



### 2007 DRAFTING REQUEST

#### Bill

Received: **09/19/2006**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Milioto**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **NO**

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#### Pre Topic:

DOA:.....Milioto, Steve, BB0026 -

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#### Topic:

Medicaid asset transfers

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#### Instructions:

See Attached

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#### 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>
/?	pkahler 09/26/2006	kfollett 09/29/2006		_____			State
/P1	pkahler 11/09/2006		rschluet 09/29/2006	_____	lparisi 09/29/2006		State
/P2	pkahler 12/22/2006	kfollett 01/02/2007	nnatzke 01/03/2007	_____	sbasford 01/04/2007		State
	pkahler 01/04/2007	kfollett 01/04/2007	nnatzke 01/04/2007	_____			
/1	pkahler 01/29/2007	kfollett 01/29/2007	pgreensl 01/29/2007	_____	mbarman 01/29/2007		State

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/2	pkahler 01/29/2007	wjackson 01/29/2007	jfrantze 01/30/2007	_____	sbasford 01/30/2007		State
/3	pkahler 01/30/2007	kfollett 01/31/2007	pgreensl 01/31/2007	_____	sbasford 01/31/2007		

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*pkahler*

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 6/30  
 26/P  
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1/29/07

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Addl. Drafters:

Subject: Public Assistance - med. assist.

Extra Copies: 

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: 

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DOA:.....Milioto, Steve, BB0026 -

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#### Topic:

Medicaid asset transfers

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#### Instructions:

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/P1		1 P2 kjf 1/2	rschluet 09/29/2006		lparisi 09/29/2006		
FE Sent For:		1 P2 kjf 1/4	nwn 1/2	nwn/sb 1/2			
			nwn 1/4	<END> nwn/rs 1/4			

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By/Representing: **Milioto, Steve**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

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

Extra Copies: **DHFS**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **forsaac@dhfs.state.wi.us**

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**Pre Topic:**

DOA:.....Milioto, Steve, BB0026 -

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**Topic:**

Medicaid asset transfers

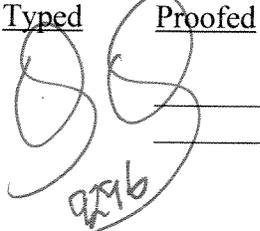
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/?	pkahler	1P11gf 9/29					

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<END>

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: **Medicaid Asset Transfers**
- Tracking Code: BB 0026
- SBO team: Health
- SBO analyst: **Steve Milioto**
  - Phone: 266-8593
  - Email: Steve.Milioto@Wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

High Priority

## Medicaid Asset Transfers

### Current Language

Chapter 49 specifies the treatment of Medicaid applicants' assets.

### Proposed Change

The federal Deficit Reduction Act (DRA) of 2005 (P.L. 109-171), enacted on February 8, 2006, includes a number of provisions that affect Medicaid asset transfers in the State of Wisconsin. Changes to Wisconsin's statutes are necessary to bring the state into compliance with federal law as it exists after the passage of the DRA. Without these changes, Wisconsin could face the loss of federal financial participation. The necessary changes are described below:

#### Divestment Look-Back Period

Section 49.453(1)(f) of Wisconsin statutes should be modified to lengthen the look-back period for all transfers from 3 to 5 years. Currently, Wisconsin uses a 5-year look-back period only for transfers to trusts.

#### Beginning Date of Ineligibility

Section 49.453(3)(a) should be modified to change the beginning date of ineligibility for a divestment penalty to the date on which an institutionalized person applied for Medicaid rather than the first day of the month in which the divestment occurred.

#### Availability of Hardship Waivers

Amend s.49.453(8) to adopt the new hardship requirement under s. 6011(d) of the DRA, which includes the following provisions: (a) the divestment penalty must be waived if it deprives a person of medical care endangering his or her health or life, or deprives him or her of food, clothing, shelter, or other necessities, (b) the facility where a person resides may file for a hardship waiver on his or her behalf; and (c) states may pay to hold a bed for up to 30 days pending a hardship decision. States are mandated to otherwise follow current federal guidelines concerning hardship waivers, including providing a notice of the hardship exemption. ←

#### Disclosure and Treatment of Annuities

Amend s.49.453(4) to require disclosure of annuities under s. 6012(a) of the DRA. Under the DRA provision, both applicants and recipients of long term care services are required to disclose any annuities they own and whether the annuity is irrevocable or counted as an asset. They are to make the state a remainder beneficiary as a condition of eligibility for long term care services.

Under s. 6012(b) and (c) of the DRA, the purchase of an annuity by either the applicant or the applicant's community spouse is to be treated as a divestment, unless the state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid. Statutory language is necessary to require the beneficiary to pay his or her annuity to the state and s.632.56(3) will need to be amended to make this payment possible. Language should also be created to require the private insurer to notify the state of changes to and/or withdrawals from the annuity.

#### Disqualification of Long Term Care for Individuals with Substantial Home Equity

Section 49.47(4)(b)(2) should be modified to adopt the \$750,000 home equity limit under the DRA. Under s. 6014 of the DRA, persons who apply on or after January 1, 2006, would not be eligible for long term care services if their equity interest in their home is greater than \$500,000, or at the option of the State, greater than an amount not exceeding \$750,000. This does not apply if a spouse, minor or disabled child resides in the home.

#### Enforceability of Continuing Care Retirement Communities (CCRC) and Life Care Community Admissions Contracts

Statutory language should be created to address enforceability of continuing care retirement communities (CCRC) and life care community admissions contracts found in s. 6015 of the DRA. Under the DRA, CCRCs may require applicants to spend their declared resources on their care at the facility before applying for Medicaid. There is no language in current state statutes or rules addressing these contracts.

#### Requirement to Impose Partial Months of Eligibility

Section 49.453(3) should be modified to prohibit rounding down partial months of ineligibility for long term care services due to a divestment. Under s. 6016(a) of the DRA, states are prohibited from rounding down partial months.

#### Authority to Combine Multiple Transfers Into One Penalty Period

Section 49.453(3) should be modified to adopt the following change under the DRA. Under s. 6016(b) of the DRA, states are allowed the option to count all transfers that occur within the look-back period as one divestment amount and establish the period of ineligibility based on that total.

*D-note - current law looks ok to me*

#### Inclusion of Transfers of Certain Notes and Loans

Section 49.453(4) should be modified to include the transfer of certain notes and loans under the DRA. Under s. 6016 (c) of the DRA, assets must, for divestment purposes, include promissory notes, loans or mortgages unless the repayment terms are actuarially sound, provide for payments to be made in equal amounts during the term of the loan and with no deferral or balloon payments, and prohibit the cancellation of the balance upon the death of the lender.

#### Inclusion of Transfers to Purchase Life Estates

Currently, there is no state statutory or rule provision concerning the purchase of life estates. Statutory language should be created to require inclusion of transfers to purchase life estates for divestments. Under s. 6016 (d) of the DRA, assets must, for divestment purposes, include the purchase of a life estate interest in another individual's home, unless the purchaser resides in the home for at least one year after the date of purchase.

### **Background and Rationale for Change**

Changes to state statutes are necessary to bring the state into compliance with federal law after the passage of the DRA. Without these changes, Wisconsin could face the loss of federal Medicaid funding.

**Desired Effective Date:** Upon passage  
**Agency:** DHFS  
**Agency Contact:** Kirstin Nelson  
**Phone:** (608) 266-5362



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0266/3

PJK:...

PI  
kf

DOA:.....Milioto, Steve, BB0026 - Medicaid asset transfers

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-note

do not  
gen cat

1 AN ACT ...; relating to: changes in asset transfer rules for Medical Assistance  
2 eligibility.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.  
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:**

3 SECTION 1. 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, the date  
5 that is ~~36 months before, or with respect to payments from a trust or portions of a~~  
6 ~~trust that are treated as assets transferred by the covered individual under s. 49.454~~  
7 (2) (e) or (3) (b) the date that is 60 months before:

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

\*\*\*\*NOTE: What will the initial applicability be for this provision? Will this first  
apply to individuals who apply for MA on the effective date?

1           **SECTION 2.** 49.453 (3) (a) <sup>✓</sup> of the statutes is amended to read:

2           49.453 (3) (a) The period of ineligibility under this subsection begins on the first  
3           day of the first month beginning on or after the look-back date during or after which  
4           assets have been transferred for less than fair market value and that does not occur  
5           in any other periods of ineligibility under this subsection day on which the individual  
6           applies for and is otherwise eligible for medical assistance.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

\*\*\*\*NOTE: As drafted, this applies to both institutionalized and noninstitutionalized individuals. The instructions mention only an "institutionalized person." Does a distinction need to be made? If so, does the period of ineligibility for a noninstitutionalized individual remain as in current law?

\*\*\*\*NOTE: What is the initial applicability for this provision? Will this first apply to individuals who apply for MA on the effective date?

7           **SECTION 3.** 49.453 (3) (b) <sup>✓</sup> (intro.) of the statutes is amended to read:

8           49.453 (3) (b) (intro.) The Subject to par. (bc), <sup>✓</sup> the department shall determine  
9           the number of months of ineligibility as follows:

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185. <sup>✓</sup>

10          **SECTION 4.** 49.453 (3) (bc) <sup>✓</sup> of the statutes is created to read:

11          49.453 (3) (bc) <sup>1.</sup> <sup>✓</sup> In determining the number of months of ineligibility under  
12          par. (b), the department <sup>✓</sup> may not round down the quotient, or otherwise disregard  
13          any fraction of a month, obtained in the division under par. (b) <sup>3.</sup> <sup>✓</sup>

14          **SECTION 5.** 49.453 (4) (d) <sup>✓</sup> of the statutes is created to read:

15          49.453 (4) (d) 1. As a condition for the provision of long-term care services, an  
16          applicant for or recipient of long-term care services shall be required to disclose on  
17          the application or recertification form a description of any interest the individual has  
18          in an annuity, including whether it is irrevocable (and counted as an asset)\*, and  
19          shall be required to designate the state as a remainder beneficiary under the annuity.

\*\*\*\*NOTE: Would an applicant or recipient know whether the annuity was counted as an asset? Wouldn't the department be in a better position to know that?

1           2. The department shall notify an insurer issuing an annuity under which the  
2 state is designated as a remainder beneficiary and shall request that the insurer  
3 notify the department of any changes to or payments made under the annuity  
4 contract.

5           3. For purposes of this section, the purchase of an annuity by an  
6 institutionalized individual or his or her community spouse is a transfer of assets for  
7 less than fair market value unless the state is designated as the remainder  
8 beneficiary in the first position for at least the total amount of medical assistance  
9 paid on behalf of the individual or the spouse.

      \*\*\*\*NOTE: How do these provisions coordinate with current law s. 49.453 (4)? Is any  
of s. 49.453 (4) replaced by any of these provisions? Should the requirement under subd.  
3. above be an additional requirement under s. 49.453 (4)(a) for a transfer to an annuity  
that is not in excess of the expected value?

      Subdivisions 1. and 3. above seem to conflict. Under subd. 1., designating the  
department as a beneficiary is a *condition* of receiving long-term care services, so not  
designating the department would completely rule out receiving long-term care  
services....at least until the department is designated. Under subd. 3., however,  
purchasing an annuity is divestment if the department is not designated as a beneficiary,  
so not designating the department would prevent receiving long-term care services but  
only for the applicable penalty period.

10       **SECTION 6.** 49.453 (4c) of the statutes is created to read:

- 11       49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. Notwithstanding sub. (1)  
12 (a), for purposes of this section, funds used by an individual to purchase a promissory  
13 note, loan, or mortgage are assets unless all of the following apply with respect to the  
14 note, loan, or mortgage:
- 15       (a) The repayment term is actuarially sound.
  - 16       (b) The payments are to be made in equal amounts during the term of the loan,  
17 with no deferral and no balloon payment.
  - 18       (c) Cancellation of the balance upon the death of the lender is prohibited.

      \*\*\*\*NOTE: I don't understand the significance of calling the funds used to purchase  
a promissory note, loan, or mortgage assets. Wouldn't funds used to purchase *anything*

probably be assets, i.e., either income or resources? If so, why does this need to be stated separately from the general definition of assets? Should this instead say that the purchase of a note, loan, or mortgage is a transfer of assets for less than fair market value unless (a), (b), and (c) above apply?

1 SECTION 7. 49.453 (4m) of the statutes is created to read:

2 49.453 (4m) PURCHASE OF LIFE ESTATE. Notwithstanding sub. (1) (a), for  
3 purposes of this section, funds used by an individual to purchase a life estate in  
4 another individual's home are assets unless the purchaser resides in the home for at  
5 least one year after the date of the purchase.

\*\*\*\*NOTE: Same question as above. Wouldn't funds used to purchase a life estate be assets, i.e., either income or resources, under the current law definition of assets in s. 49.453 (1) (a)? Should this instead say that the purchase of a life estate in the home of another is a transfer of assets for less than fair market value unless the purchaser resides in the home for at least one year?

6 SECTION 8. 49.453 (8) of the statutes is renumbered 49.453 (8) (a) (intro.) and  
7 amended to read:

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

- 10 1. The assets are exempt under 42 USC 1396p (c) (2) or if the (A), (B), or (C).
- 11 2. The department determines under the process under par. (b) that application  
12 of this section would work an undue hardship. The department shall promulgate  
13 rules concerning the transfer of assets exempt under 42 USC 1396p (c) (2).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

14 SECTION 9. 49.453 (8) (b) of the statutes is created to read:

15 49.453 (8) (b) The department shall establish a hardship waiver process that  
16 includes all of the following:

- 17 1. The department determines that undue hardship exists if the application of  
18 subs. (2) and (3) would deprive the individual who has transferred assets of medical  
19 care to the extent that the individual's health or life would be endangered, or would  
20 deprive the individual of food, clothing, shelter, or other necessities of life.

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

5           3. The department may, during the pendency of an undue hardship  
6 determination, pay for nursing facility services for up to 30 days for the individual  
7 who transferred assets, to hold a bed in the facility in which the individual resides.

8           **SECTION 10.** 49.47 (4) (b) 1. of the statutes is amended to read:

9           49.47 (4) (b) 1. ~~A~~ Subject to par. (bc), a home and the land used and operated  
10 in connection therewith or in lieu thereof a mobile home if the home or mobile home  
11 is used as the person's or his or her family's place of abode.

**History:** 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253.

12           **SECTION 11.** 49.47 (4) (bc) of the statutes is created to read:

13           49.47 (4) (bc) A person who applies for medical assistance on or after January  
14 1, 2006, shall be ineligible under this section for nursing facility services or other  
15 long-term care services if the equity in his or her home and the land used and  
16 operated in connection with the home exceeds \$750,000. This paragraph does not  
17 apply if any of the following persons lawfully resides in the home:

18           1. The person's spouse.

19           2. The person's child who is under age 21 or who is disabled, as defined in s.  
20 49.468 (1) (a) 1.

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

22           632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the  
23 department of health and family services under s. 49.453 (4) (d) 2. for notification  
24 shall comply with the request and notify the department of any changes to or

1 payments made under the annuity contract to which the request for notification  
2 relates.

3 **SECTION 13.** 647.02 (2) (g) of the statutes is amended to read:

4 647.02 (2) (g) The figure to be used by the provider as the actual or projected  
5 length of a resident's stay in the facility in the formula in the contract provision  
6 required under s. 647.05 (9) (1m) (i) and supporting information showing how the  
7 figure was determined.

8 History: 1983 a. 358; 1993 a. 112.

8 **SECTION 14.** 647.04 (5) of the statutes is amended to read:

9 647.04 (5) Inform the commissioner of any change in the figure used by the  
10 provider as the actual or projected length of a resident's stay in the facility in the  
11 formula in the contract provision required under s. 647.05 (9) (1m) (i) within 30 days  
12 after the change is made and submit supporting information showing how the  
13 change was determined.

14 History: 1983 a. 358; 1985 a. 29; 1989 a. 359.

14 **SECTION 15.** 647.05 of the statutes is renumbered 647.05 (1m), and 647.05 (1m)  
15 (g), as renumbered, is amended to read:

16 647.05 (1m) (g) Provides that if a resident dies or the continuing care contract  
17 is terminated after the first 30 days of occupancy, but within the first 90 days of  
18 occupancy, the provider will refund at least ~~90%~~ <sup>90 percent</sup> of the amount computed under sub-  
19 (6) par. (f).

20 History: 1983 a. 358.

20 **SECTION 16.** 647.05 (2m) of the statutes is created to read:

21 647.05 (2m) Subject to s. 49.455, a continuing care contract may require that,  
22 before a resident applies for medical assistance, the resident must spend on his or  
23 her care the resources declared for purposes of admission to the facility.

\*\*\*\*NOTE: I do not know if continuing care contracts are what the federal law refers to by "contracts for admission to a continuing care retirement community or life care community." I consulted with Debora Kennedy on this issue because I thought that this provision might relate more to her drafting subject matter; she felt that continuing care contracts were the closest things we have in the statutes to what the federal law is referring to.

1

(END)

*D-note*

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

LRB-0266/Adn

PJK:...

PI  
kjf

Date

I expect that this draft will need a lot of changes, additions, etc. I wasn't sure whether to follow the pared down description of what was wanted in the DHFS memo or whether to include all that was in the federal law. In general, I followed the DHFS description. However, I want to mention how helpful it was that the DHFS instructions included references to the relevant sections of the Deficit Reduction Act. I really appreciated being able to quickly find the federal law on which the changes were based. Much of the federal language did not make sense to me, however, and I've included numerous questions in notes embedded in the draft.

X One of the changes requested was to allow the department to count all transfers during the look-back period as one divestment amount. It seems to me that the current language under s. 49.453 (3) (b) 1., which says that the department shall determine the total, cumulative uncompensated value of all assets transferred... on or after the look-back date, does just that. If you total up the value of all of the assets transferred during the look-back period, doesn't that give you one amount as if there were one transfer? Am I missing something?

The instruction related to annuities said that s. 632.56 (3) would need to be amended. I don't know why or in what way. That section relates to life insurance, not annuities.

Pamela J. Kahler  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0266/P1dn  
PJK:kjf:rs

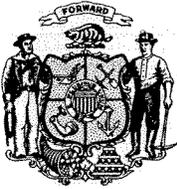
September 29, 2006

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One of the changes requested was to allow the department to count all transfers during the look-back period as one divestment amount. It seems to me that the current language under s. 49.453 (3) (b) 1., which says that the department shall determine the total, cumulative uncompensated value of all assets transferred...on or after the look-back date, does just that. If you total up the value of all of the assets transferred during the look-back period, doesn't that give you one amount as if there were one transfer? Am I missing something?

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0266/E1  
PJK:kj:rs

D-Note

revision

DOA:.....Milioto, Steve, BB0026 - Medicaid asset transfers

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 12-22

do not  
get cut

1 AN ACT ...; relating to: changes in asset transfer rules for Medical Assistance  
2 eligibility.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.  
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:*

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

\*\*\*NOTE: What will the initial applicability be for this provision? Will this first  
apply to individuals who apply for MA on the effective date?

Inset 1-7 →

1 SECTION 2. 49.453 (3) (a) of the statutes is amended to read:

2 ~~49.453 (3) (a) The period of ineligibility under this subsection begins on the first~~  
3 ~~day of the first month beginning on or after the look-back date during or after which~~  
4 ~~assets have been transferred for less than fair market value and that does not occur~~  
5 ~~in any other periods of ineligibility under this subsection day on which the individual~~  
6 ~~applies for and is otherwise eligible for medical assistance.~~

\*\*\*\*NOTE: As drafted, this applies to both institutionalized and noninstitutionalized individuals. The instructions mention only an "institutionalized person." Does a distinction need to be made? If so, does the period of ineligibility for a noninstitutionalized individual remain as in current law?

\*\*\*\*NOTE: What is the initial applicability for this provision? Will this first apply to individuals who apply for MA on the effective date?

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

8 49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine  
9 the number of months of ineligibility as follows:

10 SECTION 4. 49.453 (3) (bc) of the statutes is created to read:

11 49.453 (3) (bc) In determining the number of months of ineligibility under par.  
12 (b), the department may not round down the quotient, or otherwise disregard any  
13 fraction of a month, obtained in the division under par. (b) 3.

14 SECTION 5. 49.453 (4) (d) of the statutes is created to read:

15 ~~49.453 (4) (d) 1. As a condition for the provision of long-term care services, an~~  
16 ~~applicant for or recipient of long-term care services shall be required to disclose on~~  
17 ~~the application or recertification form a description of any interest the individual has~~  
18 ~~in an annuity, including whether it is irrevocable (and counted as an asset)\*, and~~  
19 ~~shall be required to designate the state as a remainder beneficiary under the annuity.~~

\*\*\*\*NOTE: Would an applicant or recipient know whether the annuity was counted as an asset? Wouldn't the department be in a better position to know that?

*with respect to asset transfers that occur after February 8, 2006,*

1           2. The department shall notify an insurer issuing an annuity under which the  
2 state is designated as a remainder beneficiary and shall request that the insurer  
3 notify the department of any changes to or payments made under the annuity  
4 contract.

5           3. For purposes of this section, the purchase of an annuity by an  
6 institutionalized individual or his or her community spouse is a transfer of assets for  
7 less than fair market value unless the state is designated as the remainder  
8 beneficiary in the first position for at least the total amount of medical assistance  
9 paid on behalf of the individual or the spouse.

\*\*\*\*NOTE: How do these provisions coordinate with current law s. 49.453 (4)? Is any  
of s. 49.453 (4) replaced by any of these provisions? Should the requirement under subd.  
3. above be an additional requirement under s. 49.453 (4) (a) for a transfer to an annuity  
that is not in excess of the expected value?

Subdivisions 1. and 3. above seem to conflict. Under subd. 1., designating the  
department as a beneficiary is a *condition* of receiving long-term care services, so not  
designating the department would completely rule out receiving long-term care  
services....at least until the department is designated. Under subd. 3., however,  
purchasing an annuity is divestment if the department is not designated as a beneficiary,  
so not designating the department would prevent receiving long-term care services but  
only for the applicable penalty period.

10           **SECTION 6.** 49.453 (4c) of the statutes is created to read:

11           49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. Notwithstanding sub. (1)  
12 (a), for purposes of this section, funds used by an individual to purchase a promissory  
13 note, loan, or mortgage are assets unless all of the following apply with respect to the  
14 note, loan, or mortgage:

- 15           1. (a) The repayment term is actuarially sound.
- 16           2. (b) 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. (c) Cancellation of the balance upon the death of the lender is prohibited.

\*\*\*\*NOTE. I don't understand the significance of calling the funds used to purchase  
a promissory note, loan, or mortgage assets. Wouldn't funds used to purchase *anything*

Insert 3-14

Keep

probably be assets, i.e., either income or resources? If so, why does this need to be stated separately from the general definition of assets? Should this instead say that the purchase of a note, loan, or mortgage is a transfer of assets for less than fair market value unless (a), (b), and (c) above apply?

1 SECTION 7. 49.453 (4m) of the statutes is created to read:

2 49.453 (4m) PURCHASE OF LIFE ESTATE. Notwithstanding sub. (1) (a), for  
3 purposes of this section, funds used by an individual to purchase a life estate in  
4 another individual's home are assets unless the purchaser resides in the home for at  
5 least one year after the date of the purchase.

\*\*\*NOTE: Same question as above. Wouldn't funds used to purchase a life estate be assets, i.e., either income or resources, under the current law definition of assets in s. 49.453 (1) (a)? Should this instead say that the purchase of a life estate in the home of another is a transfer of assets for less than fair market value unless the purchaser resides in the home for at least one year?

Subd 4-5

6 SECTION 8. 49.453 (8) of the statutes is renumbered 49.453 (8) (a) (intro.) and  
7 amended to read:

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

- 10 1. The assets are exempt under 42 USC 1396p (c) (2) or if the (A), (B), or (C).
- 11 2. The department determines under the process under par. (b) that application  
12 of this section would work an undue hardship. The department shall promulgate  
13 rules concerning the transfer of assets exempt under 42 USC 1396p (c) (2).

14 SECTION 9. 49.453 (8) (b) of the statutes is created to read:

15 49.453 (8) (b) The department shall establish a hardship waiver process that  
16 includes all of the following:

- 17 1. The department determines that undue hardship exists if the application of  
18 subs. (2) and (3) would deprive the individual who has transferred assets of medical  
19 care to the extent that the individual's health or life would be endangered, or would  
20 deprive the individual of food, clothing, shelter, or other necessities of life.

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

*the full payment rate under s. 49.45 (6m)*

5           3. The department may, during the pendency of an undue hardship  
6 determination, pay for nursing facility services for up to 30 days for the individual  
7 who transferred assets, to hold a bed in the facility in which the individual resides.

8           **SECTION 10.** 49.47 (4) (b) 1. of the statutes is amended to read:

9           49.47 (4) (b) 1. ~~A~~ Subject to par. (bc), a home and the land used and operated  
10 in connection therewith or in lieu thereof a mobile home if the home or mobile home  
11 is used as the person's or his or her family's place of abode.

12           **SECTION 11.** 49.47 (4) (bc) of the statutes is created to read:

13           49.47 (4) (bc) ~~A person who applies for medical assistance on or after January~~  
14 ~~1, 2006,~~ *1. Subject to subd. 2., a person* shall be ineligible under this section *for medical assistance*  
15 long-term care services *described in s. 49.453 (2)* if the equity in his or her home and the land used and  
16 operated in connection with the home exceeds \$750,000. This ~~paragraph~~ *subdivision* does not  
17 apply if any of the following persons lawfully resides in the home:

18           a. ~~1~~ The person's spouse.

19           b. ~~2~~ The person's child who is under age 21 or who is disabled, as defined in s.  
20 49.468 (1) (a) 1.

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

22           632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the  
23 department of health and family services under s. 49.453 (4) (d) 2. for notification  
24 shall comply with the request and notify the department of any changes to or

*Insert 5-7*

*Insert 5-20*

1 payments made under the annuity contract to which the request for notification  
2 relates.

3 **SECTION 13.** 647.02 (2) (g) of the statutes is amended to read:

4 647.02 (2) (g) The figure to be used by the provider as the actual or projected  
5 length of a resident's stay in the facility in the formula in the contract provision  
6 required under s. 647.05 (9) (1m) (i) and supporting information showing how the  
7 figure was determined.

8 **SECTION 14.** 647.04 (5) of the statutes is amended to read:

9 647.04 (5) Inform the commissioner of any change in the figure used by the  
10 provider as the actual or projected length of a resident's stay in the facility in the  
11 formula in the contract provision required under s. 647.05 (9) (1m) (i) within 30 days  
12 after the change is made and submit supporting information showing how the  
13 change was determined.

14 **SECTION 15.** 647.05 of the statutes is renumbered 647.05 (1m), and 647.05 (1m)  
15 (g), as renumbered, is amended to read:

16 647.05 (1m) (g) Provides that if a resident dies or the continuing care contract  
17 is terminated after the first 30 days of occupancy, but within the first 90 days of  
18 occupancy, the provider will refund at least 90% 90 percent of the amount computed  
19 under sub. (6) par. (f).

20 **SECTION 16.** 647.05 (2m) of the statutes is created to read:

21 647.05 (2m) Subject to s. 49.455, a continuing care contract may require that,  
22 before a resident applies for medical assistance, the resident must spend on his or  
23 her care the resources declared for purposes of admission to the facility.

\*\*\*\*NOTE: I do not know if continuing care contracts are what the federal law refers to by "contracts for admission to a continuing care retirement community or life care community." I consulted with Debora Kennedy on this issue because I thought that this

provision might relate more to her drafting subject matter; she felt that continuing care contracts were the closest things we have in the statutes to what the federal law is referring to.

1

(END)

Insert 7-1

D-Note

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0266/P2ins  
PJK:kjt:rs

INSERT 1-7

log 3

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

2 49.45 (6m) (m) To hold a bed in the 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).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

9 49.453 (1) (ar) "Community spouse" has the meaning given in s. 49.455 (1) (a).

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

11 49.453 (1) (d) "Income" has the meaning given in 42 USC 1396p (e) (h) (2).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

13 49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC  
14 1396p (e) (h) (3).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

16 49.453 (1) (f) (intro.) "Look-back date" means for a covered individual, either

17 of the following:

18 1m. For transfers made before February 8, 2006, the date that is 36 months  
19 before, or with respect to payments from a trust or portions of a trust that are treated  
20 as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the  
21 date that is 60 months before:

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

↓

*Ens 1-7 covered 283*

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

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

3           49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date  
4 that is 60 months before the dates specified in subd. 1m. a. and b.

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

6           49.453 (1) (fm) "Noninstitutionalized individual" has the meaning given in 42  
7 USC 1396p (e) (h) (4).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

9           49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

12           49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
13 on either of the following:

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

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

19           49.453 (3) (a) 2. In the case of a transfer of assets made on or after February  
20 8, 2006, the first day of a month beginning on or after the look-back date during or  
21 after which assets have been transferred for less than fair market value, or the date  
22 on which the individual is eligible for medical assistance and would otherwise be  
23 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved  
24 application for the care but for the application of the penalty period, whichever is

*↓*

*ins 1-7 covered 303*

1 later, and that does not occur during any other period of ineligibility under this  
2 subsection.

\*\*\*NOTE: This is the language from the federal law, except that I have excluded "under the state plan" after "eligible for medical assistance" and I have included "beginning on or after the look-back date" to parallel s. 49.453 (3) (a) in current law, which is renumbered in this draft to s. 49.453 (3) (a) 1. Okay?

(END OF INSERT 1-7)

INSERT 3-14

*104*

3 SECTION 14. 49.453 (4) (a) of the statutes is renumbered 49.453 (4) (ag).

4 SECTION 15. 49.453 (4) (ac) of the statutes is created to read:

5 49.453 (4) (ac) In this subsection, "transaction" means any action taken by an  
6 individual that changes the course of payments to be made under an annuity or the  
7 treatment of the income or principal of an annuity, including all of the following:

8 a. An addition of principal.

9 b. An elective withdrawal.

10 c. A request to change the distribution of the annuity.

11 d. An election to annuitize the contract.

12 SECTION 16. 49.453 (4) (am) of the statutes is amended to read:

13 49.453 (4) (am) Paragraph (a) (ag) 1. does not apply to a variable annuity that  
14 is tied to a mutual fund that is registered with the federal securities and exchange  
15 commission.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

16 SECTION 17. 49.453 (4) (b) of the statutes is amended to read:

17 49.453 (4) (b) The amount of assets that is transferred for less than fair market  
18 value under par. (a) (ag) is the amount by which the transferred amount exceeds the  
19 expected value of the benefit.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

20 SECTION 18. 49.453 (4) (c) of the statutes is amended to read:

*↓*

*ens 3-14 contd 2004*

1 49.453 (4) (c) The department shall promulgate rules specifying the method to  
2 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to  
3 1.72-18, and specifying the criteria for adjusting the expected value of the benefit  
4 based on a medical condition, diagnosed by a physician before the assets were  
5 transferred to the annuity, or transferred by promissory note or similar instrument.  
6 In calculating the amount of the divestment when a transfer to an annuity, or a  
7 transfer by promissory note or similar instrument, is made, payments made to the  
8 transferor in any year subsequent to the year in which the transfer was made shall  
9 be discounted to the year in which the transfer was made by the applicable federal  
10 rate specified under par. <sup>✓</sup> ~~(a)~~ <sup>✓</sup> (ag) on the date of the transfer.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

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

12 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before  
13 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

14 **SECTION 20.** 49.453 (4) (d) of the statutes is created to read:

15 49.453 (4) (d) 1. As a condition of receiving medical assistance for long-term  
16 care services described in sub. (2), <sup>✓</sup> ~~(a)~~ <sup>→</sup> an applicant for or recipient of the long-term care  
17 services shall disclose on the application or recertification form a description of any  
18 interest the individual or his or her community spouse has in an annuity <sup>that was</sup> purchased  
19 (or modified in some respect) on or after February 8, 2006, regardless of whether the  
20 annuity is irrevocable or is treated as an asset. The application or recertification  
21 form shall include a statement that the state becomes a remainder beneficiary under  
22 any annuity in which the individual or his or her spouse has an interest by virtue of  
23 the provision of the medical assistance.

*or with respect to  
which a transaction  
occurred,*



*Sub 3-14 cont'd 3/04*

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

3. For purposes of sub. (2), the purchase of an annuity by an institutionalized individual or his or her community spouse shall be treated as a transfer of assets for less than fair market value unless either of the following applies:

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

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

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

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

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

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

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

*or a transaction with respect to*

*2nd*

*an annuity) on or after February 8, 2006,*

*✓*

*ens 3-14 cont'd 484*

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

2 2. The annuity is irrevocable and nonassignable.

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

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

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

8 49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

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

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

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

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

(END OF INSERT 3-14)

INSERT 4-5

*108 2*

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

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



*Ins 4-5 contd 2502*

1           49.453 (4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase  
2 by an individual or his or her spouse of a life estate in another individual's home after  
3 February 8, 2006, is a transfer of assets for less than fair market value unless the  
4 purchaser resides in the home for at least one year after the date of the purchase.

(END OF INSERT 4-5)

INSERT 5-7

5           **SECTION 25.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

6           49.47 (4) (a) (intro.) Any individual who meets the limitations on income and  
7 resources under pars. (b) and to (c) and who complies with par. (cm) shall be eligible  
8 for medical assistance under this section if such individual is:

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253.

(END OF INSERT 5-7)

INSERT 5-20 *lf 2*

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

10           a. At the time of application and at the time of recertification, to a person who  
11 applies for medical assistance for nursing facility services or other long-term care  
12 services described in s. 49.453 (2) after the effective date of this subdivision ....  
13 [revisor inserts date].

14           b. At the time of recertification only, to a person not specified in subd. 2. a. who  
15 applied for medical assistance for nursing facility services or other long-term care  
16 services described in s. 49.453 (2) on or after January 1, 2006, and who was eligible  
17 for medical assistance for those services on the effective date of this subdivision ....  
18 [revisor inserts date].

19           **SECTION 26.** 49.47 (4) (bm) of the statutes is created to read:

*lf 5*

*ins 5-20 cont'd 2/2*

1 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for  
2 a person described in par. (a) 3. or 4. who resides in a continuing care retirement  
3 community or a life care community, any entrance fee paid on admission to the  
4 community shall be considered a resource available to the person to the extent that  
5 all of the following apply:

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

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

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

(END OF INSERT 5-20)

INSERT 7-1

*10/2*

*create auto ref (A)*

14 **SECTION 9321. Initial applicability; Health and Family Services.**

*create auto ref (B)*

15 (1) ENTRANCE FEES. The treatment of section 49.47 (4) (bm) of the statutes first  
16 applies to individuals who apply or are recertified for medical assistance for nursing  
17 facility services or other long-term care services on the effective date of this  
18 subsection.

19 **SECTION 9421. Effective dates; Health and Family Services.**

20 (1) ASSET TRANSFER CHANGES. The treatment of section 49.45 (6m) (m), 49.453  
21 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i), (3) (b) (intro.) and (bc), (4)  
22 (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m), 49.47 (4) (a) (intro.), (b)



*Ins 7-1 cont'd 2/2*

1 1., (bc), and (bm), 632.48 (3), 647.02 (2) (g), and 647.04 (5) of the statutes, the  
 2 renumbering and amendment of section 49.453 (3) (a) and (8) and 647.05 of the  
 3 statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) and 647.05 (2m) of the  
 4 statutes, and SECTION 9321 (1) of this act take effect on October 1, 2007, or on the first  
 5 day of the 4th month beginning after publication, whichever is later.

*A.R. (A) A.R. (B)*

(END OF INSERT 7-1)

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

LRB-0266/P2dn

PJK:kjf/rs

kjf

Date

I have included an initial applicability provision in this draft for only one of the changes (entrance fees) because the intext dates may be enough for the remainder of the changes. As you ponder each of the changes in this draft, try to determine whether you think initial applicabilities are necessary in addition to the intext dates.

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