

2015 DRAFTING REQUEST

Bill

Received: 1/7/2015 Received By: pkahler
Wanted: As time permits Same as LRB:
For: Administration-Budget 7-7980 By/Representing: Dombrowski
May Contact: Drafter: pkahler
Subject: Medical Assistance Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov
tamara.dodge@legis.wisconsin.gov
sarah.walkenhorstbarber@legis.wisconsin.gov

Pre Topic:

DOA:.....Dombrowski, BB0394 -

Topic:

Promissory notes as assets and divestment for MA

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 1/9/2015	wjackson 1/13/2015		_____			
/P1	pkahler 1/26/2015		rschlue 1/13/2015	_____	srose 1/13/2015		State
/P2	pkahler	jdyer	jmurphy	_____	mbarman		State

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	1/27/2015	1/26/2015	1/26/2015	_____	1/26/2015		
/1	pkahler 2/2/2015	jdyer 1/27/2015	rschluet 1/27/2015	_____	mbarman 1/27/2015		State
/2		wjackson 2/2/2015	wjackson 2/2/2015	_____	mbarman 2/2/2015		State

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/P2		jdyer	jmurphy <i>1/27/15</i> <i>SP</i>	_____	mbarman		State

Vers. Drafted

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/P1		<i>P2 1/26 jld</i> rschlue 1/13/2015		_____	srose 1/13/2015		State

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/?	pkahler	PI WJ 1/13	8	==			
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FE Sent For:

<END>

Kahler, Pam

From: Dodge, Tamara
Sent: Friday, January 02, 2015 6:55 PM
To: Kahler, Pam; Walkenhorst Barber, Sarah
Subject: FW: Statutory Language Drafting Request - BB0394

Pam and Sarah,

Here's a Medical Assistance budget request that I'm putting up for grabs. It is somewhat related to my divestment draft from last year so if you both want to punt it back to me, I'd do it, but I have others to work on at the moment.

Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: CathleneH [<mailto:cathleneh@gmail.com>]
Sent: Friday, January 02, 2015 6:48 PM
To: Dodge, Tamara
Subject: Fwd: Statutory Language Drafting Request - BB0394

Sent from my iPhone

Begin forwarded message:

From: <Cynthia.Dombrowski@Wisconsin.gov>
Date: January 2, 2015 at 4:35:30 PM CST
To: <cathlene.hanaman@legis.wisconsin.gov>
Cc: <Jana.Steinmetz@wisconsin.gov>, <Cynthia.Dombrowski@wisconsin.gov>, <Christopher.Connor@wisconsin.gov>
Subject: Statutory Language Drafting Request - BB0394

Biennial Budget: 2015-17

DOA Tracking Code: BB0394

Topic: Promissory Notes as Assets for Medicaid

SBO Team: HSI

7-7980

SBO Analyst: Dombrowski, Cynthia A - DOA
Phone: (608) 266-2214
E-mail: Cynthia.Dombrowski@Wisconsin.gov

Agency Acronym: DHS

Agency Number: 435

Priority: High

Intent:

Treat promissory notes as countable resources for Medicaid eligibility purposes, and consider any note that is not negotiable, assignable, enforceable and marketable as divestment.

Attachments: False

Please send completed drafts to SBOSatlanguage@webapps.wi.gov

Treating Promissory Notes as Assets for MA

Decision Needed

Should DHS treat promissory notes as countable resources when not considered divestment for Medical Assistance eligibility purposes?

Overview

1. With some exceptions, people who apply for elderly, blind, disabled Medicaid must have assets below a certain level to become Medicaid-eligible. Medicaid divestment statutes and policy aim to prevent applicants from divesting themselves of certain non-exempt assets solely to become Medicaid eligible. People who do divest assets in the five years before they apply – a period referred to as the Medicaid “look back period” – are ineligible for Medicaid for a duration proportional to the value of the divested assets. The duration of Medicaid ineligibility is the divestment “penalty period.”
2. A promissory note (PN) is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party which may be given in return for goods, money loaned, or services rendered. Elder law attorneys commonly advise the use of PNs for Medical Assistance (MA) planning. By converting MA-countable resources – such as bank deposits or bonds– into unavailable assets that generate income streams for MA applicants or their kin, applicants may secure MA eligibility while dramatically reducing or eliminating their divestment penalty periods and protecting a substantial portion of their assets.
3. Under this approach, the MA applicant essentially makes a “loan” to the applicant’s child or others, receiving in exchange a note “promising” to pay back the loaned funds to the applicant. In practice, many applicants do not reach their life expectancies and their loans are effectively “forgiven” when the applicants die. In other situations, the funds are paid back but to the community spouse or to an exempt trust that is not included in future eligibility determinations and reviews.
4. The Department previously proposed changes to the State’s treatment of PNs for MA eligibility for the 2013-15 budget. The proposal would have considered a note cancelled upon the death of the lender when the debtor was a presumptive heir or where neither party had incentives to enforce repayment. Under the prior proposal, the State would have treated many PNs previously considered unavailable resources for MA eligibility purposes as divestment, resulting in MA applicants holding certain PNs incurring penalty periods during which they would have been ineligible for MA. While included in the final 2015-15 budget, the Joint

Finance Committee barred its implementation. Elder law attorneys argued that the proposal was not consistent with federal law and rules.

5. Rather than treat PNs as divestment per last biennium's proposal, which federal language makes difficult, this proposal follows a precedent other states have established by permitting transfers without penalty but considering certain PNs as available assets to the MA applicant. This could increase applicants' available assets to exceed the MA asset limits, rendering some applicants MA-ineligible.
6. Wisconsin's treatment of PNs for MA financial eligibility determination varies with the terms of the note. If an MA applicant purchased a PN within their look back period that fails to meet three criteria established via the Deficit Reduction Act of 2005 (DRA), the value of funds used in the purchase of the note is considered a transfer of assets for less than fair market value. The divested amount then equals the value of the outstanding balance of the note as of the date of application for MA. The three criteria in state statute ("DRA criteria") for notes purchased on or after January 1, 2009 are:
 - a. The note's repayment term is actuarially sound as determined in accordance with the standards determined by the Office of the Chief Actuary of the Social Security Administration;
 - b. the note's payments are to be made in equal amounts during the term of the loan, with no deferral or balloon payments; and
 - c. cancellation of the note's balance upon the death of the lender is prohibited.
7. If an applicant owns a PN failing to meet the DRA criteria, the applicant faces a divestment penalty period during which the applicant is MA-ineligible. The number of days comprising an applicant's penalty period is calculated as the total cumulative uncompensated value of all assets transferred on or after the look back date divided by the average daily nursing home private pay rate (\$243.49 in 2014). A waiver is available where consideration of the purchase of a note as divestment would impose undue hardship on the applicant.
8. If the terms of a PN satisfy the DRA criteria, each state then decides whether the note is a countable resource in determining whether an applicant holds assets above the state's MA eligibility asset limit. In 2014, the MA non-exempt, available asset limit was \$2,000 for single applicants and \$3,000 for married applicants. Additional countable resources are allowed under the state's spousal impoverishment policy in some instances.
9. Currently, State policy does not specifically address the availability of PN for MA-eligibility determination. However, Federal regulations state that PNs should generally be considered resources to the applicant. Resources include "liquid assets...that an individual owns and could convert to cash to be used for support and maintenance" (20 C.F.R. s. 416.120(c)(3)). Elsewhere, 20 C.F.R s. 416.1201(b) specifies that PNs are generally considered liquid assets, and as such are presumed to be convertible to cash within 20 days. However, "if a property right cannot be liquidated, the property will not be considered a resource of the individual" (20 C.F.R. s. 416.1201(a)(1)).
10. These Federal regulations imply that a note's liquidity, availability, and thereby its consideration as a resource counted against the MA asset limit are contingent on both market conditions and the terms of the note. However, the State currently treats all PNs that meet the

49,453 (42)

DRA criteria as unavailable assets. Regardless of the funds that could be made available for an MA applicant's support and maintenance through the PN's liquidation, PN are not counted against the MA asset limit.

11. A common way to exploit the unavailability of PNs is for MA applicants to liquidate their assets to purchase PNs meeting the DRA criteria from their kin prior to their financial eligibility determination. Because the notes meet the DRA criteria and are unavailable assets, the applicants immediately become MA-eligible. The note's payments may be directed to a community spouse or back to the MA applicant, under the constraint of the MA income limit.
12. To illustrate this tactic, consider the case of Susan. Susan is elderly and possesses no income or assets other than a checking account with a balance of \$50,000. Because her assets exceed the MA limit she is currently MA-ineligible. To decrease her assets and immediately become MA-eligible, she purchases from her son a PN with a principal of \$48,000 and no interest that pays the \$48,000 in payments of \$600 per month for 80 months (6.7 years) with no balloon payments or deferrals and a balance that is not cancelled when she dies. The note's payments are directed to Susan's spouse. Because Susan's life expectancy at the time of application extends 10 more years, the note meets the DRA criteria and is therefore not divestment. As the \$2,000 she retains in her checking account is below the MA asset limit, the PN is considered unavailable, and Susan's income is below the MA limit, she is immediately MA-eligible.
13. In some instances where this loophole is exploited, the state may argue that the written contract is not a PN. PNs are partially defined as – and are assumed to be absent evidence to the contrary – bona fide and negotiable (POMS § 1140.300(D)(1) & (B)(3)). It is possible for the State to argue that a contract is not bona fide or contains terms rendering it non-negotiable – in such circumstances, the State may claim the contract is a trust-like device. Attempts to subsequently impose divestment penalties or consider such assets available have had mixed outcomes in the courts.
- * 14. The Department proposes considering the purchase of any PN as either divestment or the note as a countable resource to the note-holder creditor. Several states have implemented language to this effect.
15. The Arizona model in AHCCCS Eligibility Policy Manual 706.50(B)(4) and Arizona Revised Statutes 36-2934.02 offers the language framework for this proposal. Arizona's legal counsel indicated no hearings over conflict between Arizona and federal policy and believes the "state requirements are not inconsistent with the federal provisions." The features of the model are:
 - a. Generally PNs are presumed negotiable (i.e. can legally be sold) and have a value equal to the outstanding balance unless the applicant shows reliable evidence of a lesser CMV or non-negotiability. Non-negotiable notes or those with no market value may be transfers with uncompensated value.
 - * b. If the note is non-negotiable, the state concludes that a transfer occurred when the PN was created or when it became non-negotiable.

- c. PNs that are negotiable, assignable, enforceable, and do not contain terms making them unmarketable are transfers with *compensated* value and considered countable resources in the amount of their principal balances.
- d. PNs failing to meet the criteria in (c) are transfers with *uncompensated* value (i.e. divestments).
16. Adopting such changes would clarify and modify the conditions under which the State would consider a PN an available asset. Instead of treating PNs as unavailable assets, the State would consider PNs as available assets and divestment otherwise. The existing hardship waiver would be preserved and the changes would apply only to notes purchased after an established implementation date.
17. While the State would generally consider the current market value (CMV) of a note to be equal to the outstanding balance, applicants could offer rebuttal of CMV or negotiability by showing evidence of a legal barrier to sale or reliable evidence of the note's CMV from a "knowledgeable source" or "market participant."
18. It is anticipated that in response to the proposed changes, evidence of rebuttal would routinely accompany notes disclosed during MA eligibility determinations. If applicants begin including restrictive terms in their notes, thereby reducing the notes' CMVs to near-zero, and providing evidence of CMV rebuttal, it is expected that few MA applicants' financial eligibility would change.
19. The proposed changes could produce savings through three channels:
- Reducing the count of MA-eligible individuals by raising some applicants' asset levels above the MA asset limit due to counting previously uncounted assets.
 - Increasing penalty periods for applicants holding notes that include provisions making them unmarketable if this requirement survives possible court challenges.
 - Increasing penalty periods for applicants electing to divest their assets rather than purchase available promissory notes leading them to exceed their limits.
20. Whether savings will be realized is difficult to determine for several reasons:
- Available data are limited as PNs that successfully meet the DRA criteria are currently not recorded.
 - Notes currently considered unavailable that would be considered available under this proposal may nevertheless have little market value; this is particularly likely to be the case for the most common note type - unsecured, interfamilial notes with terms restricting their liquidity and use. Collected information suggests that the value of such notes may be steeply discounted: while such notes can be valued at \$0.80 for each dollar of balance, values of \$0.10 are more in line with expectations. If the notes considered available following the proposed change are routinely determined to be nearly worthless, there may be negligible savings.

- There is little current basis for estimating the rate at which MA applicants would substitute other tactics to preserve financial eligibility for current PN use.

21. Evidence from other states suggests that the values of notes used for Medicaid planning purposes are potentially large enough to render all note-holders MA-ineligible if note-holders do not change their behavior in response to this policy change. A 2014 U.S. Government Accountability Office report reviewed approved Medicaid nursing home applications in three states and found that two percent of approved applicants owned PNs with a median value of \$116,500. Of the notes observed, all were uncountable.

22. A modest annual savings of \$500,000 AF (\$200,000 GPR) is assumed under this change, with savings of \$250,000 AF (\$100,000 GPR) in SFY 2016 under the assumption the changes would be effective January 1, 2016.

Recommendation

Adopt language treating promissory notes as countable resources, when not considered divestment for MA eligibility purposes, and considering any note that is not negotiable, assignable, enforceable, and marketable as divestment.

	Change to Base			FTE
	FY 16	FY 17	Biennium	
GPR	(\$100,000)	(\$200,000)	(\$300,000)	
FED	(\$150,000)	(\$300,000)	(\$450,000)	
TOTAL	(\$350,000)	(\$500,000)	(\$750,000)	

Show

[Home](#) > [Chapter 700 - Resources](#) > [706 - Types of Resources](#) > 706.50 Promissory Notes, Loans & Property Agreements

706.50 Promissory Notes, Loans & Property Agreements

A. Definitions

1. Promissory Notes

A promissory note is a written, unconditional agreement signed by an individual who promises to pay a specific sum of money at a specified time, or on demand, to the person, company, corporation, or institution named on the note. A promissory note may be given in return for goods, money loaned, or services rendered.

2. Loans

A bona fide loan is a transaction whereby one party advances money to (or on behalf of) another party who promises to repay the debt in full, with or without interest. A loan agreement may be a formal or informal loan as follows:

a. Formal Loans

A formal loan must be in writing and at least one of the parties must be a business or company.

b. Informal Loans

An informal loan is a written agreement between two individuals, and the lender does not represent a business or company.

3. Oral Loans

An oral loan is valid under Arizona state law only when the loan is repaid within one year. An oral loan that is not repaid within one year shall be considered a transfer with uncompensated value on the date the loan was made. Reduce the amount of the transfer by the amount of any loan payments received since the time of the loan. The repayment of an oral loan after a year is also considered a transfer. See C.2.d below for instructions for verifying oral loans.

4. Personal and Real Property Agreements

A property agreement is a pledge or security of a particular property or properties for the payment of a debt or the performance of some other obligation within a specified time period.

a. The following are examples of real property agreements:

- i. Mortgages;
- ii. Land contracts;
- iii. Contracts for deeds.

b. The following are examples of personal property agreements (chattel mortgages):

- i. Pledges on crops;
- ii. Pledges on fixtures;
- iii. Pledges on inventory.

B. Treatment

1. Negotiable

Generally, promissory notes, loans and property agreements are negotiable, i.e., can be sold. The value is the amount of the outstanding principal balance, unless the individual furnishes reliable evidence of a lesser CMV or non-negotiability (see 2). A promissory note or agreement which is non-negotiable or which has no CMV may be a transfer with uncompensated value.

2. Nonnegotiable

Nonnegotiable means that there is a legal barrier to the transfer of ownership. If the note, loan or property agreement is not negotiable, it has no value as a resource. A transfer occurred when the loan was created or when it became non-negotiable.

3. Transfers with Compensated Value

A promissory note, loan agreement, or related financial instrument shall be treated as a transfer with compensated value when the promissory note, loan agreement or related financial instrument meets all of the following criteria:

- a. It is negotiable, assignable and enforceable; and
- b. It does not contain terms which make it unmarketable.

4. Countable Resources

A promissory note, loan agreement or related financial instrument which meets the criteria in B.3 shall be considered a countable resource in the amount of the principal balance.

5. Transfer with Uncompensated Value

A promissory note, loan agreement or related financial instrument which does not meet the criteria in B.3. shall be evaluated as a transfer with uncompensated value in accordance with Chapter 900.

6. Treatment of Loan Proceeds

a. Customer as Borrower

When a customer is the borrower, the proceeds of a promissory note or loan requiring repayment are not income in the month of receipt, but must be evaluated as a resource if retained into the following month.

b. Customer as Lender

When the customer is the lender, the proceeds of a loan, whether formal or informal are treated as follows:

- i. The portion of the loan payment which is a repayment of principal is considered a resource;
- ii. On or after July 1, 2004, the portion of the loan payment that is interest is excluded income.
- iii. Prior to July 1, 2004, the portion of the loan payment that is interest is counted income in the month of receipt (see MS 607.55.B.1.c and 607.63).

C. Specific Verification

1. If the verified face value, in combination with other countable resources, can be determined to be less than the appropriate resource limit, no further action is required.

2. The unpaid principal balance of promissory notes, loans or property agreements must be verified unless the condition in C.1. above exists.

a. Legal Documents

Legal documents such as bank notes, bills of sale, mortgage contracts, sales agreements or other contracts are acceptable evidence and may provide the necessary information. These documents must include sufficient information to determine the unpaid principal balance. This information may include the following:

- i. The name and address of the payer and payee;
- ii. The date the transaction occurred;
- iii. The original amount of the transaction;
- iv. The date payments were scheduled to begin;
- v. Monthly payment amounts applied to the principal or the unpaid principal balance;
- vi. Date last payment is due.

b. Payment Books

Payments books may assist in the determination of the unpaid balance if they include the information identified in C.2.a. above.

c. Financial Statements

Any bank statements or letters from bank officers that provide the unpaid principal balance or the information identified in C.2.a. above are acceptable verification if they also contain the name, address and title of the person completing the statement.

d. Verification of Oral Loan Agreement

In the case of an oral loan agreement, the loan must be documented by a Request for Verification of Money Borrowed (DE-230) and the Request for Verification of Money Loaned (DE-231) completed by the parties involved with the loan. The statements must include sufficient information to determine the unpaid principal balance.

3. Rebuttal of CMV or Negotiability

Presentation of evidence of a legal barrier is acceptable verification of nonnegotiability.

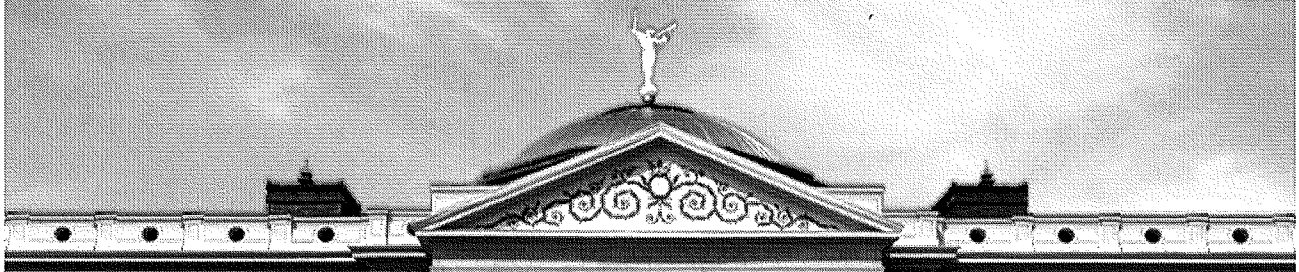
Reliable evidence of CMV is the appraised value obtained by the customer from a knowledgeable source. Knowledgeable sources include, but are not limited to, any of the following:

- a. Banks;
- b. Savings and loan associations;
- c. Credit unions;
- d. Licensed loan or mortgage bankers.

D. Calculation

The considered amount of a promissory note, loan or property agreement is determined by the following calculation.

Original amount of transaction
 - Payment amounts applied to the principal
 = Unpaid principal balance



Fifty-first Legislature - Second Regular Session

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A. The administration has sole authority to determine the effect of annuities, promissory notes, loan agreements and related financial instruments on a person's eligibility pursuant to this article.

B. An irrevocable annuity purchased with an applicant's assets is treated as a transfer with uncompensated value pursuant to section 36-2934, subsection B unless it meets all of the following:

1. It is purchased from a life insurance company or another commercial company that sells annuities as part of the normal course of business.
2. It provides substantially equal monthly payments of principal and does not have a balloon or deferred payment of interest or principal.
3. It is an annuity currently issuing payments for the person or that person's spouse.
4. It will return the full principal and interest within the annuitant's life expectancy.

C. An irrevocable annuity that meets the requirements of subsection B of this section is a transfer with compensated value.

D. The fair market value of a promissory note, loan agreement or related financial instrument that is negotiable, assignable and enforceable is a countable resource.

E. A promissory note, loan agreement or related financial instrument that does not comply with subsection D of this section is a transfer with uncompensated value. For a promissory note, loan agreement or related instrument that does comply with subsection D of this section, the difference between the outstanding principal balance and the fair market value is a transfer with uncompensated value.



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1150/8
PJK:.....
Wlj

DOA:.....Dombrowski, BB0394 – Promissory notes as assets and divestment
for MA

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

(in 1-9)
(by 1-13, please)

Do Not Gen

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES ✓

MEDICAL ASSISTANCE ✓

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

2 SECTION 1. 46.2896 of the statutes is created to read:

3 **46.2896 Counting promissory notes as assets.** (1) In this section:

4 (a) “Long-term care program” means the long-term care program under s.

5 46.27, 46.275, or 46.277; the family care program providing the benefit under s.

1 46.286; the Family Care Partnership program; or the long-term care program
2 defined in s. 46.2899 (1).

3 (b) "Promissory note" means a written, unconditional agreement, given in
4 return for goods, money loaned, or services rendered, under which one party
5 promises to pay another party a specified sum of money at a specified time or on
6 demand.

7 (2) When determining an individual's financial eligibility for a long-term care
8 program, the department shall include a promissory note as a countable asset if all
9 of the following apply:

10 (a) The individual applying for the long-term care program or his or her spouse
11 provided the goods, money loaned, or services rendered for the note and is the payee
12 under the note.

****NOTE: I included "or his or her spouse" here based on the language of s. 49.453
(4c) (a). This language clarifies that the individual or his or spouse does not owe the
payments under the note.

13 (b) The note was entered into on or after the effective date of this paragraph
14 [LRB inserts date].

****NOTE: Do you want me to add "purchased" here?

15 (c) The note is negotiable, assignable, enforceable, and does not contain any
16 terms making it unmarketable.

17 (3) A promissory note is presumed to be negotiable and its asset value is the
18 outstanding principal balance at the time the individual applies for the long-term
19 care program unless the individual shows reliable evidence that the note is
20 nonnegotiable or has a different current market value.

21 SECTION 2. 49.452 of the statutes is created to read:

1 **49.452 Counting promissory notes as assets for certain medical**
 2 **assistance programs.** (1) In this section, “promissory note” means a written,
 3 unconditional agreement, given in return for goods, money loaned, or services
 4 rendered, under which one party promises to pay another party a specified sum of
 5 money at a specified time or on demand.

6 (2) If an individual’s assets are counted when determining the individual’s
 7 financial eligibility for medical assistance, the department shall include a
 8 promissory note as a countable asset if all of the following apply:

9 (a) The individual applying for medical assistance or his or her spouse provided
 10 the goods, money loaned, or services rendered for the ^{promissory} note and is the payee under the
 11 ^{promissory} note. [^]

12 (b) The note was entered into on or after the effective date of this paragraph
 13 [LRB inserts date]. [^]

14 (c) The ^{promissory} note is negotiable, assignable, ^{and} enforceable, ^{en} and does not contain any
 15 terms making it unmarketable. [^]

16 (3) A promissory note is presumed to be negotiable and its asset value is the
 17 outstanding principal balance at the time the individual applies for medical
 18 assistance, ^{en} unless the individual shows reliable evidence that the [✓] note is
 19 nonnegotiable or has a different current market value.

20 **SECTION 3.** 49.453 (4c) (am) of the statutes is created to read:

21 49.453 (4c) (am) Notwithstanding par. (a), for purposes of sub. (2) ⁵ the purchase
 22 of or entering into a promissory note by an individual or his or her spouse on or after
 23 the effective date of this paragraph [LRB inserts date], is a transfer of assets for
 24 less than fair market value unless all of the following apply:

- 25 1. The ^{promissory} note satisfies the requirements under par. (a) 1. to 3. [✓]

Kahler, Pam

From: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
Sent: Friday, January 23, 2015 7:17 PM
To: Kahler, Pam
Subject: Promissory Notes Draft Changes

Hi Pam-

Please make the following changes to this draft. (LRB 1150/P1)

- ✓ 1. Rather than use the term "reliable evidence" please use "credible evidence from a knowledgeable source"
- ✓ 2. The draft currently targets just MA applicants but the intent is to apply the proposal to applicants and current recipients. Perhaps modifying the language "applying for" the program to "applying for or receiving" benefits? *value of note?*
- ✓ 3. With regard to the term "payee", could we instead reference the individual who provided the funds, goods or services? DHS has indicated that if the individual is not the payee, then either the note purchase will be considered divestment or the payments go to some other entity which will benefit the applicant/spouse/participation and be counted as a resource.

Please let me know if you have any questions on these changes or wish to discuss.

Thanks,
Cindy

Cynthia Dombrowski
Executive Policy and Budget Analyst
Wisconsin State Budget Office
608-267-7980 (p)
cynthia.dombrowski@wisconsin.gov

Kahler, Pam

From: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
Sent: Monday, January 26, 2015 2:26 PM
To: Kahler, Pam
Subject: Promissory Notes

Hi Pam –

In response to our earlier conversation,

1. The provisions would not apply to promissory notes held by current enrollees prior to the implementation date of the new provisions.
2. The provisions WOULD apply to promissory notes purchased or entered into by future or current enrollees after the effective date of the provisions.

Please let me know if this helps clarify the concerns we discussed or if there are further questions.

Thank you,
Cindy

Cynthia Dombrowski
Executive Policy and Budget Analyst
Wisconsin State Budget Office
608-267-7980 (p)
cynthia.dombrowski@wisconsin.gov

per Cindy

*Value for applicant is principal
when apply*

*Value for recipient is ~~the~~
principal when DHS determines
eligibility*



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1150/P
PJK:wlj:rs

Due TODAY

P2
+JLd

DOA:.....Dombrowski, BB0394 – Promissory notes as assets and divestment for MA

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

(in 1-26)

x
1 AN ACT ...; relating to: the budget. ✓
don't gen

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

Insert A ✓

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

- 2 SECTION 1. 46.2896 of the statutes is created to read:
- 3 **46.2896 Counting promissory notes as assets.** (1) In this section:
- 4 (a) "Long-term care program" means the long-term care program under s.
- 5 46.27, 46.275, or 46.277; the family care program providing the benefit under s.

1 46.286; the Family Care Partnership program; or the long-term care program
2 defined in s. 46.2899 (1).

3 (b) "Promissory note" means a written, unconditional agreement, given in
4 return for goods, money loaned, or services rendered, under which one party
5 promises to pay another party a specified sum of money at a specified time or on
6 demand.

7 (2) When determining ^{or redetermining} an individual's financial eligibility for a long-term care
8 program, the department shall include a promissory note as a countable asset if all
9 of the following apply:

10 (a) The individual applying for ^{or receiving benefits under} the long-term care program or his or her spouse
11 provided the goods, money loaned, or services rendered for the promissory note ^{and}
12 is the payee under the note

****NOTE: I included "or his or her spouse" here based on the language of s. 49.453
(4c) (a). This language clarifies that the individual or his or spouse does not owe the
payments under the note.

13 (b) The promissory note was entered into on or after the effective date of this
14 paragraph [LRB inserts date].

****NOTE: Do you want me to add "purchased" here?

15 (c) The promissory note is negotiable, assignable, and enforceable and does not
16 contain any terms making it unmarketable.

17 (3) A promissory note is presumed to be negotiable and its asset value is the
18 outstanding principal balance at the time the individual applies for the long-term
19 care program ^{Insert 2-19A} unless the individual shows reliable evidence ^{Insert 2-19B} that the note is
20 nonnegotiable or has a different current market value.

21 SECTION 2. 49.452 of the statutes is created to read:

1 **49.452 Counting promissory notes as assets for certain medical**
 2 **assistance programs.** (1) In this section, "promissory note" means a written,
 3 unconditional agreement, given in return for goods, money loaned, or services
 4 rendered, under which one party promises to pay another party a specified sum of
 5 money at a specified time or on demand.

6 (2) If an individual's assets are counted when determining ^{or redetermining ✓} the individual's
 7 financial eligibility for medical assistance, the department shall include a
 8 promissory note as a countable asset if all of the following apply:

9 (a) The individual applying ^{or receiving benefits under ✓} for medical assistance or his or her spouse provided
 10 the goods, money loaned, or services rendered for the promissory note and is the
 11 payee under the note.

12 (b) The promissory note was entered into on or after the effective date of this
 13 paragraph [LRB inserts date].

14 (c) The promissory note is negotiable, assignable, and enforceable and does not
 15 contain any terms making it unmarketable.

16 (3) A promissory note is presumed to be negotiable and its asset value is the
 17 outstanding principal balance at the time the individual applies for medical
 18 assistance ^{Insert 3-19A ✓} unless the individual shows reliable evidence that the note is
 19 nonnegotiable or has a different current market value.

20 **SECTION 3.** 49.453 (4c) (am) of the statutes is created to read:

21 49.453 (4c) (am) Notwithstanding par. (a), for purposes of sub. (2), the purchase
 22 of or entering into a promissory note by an individual or his or her spouse on or after
 23 the effective date of this paragraph [LRB inserts date], is a transfer of assets for
 24 less than fair market value unless all of the following apply:

25 1. The promissory note satisfies the requirements under par. (a) 1. to 3.

Insert 3-19B ✓

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1150/P2ins
PJK:.....

INSERT A

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual's financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual's application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value.

eligibility

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. This is commonly known as divestment.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill provides that the entering into or purchase of a promissory note by an individual or his or her spouse on or after the effective date of the 2015-17 budget act is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

(END OF INSERT A)

INSERT 2-19A



Ins 2-19A

1

NO or at the time the individual's eligibility for the long-term care program is
redetermined, *NO*

(END OF INSERT 2-19A)

INSERT 2-19B

3

NO by credible evidence from a knowledgeable source *NO*

(END OF INSERT 2-19B)

(END OF INSERT 2-20)

INSERT 3-19A

4

NO or at the time the individual's eligibility for Medical Assistance is redetermined, *NO*

(END OF INSERT 3-19A)

INSERT 3-19B

5

NO by credible evidence from a knowledgeable source *NO*

(END OF INSERT 3-19B)

INSERT 4-15

6
7

NO or on the date that the individual's eligibility for medical assistance for nursing
facility services or other long-term care services described in sub. (2) is redetermined *NO*

(END OF INSERT 4-15)

Kahler, Pam

From: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
Sent: Tuesday, January 27, 2015 2:42 PM
To: Kahler, Pam
Subject: Promissory Notes Changes

Hi Pam –

Just a few final changes to this draft.

P.1 lines 2-3: Please include 46.278 and 46.2785 in the list of long-term care programs located at the start of line 4.

P.2 lines 15-16: It is not explicit that where credible evidence from a knowledgeable source shows the note has a different current market value than the outstanding principal balance at the time of application, the current market value will be used in lieu of the outstanding principal balance. The intent would be to change these lines to something akin to: “knowledgeable source that the note is nonnegotiable or has a different current market value that will then be considered the asset value.”

p.3 line 7: Change to “entered into or purchased”

p.4 lines 12-13: Same change as in p.2, lines 15-16 comment above.

Please let me know if you have any questions or wish to discuss these changes.

Cynthia Dombrowski
Executive Policy and Budget Analyst
Wisconsin State Budget Office
608-267-7980 (p)
cynthia.dombrowski@wisconsin.gov



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1150/P2
PJK:wlj:jma

TODAY by 4 pm

DOA:.....Dombrowski, BB0394 - Promissory notes as assets and divestment for MA

FOR 2015-2017 BUDGET - NOT READY FOR INTRODUCTION

(w/ 1-27)

1

do not gen

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual's financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual's application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value.

or purchased

→

→

which will then be considered the note's value ✓

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. This is commonly known as divestment.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan’s term with no deferral and no balloon payment; and the loan’s terms prohibit cancellation of the balance upon the death of the lender. This bill provides that the entering into or purchase of a promissory note by an individual or his or her spouse on or after the effective date of the 2015–17 budget act is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

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:

→ , 46.278[✓], or 46.2785[✓]

1 SECTION 1. 46.2896 of the statutes is created to read:

2 **46.2896 Counting promissory notes as assets.** (1) In this section:

3 (a) “Long-term care program” means the long-term care program under s.

4 46.27, 46.275, ~~or~~ 46.277; the family care program providing the benefit under s.
5 46.286; the Family Care Partnership program; or the long-term care program
6 defined in s. 46.2899 (1).

7 (b) “Promissory note” means a written, unconditional agreement, given in
8 return for goods, money loaned, or services rendered, under which one party
9 promises to pay another party a specified sum of money at a specified time or on
10 demand.

1 (2) When determining or redetermining an individual's financial eligibility for
2 a long-term care program, the department shall include a promissory note as a
3 countable asset if all of the following apply:

4 (a) The individual applying for or receiving benefits under the long-term care
5 program or his or her spouse provided the goods, money loaned, or services rendered
6 for the promissory note.

7 (b) The promissory note was entered into ^{or purchased ✓} on or after the effective date of this
8 paragraph [LRB inserts date].

9 (c) The promissory note is negotiable, assignable, and enforceable and does not
10 contain any terms making it unmarketable.

11 (3) A promissory note is presumed to be negotiable and its asset value is the
12 outstanding principal balance at the time the individual applies for the long-term
13 care program or at the time the individual's eligibility for the long-term care
14 program is redetermined, unless the individual shows by credible evidence from a
15 knowledgeable source that the note is nonnegotiable or has a different current
16 market value ^{→ , which will then be considered the asset value ✓}

17 **SECTION 2.** 49.452 of the statutes is created to read:

18 **49.452 Counting promissory notes as assets for certain Medical**
19 **Assistance programs.** (1) In this section, "promissory note" means a written,
20 unconditional agreement, given in return for goods, money loaned, or services
21 rendered, under which one party promises to pay another party a specified sum of
22 money at a specified time or on demand.

23 (2) If an individual's assets are counted when determining or redetermining
24 the individual's financial eligibility for Medical Assistance, the department shall
25 include a promissory note as a countable asset if all of the following apply:

1 (a) The individual applying for or receiving benefits under Medical Assistance
2 or his or her spouse provided the goods, money loaned, or services rendered for the
3 promissory note.

4 (b) The promissory note was entered into ^{or purchased ✓} on or after the effective date of this
5 paragraph [LRB inserts date].

6 (c) The promissory note is negotiable, assignable, and enforceable and does not
7 contain any terms making it unmarketable.

8 (3) A promissory note is presumed to be negotiable and its asset value is the
9 outstanding principal balance at the time the individual applies for Medical
10 Assistance or at the time the individual's eligibility for Medical Assistance is
11 redetermined, unless the individual shows by credible evidence from a
12 knowledgeable source that the note is nonnegotiable or has a different current
13 market value, which will then be considered the asset value ✓

14 SECTION 3. 49.453 (4c) (am) of the statutes is created to read:

15 49.453 (4c) (am) Notwithstanding par. (a), for purposes of sub. (2), the purchase
16 of or entering into a promissory note by an individual or his or her spouse on or after
17 the effective date of this paragraph [LRB inserts date], is a transfer of assets for
18 less than fair market value unless all of the following apply:

19 1. The promissory note satisfies the requirements under par. (a) 1. to 3.

20 2. The promissory note is negotiable, assignable, and enforceable and does not
21 contain any terms making it unmarketable.

22 SECTION 4. 49.453 (4c) (b) of the statutes is renumbered 49.453 (4c) (b) 1. and
23 amended to read:

24 49.453 (4c) (b) 1. The value of a promissory note, purchased before the effective
25 date of this subdivision [LRB inserts date], a loan, or a mortgage that does not

1 satisfy the requirements under par. (a) 1. to 3. is the outstanding balance due on the
2 date that the individual applies for medical assistance for nursing facility services
3 or other long-term care services described in sub. (2).

4 **SECTION 5.** 49.453 (4c) (b) 2. of the statutes is created to read:

5 49.453 (4c) (b) 2. The value of a promissory note purchased or entered into on
6 or after the effective date of this subdivision [LRB inserts date], that does not
7 satisfy the requirements under par. (am) 1. and 2. is the outstanding balance due on
8 the date that the individual applies for Medical Assistance for nursing facility
9 services or other long-term care services described in sub. (2) or on the date that the
10 individual's eligibility for Medical Assistance for nursing facility services or other
11 long-term care services described in sub. (2) is redetermined.

12 (END)

Kahler, Pam

From: Hurley, Peggy
Sent: Friday, January 30, 2015 7:35 PM
To: Kahler, Pam
Subject: Proofing task
Attachments: 15-1150/1.pdf

Hi Pam,

Proofing turned up a possible error. In this draft, you create s. 46.2896. Subsection (1) defines "long-term care program":

(1) In this section:

(a) "Long-term care program" means the long-term care program under s. 46.27, 46.275, 46.277, 46.278, or 46.2785; the family care program providing the benefit under s. 46.286; the Family Care Partnership program; or the long-term care program defined in s. 46.2899 (1).

I highlighted that last one because LRB -1461 repeals s. 46.2899 (1).

Peggy Hurley
Legislative Reference Bureau
608 266 8906



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1150/1
PJK:wlj:re
2
WJ

DOA:.....Dombrowski, BB0394 – Promissory notes as assets and divestment for MA

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

D-note
(in 2-2)

Do Not Gen

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual’s financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into or purchased on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual’s application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the note’s value.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. This is commonly known as divestment.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill provides that the entering into or purchase of a promissory note by an individual or his or her spouse on or after the effective date of the 2015–17 budget act is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

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:

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3 (a) “Long-term care program” means the long-term care program under s.
4 46.27, 46.275, 46.277, 46.278, or 46.2785; the family care program providing the
5 benefit under s. 46.286; the Family Care Partnership program; or the long-term care
6 program defined in s. 46.2899 (1). →, 2013 state

7 (b) “Promissory note” means a written, unconditional agreement, given in
8 return for goods, money loaned, or services rendered, under which one party
9 promises to pay another party a specified sum of money at a specified time or on
10 demand.

1 (2) When determining or redetermining an individual's financial eligibility for
2 a long-term care program, the department shall include a promissory note as a
3 countable asset if all of the following apply:

4 (a) The individual applying for or receiving benefits under the long-term care
5 program or his or her spouse provided the goods, money loaned, or services rendered
6 for the promissory note.

7 (b) The promissory note was entered into or purchased on or after the effective
8 date of this paragraph [LRB inserts date].

9 (c) The promissory note is negotiable, assignable, and enforceable and does not
10 contain any terms making it unmarketable.

11 (3) A promissory note is presumed to be negotiable and its asset value is the
12 outstanding principal balance at the time the individual applies for the long-term
13 care program or at the time the individual's eligibility for the long-term care
14 program is redetermined, unless the individual shows by credible evidence from a
15 knowledgeable source that the note is nonnegotiable or has a different current
16 market value, which will then be considered the asset value.

17 **SECTION 2.** 49.452 of the statutes is created to read:

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21 rendered, under which one party promises to pay another party a specified sum of
22 money at a specified time or on demand.

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24 the individual's financial eligibility for Medical Assistance, the department shall
25 include a promissory note as a countable asset if all of the following apply:

1 (a) The individual applying for or receiving benefits under Medical Assistance
2 or his or her spouse provided the goods, money loaned, or services rendered for the
3 promissory note.

4 (b) The promissory note was entered into or purchased on or after the effective
5 date of this paragraph [LRB inserts date].

6 (c) The promissory note is negotiable, assignable, and enforceable and does not
7 contain any terms making it unmarketable.

8 (3) A promissory note is presumed to be negotiable and its asset value is the
9 outstanding principal balance at the time the individual applies for Medical
10 Assistance or at the time the individual's eligibility for Medical Assistance is
11 redetermined, unless the individual shows by credible evidence from a
12 knowledgeable source that the note is nonnegotiable or has a different current
13 market value, which will then be considered the asset value.

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15 49.453 (4c) (am) Notwithstanding par. (a), for purposes of sub. (2), the purchase
16 of or entering into a promissory note by an individual or his or her spouse on or after
17 the effective date of this paragraph [LRB inserts date], is a transfer of assets for
18 less than fair market value unless all of the following apply:

19 1. The promissory note satisfies the requirements under par. (a) 1. to 3.

20 2. The promissory note is negotiable, assignable, and enforceable and does not
21 contain any terms making it unmarketable.

22 **SECTION 4.** 49.453 (4c) (b) of the statutes is renumbered 49.453 (4c) (b) 1. and
23 amended to read:

24 49.453 (4c) (b) 1. The value of a promissory note, purchased before the effective
25 date of this subdivision [LRB inserts date], a loan, or a mortgage that does not

1 satisfy the requirements under par. (a) 1. to 3. is the outstanding balance due on the
2 date that the individual applies for medical assistance for nursing facility services
3 or other long-term care services described in sub. (2).

4 **SECTION 5.** 49.453 (4c) (b) 2. of the statutes is created to read:

5 49.453 (4c) (b) 2. The value of a promissory note purchased or entered into on
6 or after the effective date of this subdivision [LRB inserts date], that does not
7 satisfy the requirements under par. (am) 1. and 2. is the outstanding balance due on
8 the date that the individual applies for Medical Assistance for nursing facility
9 services or other long-term care services described in sub. (2) or on the date that the
10 individual's eligibility for Medical Assistance for nursing facility services or other
11 long-term care services described in sub. (2) is redetermined.

12 (END)

D - note

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

LRB-1150/2dn
PJK:f:....

WJ

Date

Cindy:

This draft reconciles LRB-1150/1 and LRB-1461/P2. Both of these drafts should continue to appear in the compiled bill.

LRB-1461/P2 repealed s. 46.2899 (1), which was crossed-referenced in s. 46.2896 in LRB-1150/1.

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0972/P7

0972/P7

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

LRB-1150/2dn
PJK:wlj:wj

February 2, 2015

Cindy:

This draft reconciles LRB-1150/1 and LRB-0972/P7. Both of these drafts should continue to appear in the compiled bill.

LRB-0972/P7 repealed s. 46.2899 (1), which was cross-referenced in s. 46.2896 in LRB-1150/1.

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1150/2
PJK:wlj:wj

DOA:.....Dombrowski, BB0394 – Promissory notes as assets and divestment
for MA

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual's financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into or purchased on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual's application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the note's value.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. This is commonly known as divestment.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill provides that the entering into or purchase of a promissory note by an individual or his or her spouse on or after the effective date of the 2015-17 budget act is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

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.** 46.2896 of the statutes is created to read:

2 **46.2896 Counting promissory notes as assets.** (1) In this section:

3 (a) "Long-term care program" means the long-term care program under s.
4 46.27, 46.275, 46.277, 46.278, or 46.2785; the family care program providing the
5 benefit under s. 46.286; the Family Care Partnership program; or the long-term care
6 program defined in s. 46.2899 (1), 2013 stats.

7 (b) "Promissory note" means a written, unconditional agreement, given in
8 return for goods, money loaned, or services rendered, under which one party
9 promises to pay another party a specified sum of money at a specified time or on
10 demand.

1 (2) When determining or redetermining an individual's financial eligibility for
2 a long-term care program, the department shall include a promissory note as a
3 countable asset if all of the following apply:

4 (a) The individual applying for or receiving benefits under the long-term care
5 program or his or her spouse provided the goods, money loaned, or services rendered
6 for the promissory note.

7 (b) The promissory note was entered into or purchased on or after the effective
8 date of this paragraph [LRB inserts date].

9 (c) The promissory note is negotiable, assignable, and enforceable and does not
10 contain any terms making it unmarketable.

11 (3) A promissory note is presumed to be negotiable and its asset value is the
12 outstanding principal balance at the time the individual applies for the long-term
13 care program or at the time the individual's eligibility for the long-term care
14 program is redetermined, unless the individual shows by credible evidence from a
15 knowledgeable source that the note is nonnegotiable or has a different current
16 market value, which will then be considered the asset value.

17 **SECTION 2.** 49.452 of the statutes is created to read:

18 **49.452 Counting promissory notes as assets for certain Medical**
19 **Assistance programs.** (1) In this section, "promissory note" means a written,
20 unconditional agreement, given in return for goods, money loaned, or services
21 rendered, under which one party promises to pay another party a specified sum of
22 money at a specified time or on demand.

23 (2) If an individual's assets are counted when determining or redetermining
24 the individual's financial eligibility for Medical Assistance, the department shall
25 include a promissory note as a countable asset if all of the following apply:

1 (a) The individual applying for or receiving benefits under Medical Assistance
2 or his or her spouse provided the goods, money loaned, or services rendered for the
3 promissory note.

4 (b) The promissory note was entered into or purchased on or after the effective
5 date of this paragraph [LRB inserts date].

6 (c) The promissory note is negotiable, assignable, and enforceable and does not
7 contain any terms making it unmarketable.

8 (3) A promissory note is presumed to be negotiable and its asset value is the
9 outstanding principal balance at the time the individual applies for Medical
10 Assistance or at the time the individual's eligibility for Medical Assistance is
11 redetermined, unless the individual shows by credible evidence from a
12 knowledgeable source that the note is nonnegotiable or has a different current
13 market value, which will then be considered the asset value.

14 **SECTION 3.** 49.453 (4c) (am) of the statutes is created to read:

15 49.453 (4c) (am) Notwithstanding par. (a), for purposes of sub. (2), the purchase
16 of or entering into a promissory note by an individual or his or her spouse on or after
17 the effective date of this paragraph [LRB inserts date], is a transfer of assets for
18 less than fair market value unless all of the following apply:

19 1. The promissory note satisfies the requirements under par. (a) 1. to 3.

20 2. The promissory note is negotiable, assignable, and enforceable and does not
21 contain any terms making it unmarketable.

22 **SECTION 4.** 49.453 (4c) (b) of the statutes is renumbered 49.453 (4c) (b) 1. and
23 amended to read:

24 49.453 (4c) (b) 1. The value of a promissory note, purchased before the effective
25 date of this subdivision [LRB inserts date], a loan, or a mortgage that does not

1 satisfy the requirements under par. (a) 1. to 3. is the outstanding balance due on the
2 date that the individual applies for medical assistance for nursing facility services
3 or other long-term care services described in sub. (2).

4 **SECTION 5.** 49.453 (4c) (b) 2. of the statutes is created to read:

5 49.453 (4c) (b) 2. The value of a promissory note purchased or entered into on
6 or after the effective date of this subdivision [LRB inserts date], that does not
7 satisfy the requirements under par. (am) 1. and 2. is the outstanding balance due on
8 the date that the individual applies for Medical Assistance for nursing facility
9 services or other long-term care services described in sub. (2) or on the date that the
10 individual's eligibility for Medical Assistance for nursing facility services or other
11 long-term care services described in sub. (2) is redetermined.

12 (END)