



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0266/3

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, 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 "spend down" his or her income and resources by paying 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 divestment rules. To conform

Wisconsin law to the federal law, this bill makes a number of changes with respect to divestment, including, among other things:

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, or a transaction with respect to 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 in the first position.

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.

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

1 during the pendency of an undue hardship determination, as provided in s. 49.453
2 (8) (b) 3.

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

4 49.453 (1) (a) "Assets" has the meaning given in 42 USC 1396p (e) (h) (1).

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

6 49.453 (1) (ar) "Community spouse" ~~has the meaning given in s. 49.455 (1) (a).~~ *Insert 3-6*

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

8 49.453 (1) (d) "Income" has the meaning given in 42 USC 1396p (e) (h) (2).

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

10 49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC
11 1396p (e) (h) (3).

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

13 49.453 (1) (f) (intro.) "Look-back date" means for a covered individual, either
14 of the following:

15 1m. For transfers made before February 8, 2006, the date that is 36 months
16 before, or with respect to payments from a trust or portions of a trust that are treated
17 as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the
18 date that is 60 months before:

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

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

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

22 49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date
23 that is 60 months before the dates specified in subd. 1m. a. and b.

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

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

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

4 49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

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

7 49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins
8 on either of the following:

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

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

14 49.453 (3) (a) 2. In the case of a transfer of assets made on or after February
15 8, 2006, the first day of a month beginning on or after the look-back date during or
16 after which assets have been transferred for less than fair market value, or the date
17 on which the individual is eligible for medical assistance and would otherwise be
18 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved
19 application for the care but for the application of the penalty period, whichever is
20 later, and that does not occur during any other period of ineligibility under this
21 subsection.

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

23 49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine
24 the number of months of ineligibility as follows:

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

1 49.453 (3) (bc) In determining the number of months of ineligibility under par.
2 (b), with respect to asset transfers that occur after February 8, 2006, the department
3 may not round down the quotient, or otherwise disregard any fraction of a month,
4 obtained in the division under par. (b) 3.

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

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

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

- 10 1. An addition of principal.
- 11 2. An elective withdrawal.
- 12 3. A request to change the distribution of the annuity.
- 13 4. An election to annuitize the contract.
- 14 5. A change in ownership.

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

16 49.453 (4) (am) Paragraph ~~(a)~~ (ag) 1. does not apply to a variable annuity that
17 is tied to a mutual fund that is registered with the federal securities and exchange
18 commission.

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

20 49.453 (4) (b) The amount of assets that is transferred for less than fair market
21 value under par. ~~(a)~~ (ag) is the amount by which the transferred amount exceeds the
22 expected value of the benefit.

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

24 49.453 (4) (c) The department shall promulgate rules specifying the method to
25 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to

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

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

10 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before
 11 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

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

13 49.453 (4) (d) For purposes of sub. (2), the purchase of an annuity by an
 14 institutionalized individual or his or her community spouse shall be treated as a
 15 transfer of assets for less than fair market value unless any of the following applies:

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

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

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

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

or anyone acting on their behalf

1 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity by or on behalf
2 of an annuitant who has applied for medical assistance for nursing facility services
3 or other long-term care services described in sub. (2) is a transfer of assets for less
4 than fair market value unless either of the following applies:

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

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

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

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

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

13 a. The annuity is irrevocable and nonassignable.

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

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

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

19 49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

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

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

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

24 49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2),
25 the purchase by an individual or his or her spouse of a promissory note, loan, or

1 mortgage after February 8, 2006, is a transfer of assets for less than fair market
2 value unless all of the following apply with respect to the note, loan, or mortgage:

3 1. The repayment term is actuarially sound.

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

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

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

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

12 49.453 (4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase
13 by an individual or his or her spouse of a life estate in another individual's home after
14 February 8, 2006, is a transfer of assets for less than fair market value unless the
15 purchaser resides in the home for at least one year after the date of the purchase.

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

18 49.453 (8) (a) (intro.) Subsections (2) and (3) do not apply to transfers of assets
19 if ~~the~~ any of the following applies:

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

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

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

1 49.453 (8) (b) The department shall establish a hardship waiver process that
2 includes all of the following:

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

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

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

15 **SECTION 29.** 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 30.** 49.47 (4) (b) 1. of the statutes is amended to read:

20 49.47 (4) (b) 1. ~~A~~ Subject to par. (bc), a home and the land used and operated
21 in connection therewith or in lieu thereof a mobile home if the home or mobile home
22 is used as the person's or his or her family's place of abode.

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

24 49.47 (4) (bc) 1. Subject to subd. 2., a person shall be ineligible under this
25 section for medical assistance for nursing facility services or other long-term care

1 services described in s. 49.453 (2) if the equity in his or her home and the land used
2 and operated in connection with the home exceeds \$750,000. This subdivision does
3 not apply if any of the following persons lawfully resides in the home:

4 a. The person's spouse.

5 b. The person's child who is under age 21 or who is disabled, as defined in s.
6 49.468 (1) (a) 1.

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

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

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

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

18 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for
19 a person described in par. (a) 3. or 4. who resides in a continuing care retirement
20 community or a life care community, any entrance fee paid on admission to the
21 community shall be considered a resource available to the person to the extent that
22 all of the following apply:

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

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

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

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

7 49.47 (4) (cr) 1. As a condition of receiving medical assistance for long-term
8 care services described in s. 49.453 (2) (a), an applicant for or recipient of the
9 long-term care services shall disclose on the application or recertification form a
10 description of any interest the individual or his or her community spouse, as defined

11 in s. ~~49.455 (1) (a)~~, has in an annuity, regardless of whether the annuity is irrevocable
12 or is treated as an asset. The application or recertification form shall include a
13 statement that the state becomes a remainder beneficiary under any annuity in
14 which the individual or his or her spouse has an interest by virtue of the provision
15 of the medical assistance. The applicant or recipient shall, no later than 30 days after
16 the department receives the application or recertification form, take any action
17 required by the annuity issuer to make the state a remainder beneficiary.

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

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

23 632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the
24 department of health and family services under s. 49.47 (4) (cr) 2. for notification
25 shall comply with the request and notify the department of any changes to or

49.453(1)(ar)

Insert 11-21

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

3 **SECTION 35.** 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 36.** 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 37.** 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% of the amount computed under sub-
19 ~~(6)~~ par. (f).

20 **SECTION 38.** 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.

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

25 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

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

4 (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,
5 and 2m. and (fm), (3) (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and
6 (em), (4c), and (4m) of the statutes, the renumbering and amendment of section
7 49.453 (3) (a) and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8)
8 (b) of the statutes first apply to individuals who apply for or are receiving medical
9 assistance for nursing facility services or other long-term care services on the
10 effective date of this paragraph.

11 (c) *Continuing care contracts.* The treatment of section 647.05 (2m) of the
12 statutes first applies to contracts entered into on the effective date of this paragraph.

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

14 (1) **MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.** The treatment of sections
15 49.45 (6m) (m), 49.453 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i), (3)
16 (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m),
17 49.47 (4) (a) (intro.), (b) 1., (bc), and (bm), and (cr) 632.48 (3), 647.02 (2) (g), and 647.04
18 (5) of the statutes, the renumbering and amendment of section 49.453 (3) (a) and (8)
19 and 647.05 of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) and
20 647.05 (2m) of the statutes, and SECTION 9321 (1) (a), (b), and (c) of this act take effect
21 on October 1, 2007, or on the first day of the 4th month beginning after publication,
22 whichever is later.

23 (END)

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LEGISLATIVE REFERENCE BUREAU**

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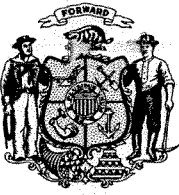
1 *not* means the spouse of either the institutionalized person or the
2 noninstitutionalized person

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- 3 *H* 3. This paragraph [✓] applies to all of the following:
- 4 a. Annuities purchased on or after February 8, 2006.
- 5 b. Annuities purchased before February 8, 2006, for which a transaction, as
- 6 defined in s. 49.453 (4) [✓](ac), has occurred on or after February 8, 2006.

(END OF INSERT 11-21)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0266/3
PJK:kjf&wlj:pg

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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 divestment rules. To conform

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- 5 (8) (b) 3.

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

6 **SECTION 4.** 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 5.** 49.453 (1) (e) of the statutes is amended to read:

9 49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC
10 1396p (e) (h) (3).

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

12 49.453 (1) (f) (intro.) "Look-back date" means ~~for a covered individual,~~ either
13 of the following:

14 1m. For transfers made before February 8, 2006, the date that is 36 months
15 before, or with respect to payments from a trust or portions of a trust that are treated
16 as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the
17 date that is 60 months before:

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

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

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

21 49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date
22 that is 60 months before the dates specified in subd. 1m. a. and b.

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

24 49.453 (1) (fm) "Noninstitutionalized individual" has the meaning given in 42
25 USC 1396p (e) (h) (4).

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

2 49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

3 **SECTION 12.** 49.453 (3) (a) of the statutes is renumbered 49.453 (3) (a) (intro.)

4 and amended to read:

5 49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins
6 on either of the following:

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

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

12 49.453 (3) (a) 2. In the case of a transfer of assets made on or after February
13 8, 2006, the first day of a month beginning on or after the look-back date during or
14 after which assets have been transferred for less than fair market value, or the date
15 on which the individual is eligible for medical assistance and would otherwise be
16 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved
17 application for the care but for the application of the penalty period, whichever is
18 later, and that does not occur during any other period of ineligibility under this
19 subsection.

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

21 49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine
22 the number of months of ineligibility as follows:

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

24 49.453 (3) (bc) In determining the number of months of ineligibility under par.
25 (b), with respect to asset transfers that occur after February 8, 2006, the department

1 may not round down the quotient, or otherwise disregard any fraction of a month,
2 obtained in the division under par. (b) 3.

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

4 **SECTION 17.** 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 1. An addition of principal.
- 9 2. An elective withdrawal.
- 10 3. A request to change the distribution of the annuity.
- 11 4. An election to annuitize the contract.
- 12 5. A change in ownership.

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

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

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

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

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

22 49.453 (4) (c) The department shall promulgate rules specifying the method to
23 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to
24 1.72-18, and specifying the criteria for adjusting the expected value of the benefit
25 based on a medical condition diagnosed by a physician before the assets were

1 transferred to the annuity, or transferred by promissory note or similar instrument.
2 In calculating the amount of the divestment when a transfer to an annuity, or a
3 transfer by promissory note or similar instrument, is made, payments made to the
4 transferor in any year subsequent to the year in which the transfer was made shall
5 be discounted to the year in which the transfer was made by the applicable federal
6 rate specified under par. (a) (ag) on the date of the transfer.

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

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

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

11 49.453 (4) (d) For purposes of sub. (2), the purchase of an annuity by an
12 institutionalized individual or his or her community spouse, or anyone acting on
13 their behalf, shall be treated as a transfer of assets for less than fair market value
14 unless any of the following applies:

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

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

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

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

24 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity by or on behalf
25 of an annuitant who has applied for medical assistance for nursing facility services

1 or other long-term care services described in sub. (2) is a transfer of assets for less
2 than fair market value unless either of the following applies:

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

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

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

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

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

11 a. The annuity is irrevocable and nonassignable.

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

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

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

17 49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

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

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

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

22 49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2),
23 the purchase by an individual or his or her spouse of a promissory note, loan, or
24 mortgage after February 8, 2006, is a transfer of assets for less than fair market
25 value unless all of the following apply with respect to the note, loan, or mortgage:

- 1 1. The repayment term is actuarially sound.
- 2 2. The payments are to be made in equal amounts during the term of the loan,
- 3 with no deferral and no balloon payment.
- 4 3. Cancellation of the balance upon the death of the lender is prohibited.

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

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

10 **49.453 (4m) PURCHASE OF LIFE ESTATE.** For purposes of sub. (2), the purchase
11 by an individual or his or her spouse of a life estate in another individual's home after
12 February 8, 2006, is a transfer of assets for less than fair market value unless the
13 purchaser resides in the home for at least one year after the date of the purchase.

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

16 49.453 (8) (a) (intro.) Subsections (2) and (3) do not apply to transfers of assets
17 if the any of the following applies:

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

19 2. The department determines under the process under par. (b) that application
20 of this section would work an undue hardship. The department shall promulgate
21 rules concerning the transfer of assets exempt under 42 USC 1396p (e) (2).

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

23 49.453 (8) (b) The department shall establish a hardship waiver process that
24 includes all of the following:

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

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

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

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

14 49.47 (4) (a) (intro.) Any individual who meets the limitations on income and
15 resources under pars. (b) ~~and~~ to (c) and who complies with ~~par. (cm) and (cr)~~
16 shall be eligible for medical assistance under this section if such individual is:

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

18 49.47 (4) (b) 1. ~~A~~ Subject to par. (bc), a home and the land used and operated
19 in connection therewith or in lieu thereof a mobile home if the home or mobile home
20 is used as the person's or his or her family's place of abode.

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

22 49.47 (4) (bc) 1. Subject to subd. 2., a person shall be ineligible under this
23 section for medical assistance for nursing facility services or other long-term care
24 services described in s. 49. 453 (2) if the equity in his or her home and the land used

1 and operated in connection with the home exceeds \$750,000. This subdivision does
2 not apply if any of the following persons lawfully resides in the home:

3 a. The person's spouse.

4 b. The person's child who is under age 21 or who is disabled, as defined in s.
5 49.468 (1) (a) 1.

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

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

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

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

17 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for
18 a person described in par. (a) 3. or 4. who resides in a continuing care retirement
19 community or a life care community, any entrance fee paid on admission to the
20 community shall be considered a resource available to the person to the extent that
21 all of the following apply:

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

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

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

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

7 49.47 (4) (cr) 1. As a condition of receiving medical assistance for long-term
8 care services described in s. 49.453 (2) (a), an applicant for or recipient of the
9 long-term care services shall disclose on the application or recertification form a
10 description of any interest the individual or his or her community spouse, as defined
11 in s. 49.453 (1) (ar), has in an annuity, regardless of whether the annuity is
12 irrevocable or is treated as an asset. The application or recertification form shall
13 include a statement that the state becomes a remainder beneficiary under any
14 annuity in which the individual or his or her spouse has an interest by virtue of the
15 provision of the medical assistance. The applicant or recipient shall, no later than
16 30 days after the department receives the application or recertification form, take
17 any action required by the annuity issuer to make the state a remainder beneficiary.

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

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

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

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

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

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

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

8 647.02 (2) (g) The figure to be used by the provider as the actual or projected
9 length of a resident's stay in the facility in the formula in the contract provision
10 required under s. 647.05 (9) (1m) (i) and supporting information showing how the
11 figure was determined.

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

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

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

20 647.05 (1m) (g) Provides that if a resident dies or the continuing care contract
21 is terminated after the first 30 days of occupancy, but within the first 90 days of
22 occupancy, the provider will refund at least 90% of the amount computed under sub.
23 (6) par. (f).

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

1 647.05 (2m) Subject to s. 49.455, a continuing care contract may require that,
2 before a resident applies for medical assistance, the resident must spend on his or
3 her care the resources declared for purposes of admission to the facility.

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

5 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

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

9 (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,
10 and 2m. and (fm), (3) (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and
11 (em), (4c), and (4m) of the statutes, the renumbering and amendment of section
12 49.453 (3) (a) and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8)
13 (b) of the statutes first apply to individuals who apply for or are receiving medical
14 assistance for nursing facility services or other long-term care services on the
15 effective date of this paragraph.

16 (c) *Continuing care contracts.* The treatment of section 647.05 (2m) of the
17 statutes first applies to contracts entered into on the effective date of this paragraph.

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

19 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES. The treatment of sections
20 49.45 (6m) (m), 49.453 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i), (3)
21 (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m),
22 49.47 (4) (a) (intro.), (b) 1., (bc), (bm), and (cr), 632.48 (3), 647.02 (2) (g), and 647.04
23 (5) of the statutes, the renumbering and amendment of section 49.453 (3) (a) and (8)
24 and 647.05 of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) and
25 647.05 (2m) of the statutes, and SECTION 9321 (1) (a), (b), and (c) of this act take effect

1 on October 1, 2007, or on the first day of the 4th month beginning after publication,
2 whichever is later.

3 (END)