for MA for long-term care services. If a person divests assets on or after the person's look-back date (generally, the date that is three years before the person applies for MA for long-term care services), the person may be ineligible for MA for a specific time period (penalty period). The federal Deficit Reduction Act, which became effective on February 8, 2006, made a number of changes in the asset and divestment rules. This bill makes a number of changes with respect to assets and divestment to conform Wisconsin law to the federal law. The bill:

1. Changes the look-back date to five years for transfers that occur on or after February 8, 2006.

2. Changes the beginning date for the penalty period from the date on which assets were transferred to the later of the date on which assets were transferred or the date on which the person applies and is eligible for MA for long-term care services.

3. Provides that the purchase of a loan, promissory note, mortgage, or life estate after February 8, 2006, is a divestment and specifies the requirements for when such a purchase is not to be considered a divestment.

4. Provides that as a condition of receiving MA for long-term care services an applicant (when applying) or recipient (when being recertified) must disclose any interest he or she or his or her spouse has in an annuity that was purchased on or after February 8, 2006, or with respect to which a transaction occurred on or after February 8, 2006. A transaction is defined as any action that changes the course of payments to be made or the treatment of income or principal.

5. Specifies the conditions under which the purchase of an annuity on or after February 8, 2006, is not to be considered a divestment, including designating DHFS as a remainder beneficiary under the annuity.

6. Requires DHFS to establish a hardship waiver process, with certain criteria, under which the divestment rules would not apply to a person because it would result in undue hardship for the person and allows DHFS to pay the full nursing facility payment rate for up to 30 days to hold a bed in the facility for a person involved in a pending undue hardship determination.

7. Provides, generally, that a person is ineligible for MA for long-term care services if the equity in their home exceeds \$750,000 unless their spouse or minor or disabled child is living in the home. Under current law, a person's home, regardless of the value, is not counted when the person's income and resources for MA eligibility are determined.

8. Specifies the conditions under which entrance fees paid by a person on admission to a continuing care retirement community or a life care community will be considered resources available to the person for paying for his or her long-term care and for determining the person's eligibility for MA for long-term care services.

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

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

1 **SECTION 1.** 49.45 (6m) (m) of the statutes is created to read:

2 49.45 **(6m)** (m) To hold a bed in a facility, the department may pay the full
3 payment rate under this subsection for up to 30 days for services provided to a person
4 during the pendency of an undue hardship determination, as provided in s. 49.453
5 (8) (b) 3.

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

7 49.453 **(1)** (a) “Assets” has the meaning given in 42 USC 1396p (e) (h) (1).

8 **SECTION 3.** 49.453 (1) (ar) of the statutes is created to read:

9 49.453 **(1)** (ar) “Community spouse” means the spouse of either the
10 institutionalized person or the noninstitutionalized person.

11 **SECTION 4.** 49.453 (1) (d) of the statutes is amended to read:

12 49.453 **(1)** (d) “Income” has the meaning given in 42 USC 1396p (e) (h) (2).

13 **SECTION 5.** 49.453 (1) (e) of the statutes is amended to read:

14 49.453 **(1)** (e) “Institutionalized individual” has the meaning given in 42 USC
15 1396p (e) (h) (3).

16 **SECTION 6.** 49.453 (1) (f) (intro.) of the statutes is amended to read:

17 49.453 **(1)** (f) (intro.) “Look-back date” means ~~for a covered individual,~~ either
18 of the following:

19 1m. For transfers made before February 8, 2006, the date that is 36 months
20 before, or with respect to payments from a trust or portions of a trust that are treated

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1 as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the
2 date that is 60 months before:

3 **SECTION 7.** 49.453 (1) (f) 1. of the statutes is renumbered 49.453 (1) (f) 1m. a.

4 **SECTION 8.** 49.453 (1) (f) 2. of the statutes is renumbered 49.453 (1) (f) 1m. b.

5 **SECTION 9.** 49.453 (1) (f) 2m. of the statutes is created to read:

6 49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date
7 that is 60 months before the dates specified in subd. 1m. a. and b.

8 **SECTION 10.** 49.453 (1) (fm) of the statutes is amended to read:

9 49.453 (1) (fm) “Noninstitutionalized individual” has the meaning given in 42
10 USC 1396p (e) (h) (4).

11 **SECTION 11.** 49.453 (1) (i) of the statutes is amended to read:

12 49.453 (1) (i) “Resources” has the meaning given in 42 USC 1396p (e) (h) (5).

13 **SECTION 12.** 49.453 (3) (a) of the statutes is renumbered 49.453 (3) (a) (intro.)
14 and amended to read:

15 49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins
16 on either of the following:

17 1. In the case of a transfer of assets made before February 8, 2006, the first day
18 of the first month beginning on or after the look-back date during or after which
19 assets have been transferred for less than fair market value and that does not occur
20 in any other periods of ineligibility under this subsection.

21 **SECTION 13.** 49.453 (3) (a) 2. of the statutes is created to read:

22 49.453 (3) (a) 2. In the case of a transfer of assets made on or after February
23 8, 2006, the first day of a month beginning on or after the look-back date during or
24 after which assets have been transferred for less than fair market value, or the date
25 on which the individual is eligible for medical assistance and would otherwise be

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1 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved
2 application for the care but for the application of the penalty period, whichever is
3 later, and that does not occur during any other period of ineligibility under this
4 subsection.

5 **SECTION 14.** 49.453 (3) (b) (intro.) of the statutes is amended to read:

6 49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine
7 the number of months of ineligibility as follows:

8 **SECTION 15.** 49.453 (3) (bc) of the statutes is created to read:

9 49.453 (3) (bc) In determining the number of months of ineligibility under par.
10 (b), with respect to asset transfers that occur after February 8, 2006, the department
11 may not round down the quotient, or otherwise disregard any fraction of a month,
12 obtained in the division under par. (b) 3.

13 **SECTION 16.** 49.453 (4) (a) of the statutes is renumbered 49.453 (4) (ag).

14 **SECTION 17.** 49.453 (4) (ac) of the statutes is created to read:

15 49.453 (4) (ac) In this subsection, “transaction” means any action taken by an
16 individual that changes the course of payments to be made under an annuity or the
17 treatment of the income or principal of an annuity, including all of the following:

- 18 1. An addition of principal.
- 19 2. An elective withdrawal.
- 20 3. A request to change the distribution of the annuity.
- 21 4. An election to annuitize the contract.
- 22 5. A change in ownership.

23 **SECTION 18.** 49.453 (4) (am) of the statutes is amended to read:

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1 49.453 (4) (am) Paragraph ~~(a)~~ (ag) 1. does not apply to a variable annuity that
2 is tied to a mutual fund that is registered with the federal securities and exchange
3 commission.

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

5 49.453 (4) (b) The amount of assets that is transferred for less than fair market
6 value under par. ~~(a)~~ (ag) is the amount by which the transferred amount exceeds the
7 expected value of the benefit.

8 **SECTION 20.** 49.453 (4) (c) of the statutes is amended to read:

9 49.453 (4) (c) The department shall promulgate rules specifying the method to
10 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to
11 1.72-18, and specifying the criteria for adjusting the expected value of the benefit
12 based on a medical condition diagnosed by a physician before the assets were
13 transferred to the annuity, or transferred by promissory note or similar instrument.
14 In calculating the amount of the divestment when a transfer to an annuity, or a
15 transfer by promissory note or similar instrument, is made, payments made to the
16 transferor in any year subsequent to the year in which the transfer was made shall
17 be discounted to the year in which the transfer was made by the applicable federal
18 rate specified under par. ~~(a)~~ (ag) on the date of the transfer.

19 **SECTION 21.** 49.453 (4) (cm) of the statutes is created to read:

20 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before
21 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

22 **SECTION 22.** 49.453 (4) (d) of the statutes is created to read:

23 49.453 (4) (d) For purposes of sub. (2), the purchase of an annuity by an
24 institutionalized individual or his or her community spouse, or anyone acting on

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1 their behalf, shall be treated as a transfer of assets for less than fair market value
2 unless any of the following applies:

3 1. The state is designated as the remainder beneficiary in the first position for
4 at least the total amount of medical assistance paid on behalf of the institutionalized
5 individual.

6 2. The state is named as a beneficiary in the 2nd position after the community
7 spouse or a minor or disabled child and is named in the first position if the community
8 spouse or a representative of the minor or disabled child disposes of any remainder
9 for less than fair market value.

10 3. The annuity satisfies the requirements under par. (e) 1. or 2.

11 **SECTION 23.** 49.453 (4) (e) of the statutes is created to read:

12 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity by or on behalf
13 of an annuitant who has applied for medical assistance for nursing facility services
14 or other long-term care services described in sub. (2) is a transfer of assets for less
15 than fair market value unless either of the following applies:

16 1. The annuity is either an annuity described in section 408 (b) or (q) of the
17 Internal Revenue Code of 1986 or purchased with proceeds from any of the following:

18 a. An account or trust described in section 408 (a), (c), or (p) of the Internal
19 Revenue Code of 1986.

20 b. A simplified employee pension, within the meaning of section 408 (k) of the
21 Internal Revenue Code of 1986.

22 c. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

23 2. All of the following apply with respect to the annuity:

24 a. The annuity is irrevocable and nonassignable.

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1 b. The annuity is actuarially sound, as determined in accordance with actuarial
2 publications of the office of the chief actuary of the social security administration.

3 c. The annuity provides for payments in equal amounts during the term of the
4 annuity, with no deferral and no balloon payments made.

5 **SECTION 24.** 49.453 (4) (em) of the statutes is created to read:

6 49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

7 1. Annuities purchased on or after February 8, 2006.

8 2. Annuities purchased before February 8, 2006, for which a transaction has
9 occurred on or after February 8, 2006.

10 **SECTION 25.** 49.453 (4c) of the statutes is created to read:

11 49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2),
12 the purchase by an individual or his or her spouse of a promissory note, loan, or
13 mortgage after February 8, 2006, is a transfer of assets for less than fair market
14 value unless all of the following apply with respect to the note, loan, or mortgage:

15 1. The repayment term is actuarially sound.

16 2. The payments are to be made in equal amounts during the term of the loan,
17 with no deferral and no balloon payment.

18 3. Cancellation of the balance upon the death of the lender is prohibited.

19 (b) The value of a promissory note, loan, or mortgage that does not satisfy the
20 requirements under par. (a) 1. to 3. is the outstanding balance due on the date that
21 the individual applies for medical assistance for nursing facility services or other
22 long-term care services described in sub. (2).

23 **SECTION 26.** 49.453 (4m) of the statutes is created to read:

24 49.453 (4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase
25 by an individual or his or her spouse of a life estate in another individual's home after

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1 February 8, 2006, is a transfer of assets for less than fair market value unless the
2 purchaser resides in the home for at least one year after the date of the purchase.

3 **SECTION 27.** 49.453 (8) of the statutes is renumbered 49.453 (8) (a) (intro.) and
4 amended to read:

5 49.453 **(8)** (a) (intro.) Subsections (2) and (3) do not apply to transfers of assets
6 if ~~the~~ any of the following applies:

7 1. The assets are exempt under 42 USC 1396p (c) (2) or if the (A), (B), or (C).

8 2. The department determines under the process under par. (b) that application
9 of this section would work an undue hardship. ~~The department shall promulgate~~
10 ~~rules concerning the transfer of assets exempt under 42 USC 1396p (c) (2).~~

11 **SECTION 28.** 49.453 (8) (b) of the statutes is created to read:

12 49.453 **(8)** (b) The department shall establish a hardship waiver process that
13 includes all of the following:

14 1. The department determines that undue hardship exists if the application of
15 subs. (2) and (3) would deprive the individual of medical care to the extent that the
16 individual's health or life would be endangered, or would deprive the individual of
17 food, clothing, shelter, or other necessities of life.

18 2. A facility in which an institutionalized individual who has transferred assets
19 resides is permitted to file an application for undue hardship on behalf of the
20 individual with the consent of the individual or the individual's authorized
21 representative.

22 3. The department may, during the pendency of an undue hardship
23 determination, pay the full payment rate under s. 49.45 (6m) for nursing facility
24 services for up to 30 days for the individual who transferred assets, to hold a bed in
25 the facility in which the individual resides.

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1 **SECTION 29.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

2 49.47 **(4)** (a) (intro.) Any individual who meets the limitations on income and
3 resources under pars. (b) ~~and~~ to (c) and who complies with ~~par.~~ pars. (cm) and (cr)
4 shall be eligible for medical assistance under this section if such individual is:

5 **SECTION 30.** 49.47 (4) (b) 1. of the statutes is amended to read:

6 49.47 **(4)** (b) 1. ~~A Subject to par. (bc), a~~ home and the land used and operated
7 in connection therewith or in lieu thereof a mobile home if the home or mobile home
8 is used as the person's or his or her family's place of abode.

9 **SECTION 31.** 49.47 (4) (bc) of the statutes is created to read:

10 49.47 **(4)** (bc) 1. Subject to subd. 2., a person shall be ineligible under this
11 section for medical assistance for nursing facility services or other long-term care
12 services described in s. 49. 453 (2) if the equity in his or her home and the land used
13 and operated in connection with the home exceeds \$750,000. This subdivision does
14 not apply if any of the following persons lawfully resides in the home:

15 a. The person's spouse.

16 b. The person's child who is under age 21 or who is disabled, as defined in s.
17 49.468 (1) (a) 1.

18 2. Subdivision 1. applies to all of the following:

19 a. At the time of application, to a person who applies for medical assistance for
20 nursing facility services or other long-term care services described in s. 49.453 (2)
21 after the effective date of this subd. 2. a. [revisor inserts date].

22 b. At the time of the person's first recertification after the effective date of this
23 subd. 2. b. [revisor inserts date], to a person not specified in subd. 2. a. who applied
24 for medical assistance for nursing facility services or other long-term care services
25 described in s. 49.453 (2) on or after January 1, 2006, and who was eligible for medical

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1 assistance for those services on the effective date of this subd. 2. b. [revisor inserts
2 date].

3 **SECTION 32.** 49.47 (4) (bm) of the statutes is created to read:

4 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for
5 a person described in par. (a) 3. or 4. who resides in a continuing care retirement
6 community or a life care community, any entrance fee paid on admission to the
7 community shall be considered a resource available to the person to the extent that
8 all of the following apply:

9 1. The person has the ability to use the entrance fee, or the contract provides
10 that the entrance fee may be used, to pay for care if the person's other resources or
11 income are insufficient to pay for the care.

12 2. The person is eligible for a refund of any remaining entrance fee when the
13 person dies or terminates the continuing care retirement community or life care
14 community contract and leaves the community.

15 3. The entrance fee does not confer an ownership interest in the continuing care
16 retirement community or life care community.

17 **SECTION 33.** 49.47 (4) (cr) of the statutes is created to read:

18 49.47 (4) (cr) 1. As a condition of receiving medical assistance for long-term
19 care services described in s. 49.453 (2) (a), an applicant for or recipient of the
20 long-term care services shall disclose on the application or recertification form a
21 description of any interest the individual or his or her community spouse, as defined
22 in s. 49.453 (1) (ar), has in an annuity, regardless of whether the annuity is
23 irrevocable or is treated as an asset. The application or recertification form shall
24 include a statement that the state becomes a remainder beneficiary under any
25 annuity in which the individual or his or her spouse has an interest by virtue of the

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1 provision of the medical assistance. The applicant or recipient shall, no later than
2 30 days after the department receives the application or recertification form, take
3 any action required by the annuity issuer to make the state a remainder beneficiary.

4 2. The department shall notify the issuer of an annuity disclosed under subd.
5 1. of the state's right as a remainder beneficiary and shall request that the issuer
6 notify the department of any changes to or payments made under the annuity
7 contract.

8 3. This paragraph applies to all of the following:

9 a. Annuities purchased on or after February 8, 2006.

10 b. Annuities purchased before February 8, 2006, for which a transaction, as
11 defined in s. 49.453 (4) (ac), has occurred on or after February 8, 2006.

12 **SECTION 34.** 632.48 (3) of the statutes is created to read:

13 632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the
14 department of health and family services under s. 49.47 (4) (cr) 2. for notification
15 shall comply with the request and notify the department of any changes to or
16 payments made under the annuity contract to which the request for notification
17 relates.

18 **SECTION 35.** 647.02 (2) (g) of the statutes is amended to read:

19 647.02 (2) (g) The figure to be used by the provider as the actual or projected
20 length of a resident's stay in the facility in the formula in the contract provision
21 required under s. 647.05 (9) (1m) (i) and supporting information showing how the
22 figure was determined.

23 **SECTION 36.** 647.04 (5) of the statutes is amended to read:

24 647.04 (5) Inform the commissioner of any change in the figure used by the
25 provider as the actual or projected length of a resident's stay in the facility in the

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1 formula in the contract provision required under s. 647.05 ~~(9)~~ (1m) (i) within 30 days
2 after the change is made and submit supporting information showing how the
3 change was determined.

4 **SECTION 37.** 647.05 of the statutes is renumbered 647.05 (1m), and 647.05 (1m)
5 (g), as renumbered, is amended to read:

6 647.05 **(1m)** (g) Provides that if a resident dies or the continuing care contract
7 is terminated after the first 30 days of occupancy, but within the first 90 days of
8 occupancy, the provider will refund at least 90% of the amount computed under ~~sub.~~
9 ~~(6)~~ par. (f).

10 **SECTION 38.** 647.05 (2m) of the statutes is created to read:

11 647.05 **(2m)** Subject to s. 49.455, a continuing care contract may require that,
12 before a resident applies for medical assistance, the resident must spend on his or
13 her care the resources declared for purposes of admission to the facility.

14 **SECTION 39. Initial applicability.**

15 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

16 (a) *Eligibility changes.* The treatment of section 49.47 (4) (a) (intro.), (bm), and
17 (cr) of the statutes first applies to individuals who apply or are recertified for medical
18 assistance on the effective date of this paragraph.

19 (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,
20 and 2m., (3) (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c),
21 and (4m) of the statutes, the renumbering and amendment of section 49.453 (3) (a)
22 and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) of the
23 statutes first apply to individuals who apply for or are receiving medical assistance
24 for nursing facility services or other long-term care services on the effective date of
25 this paragraph.

