



2007 BILL

1 **AN ACT** *to renumber* 49.453 (1) (f) 1., 49.453 (1) (f) 2. and 49.453 (4) (a); *to amend*
2 49.453 (1) (a), 49.453 (1) (d), 49.453 (1) (e), 49.453 (1) (f) (intro.), 49.453 (1) (fm),
3 49.453 (1) (i), 49.453 (4) (am), 49.453 (4) (b), 49.453 (4) (c) and 49.47 (4) (a)
4 (intro.); and *to create* 49.453 (1) (ar), 49.453 (1) (f) 2m., 49.453 (4) (ac), 49.453
5 (4) (cm), 49.453 (4) (d), 49.453 (4) (e), 49.453 (4) (em), 49.47 (4) (bm), 49.47 (4)
6 (cr) and 632.48 (3) of the statutes; **relating to:** changes relating to assets and
7 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 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

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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. 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 in conformity with federal law. The bill:

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

2. 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.

3. 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.

4. 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.

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

2 49.453 (1) (a) "Assets" has the meaning given in 42 USC 1396p (e) (h) (1).

3 **SECTION 2.** 49.453 (1) (ar) of the statutes is created to read:

4 49.453 (1) (ar) "Community spouse" means the spouse of either the
5 institutionalized person or the noninstitutionalized person.

6 **SECTION 3.** 49.453 (1) (d) of the statutes is amended to read:

7 49.453 (1) (d) "Income" has the meaning given in 42 USC 1396p (e) (h) (2).

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

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1 49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC
2 1396p (e) (h) (3).

3 **SECTION 5.** 49.453 (1) (f) (intro.) of the statutes is amended to read:

4 49.453 (1) (f) (intro.) "Look-back date" means ~~for a covered individual~~, either
5 of the following:

6 1m. For transfers made before February 8, 2006, the date that is 36 months
7 before, or with respect to payments from a trust or portions of a trust that are treated
8 as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the
9 date that is 60 months before:

10 **SECTION 6.** 49.453 (1) (f) 1. of the statutes is renumbered 49.453 (1) (f) 1m. a.

11 **SECTION 7.** 49.453 (1) (f) 2. of the statutes is renumbered 49.453 (1) (f) 1m. b.

12 **SECTION 8.** 49.453 (1) (f) 2m. of the statutes is created to read:

13 49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date
14 that is 60 months before the dates specified in subd. 1m. a. and b.

15 **SECTION 9.** 49.453 (1) (fm) of the statutes is amended to read:

16 49.453 (1) (fm) "Noninstitutionalized individual" has the meaning given in 42
17 USC 1396p (e) (h) (4).

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

19 49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

20 **SECTION 11.** 49.453 (4) (a) of the statutes is renumbered 49.453 (4) (ag).

21 **SECTION 12.** 49.453 (4) (ac) of the statutes is created to read:

22 49.453 (4) (ac) In this subsection, "transaction" means any action taken by an
23 individual that changes the course of payments to be made under an annuity or the
24 treatment of the income or principal of an annuity, including all of the following:

25 1. An addition of principal.

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1 2. An elective withdrawal.

2 3. A request to change the distribution of the annuity.

3 4. An election to annuitize the contract.

4 5. A change in ownership.

5 **SECTION 13.** 49.453 (4) (am) of the statutes is amended to read:

6 49.453 (4) (am) Paragraph (a) (ag) 1. does not apply to a variable annuity that
7 is tied to a mutual fund that is registered with the federal securities and exchange
8 commission.

9 **SECTION 14.** 49.453 (4) (b) of the statutes is amended to read:

10 49.453 (4) (b) The amount of assets that is transferred for less than fair market
11 value under par. (a) (ag) is the amount by which the transferred amount exceeds the
12 expected value of the benefit.

13 **SECTION 15.** 49.453 (4) (c) of the statutes is amended to read:

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

24 **SECTION 16.** 49.453 (4) (cm) of the statutes is created to read:

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1 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before
2 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

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

4 49.453 (4) (d) For purposes of sub. (2), the purchase of an annuity by an
5 institutionalized individual or his or her community spouse, or anyone acting on
6 their behalf, shall be treated as a transfer of assets for less than fair market value
7 unless any of the following applies:

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

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

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

16 **SECTION 18.** 49.453 (4) (e) of the statutes is created to read:

17 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity by or on behalf
18 of an annuitant who has applied for medical assistance for nursing facility services
19 or other long-term care services described in sub. (2) is a transfer of assets for less
20 than fair market value unless either of the following applies:

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

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

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

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

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

5 a. The annuity is irrevocable and nonassignable.

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

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

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

11 49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

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

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

15 **SECTION 20.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

16 49.47 (4) (a) (intro.) Any individual who meets the limitations on income and
17 resources under pars. (b) and to (c) and who complies with ~~par.~~ pars. (cm) and (cr)
18 shall be eligible for medical assistance under this section if such individual is:

19 **SECTION 21.** 49.47 (4) (bm) of the statutes is created to read:

20 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for
21 a person described in par. (a) 3. or 4. who resides in a continuing care retirement
22 community or a life care community, any entrance fee paid on admission to the
23 community shall be considered a resource available to the person to the extent that
24 all of the following apply:

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

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

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

9 **SECTION 22.** 49.47 (4) (cr) of the statutes is created to read:

10 49.47 (4) (cr) 1. As a condition of receiving medical assistance for long-term
11 care services described in s. 49.453 (2) (a), an applicant for or recipient of the
12 long-term care services shall disclose on the application or recertification form a
13 description of any interest the individual or his or her community spouse, as defined
14 in s. 49.453 (1) (ar), has in an annuity, regardless of whether the annuity is
15 irrevocable or is treated as an asset. The application or recertification form shall
16 include a statement that the state becomes a remainder beneficiary under any
17 annuity in which the individual or his or her spouse has an interest by virtue of the
18 provision of the medical assistance. The applicant or recipient shall, no later than
19 30 days after the department receives the application or recertification form, take
20 any action required by the annuity issuer to make the state a remainder beneficiary.

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

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

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

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

4 **SECTION 23.** 632.48 (3) of the statutes is created to read:

5 632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the
6 department of health and family services under s. 49.47 (4) (cr) 2. for notification
7 shall comply with the request and notify the department of any changes to or
8 payments made under the annuity contract to which the request for notification
9 relates.

10 **SECTION 24. Initial applicability.**

11 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

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

15 (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,
16 and 2m. and (fm) and (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em) of the statutes
17 first applies to individuals who apply for or are receiving medical assistance for
18 nursing facility services or other long-term care services on the effective date of this
19 paragraph.

20 **SECTION 25. Effective date.**

21 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES. The treatment of sections
22 49.453 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i) and (4) (a), (ac), (am),
23 (b), (c), (cm), (d), (e), and (em), 49.47 (4) (a) (intro.), (bm), and (cr), and 632.48 (3) of

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1 the statutes and SECTION 24 (1) (a) and (b) of this act take effect on October 1, 2007,
2 or on the first day of the 4th month beginning after publication, whichever is later.

3 (END)

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

LRB-1807/1dn
PJK:kjf:jf

March 12, 2007

This draft may do a little more than you wanted. As you can see, the definitions in s. 49.453 (1) that contain cross-references to 42 USC 1396p (e) have been changed to conform to federal law [changing (e) to (h)]. Because the provisions you requested contained some of the words for which the definitions needed to be changed, I went ahead and made all of the necessary cross-reference changes, not just to those definitions of words included in your provisions.

Under the Deficit Reduction Act (DRA), the provisions relating to naming the state as a beneficiary under an annuity include some additional requirements (for example, see proposed s. 49.453 (4) (d) 3.). I included any additional requirements that were integral to the provision. In addition, because annuities are treated differently under the DRA depending on when they are purchased, the draft makes a distinction between annuities that are subject to the DRA requirements and those that are not.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1807/1dn
PJK:kjf:jf

March 13, 2007

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LRB-1807 Sen. Roessler, Jennifer Segel

same as your bill

3-21-07

~~LRB-281 to be~~

LRB-300

redraft to include all MA divestment
changes that went into
budget

LRB-266