

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: Public Assistance - misc 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, BB0408 -

Topic:

Limits under the cemetery, funeral, and burial expenses program

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	jdye 1/12/2015		_____			
/P1			rschluet 1/12/2015	_____	lparisi 1/12/2015		State

FE Sent For:

<END>

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: Public Assistance - misc 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, BB0408 -

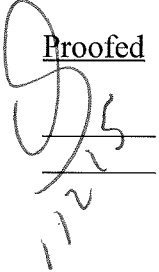
Topic:

Limits under the cemetery, funeral, and burial expenses program ✓

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	PI 1/2 jld	jd				

FE Sent For:

<END>

Kahler, Pam

From: Hanaman, Cathlene
Sent: Wednesday, January 07, 2015 12:13 PM
To: Dodge, Tamara; Walkenhorst Barber, Sarah; Kahler, Pam
Subject: FW: Statutory Language Drafting Request - BB0408

From: Cynthia.Dombrowski@Wisconsin.gov [mailto:Cynthia.Dombrowski@Wisconsin.gov]
Sent: Wednesday, January 07, 2015 12:00 PM
To: Hanaman, Cathlene
Cc: Steinmetz, Jana D - DOA; Dombrowski, Cynthia A - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0408

Biennial Budget: 2015-17

DOA Tracking Code: BB0408

Topic: MA Cemetery Aid Limits

SBO Team: HSI

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

7-7980

Agency Acronym: DHS

Agency Number: 435

Priority: Medium

Intent:

Reduce the total amount of the Wisconsin Funeral and Cemetery Aid Program reimbursement for a decedent who own a life insurance policy with a face value over \$3,000, or a decedent whose spouse, or other person responsible for the decedent has life insurance on the decedent with a face value greater than \$3,000 by one dollar for every dollar over \$3,000 in life insurance.

Enable Estate Recovery for populations already subject to estate recovery, but include recovery of estates if there is a surviving spouse or minor disabled child and do not include the hardship provisions of other programs.

→ put it in 49.682 (w/ specific exceptions)

Attachments: False

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



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1152/7

PJK

JLD

PI

DOA:.....Dombrowski, BB0408 – Limits under the cemetery, funeral, and burial expenses program

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

in 1-9
by 1-13

4
1

do not gen

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

Under current law, DHS pays funeral, burial, and cemetery expenses for decedents who, during life, received certain public assistance benefits, such as Wisconsin Works benefits or Medical Assistance benefits, and whose estates at death are insufficient to pay those expenses. If an eligible decedent's total funeral and burial expenses do not exceed \$4,500, DHS pays the lesser of \$1,500 or the amount not paid by the decedent's estate and other persons; if the decedent's total cemetery expenses do not exceed \$3,500, DHS pays the lesser of \$1,000 or the amount not paid by the decedent's estate and other persons. This bill provides that, if an eligible decedent, or the decedent's spouse or another person, owns a life insurance policy insuring the decedent's life and the face value is more than \$3,000, any amount that DHS would otherwise pay for the decedent's funeral, burial, or cemetery expenses will be reduced by one dollar for each dollar that the insurance policy exceeds \$3,000.

The bill also requires DHS to pursue recovery of the amount of funeral, burial, and cemetery expenses aid provided on behalf of a decedent by making a claim in the decedent's estate and in the estate of the decedent's spouse. As with estate recovery for other types of public assistance benefits, DHS may recover from all property of

*

the decedent or the decedent's spouse, and there is a presumption that all property in the spouse's estate was marital property held with the decedent and that 100 percent of the property in the spouse's estate is subject to the claim of DHS. Unlike estate recovery for other types of public assistance benefits provided to a decedent, however, the claim for funeral, burial, and cemetery expenses aid must be allowed even if the decedent in whose estate the claim is made has a surviving spouse or a surviving child who is under the age of 21 or disabled. Also unlike estate recovery for other types of public assistance benefits, DHS is not permitted to waive recovery if DHS determines that recovering the amount paid on the decedent's behalf would work an undue hardship in a particular case.

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.** 49.682 (title) of the statutes is amended to read:

2 **49.682 (title) Recovery from estates; disease aids and funeral expenses.**

3 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

3 **SECTION 2.** 49.682 (1) (a) of the statutes is amended to read:

4 49.682 (1) (a) "Client" means a person who receives or received aid under s.
5 49.68, 49.683, or 49.685 or a person on whose behalf funeral, burial, or cemetery
6 expenses aid was provided under s. 49.785.

7 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

7 **SECTION 3.** 49.682 (1) (d) of the statutes is amended to read:

8 49.682 (1) (d) "Nonclient surviving spouse" means any person who was married
9 to a client while the client was receiving or when the client received services or aid
10 for which the cost may be recovered under sub. (2) (a) or (am) and who survived the
11 client.

12 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

12 **SECTION 4.** 49.682 (2) (am) of the statutes is created to read:

13 49.682 (2) (am) The department shall file a claim against the estate of a client,
14 and against the estate of a nonclient surviving spouse, for the amount of aid under
15 s. 49.785 paid to or on behalf of the client.

1 **SECTION 5.** 49.682 (2) (bm) 1. of the statutes is amended to read:

2 49.682 (2) (bm) 1. Property that is subject to the department's claim under par.
3 (a) or (am) in the estate of a client or in the estate of a nonclient surviving spouse is
4 all property of a decedent that is included in the estate.

5 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

5 **SECTION 6.** 49.682 (2) (bm) 2. of the statutes is amended to read:

6 49.682 (2) (bm) 2. There is a presumption, consistent with s. 766.31, which may
7 be rebutted, that all property in the estate of the nonclient surviving spouse was
8 marital property held with the client and that 100 percent of the property in the
9 estate of the nonclient surviving spouse is subject to the department's claim under
10 par. (a) or (am).

11 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

11 **SECTION 7.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

12 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
13 (a) or (am) by up to the amount specified in s. 861.33 (2) if necessary to allow the
14 decedent's heirs or the beneficiaries of the decedent's will to retain the following
15 personal property:

16 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

16 **SECTION 8.** 49.682 (3) of the statutes is amended to read:

17 49.682 (3) The department shall administer the program under this section
18 and may contract with an entity to administer all or a portion of the program,
19 including gathering and providing the department with information needed to
20 recover payment of aid provided under s. 49.68, 49.683, ~~or 49.685~~, or 49.785. All
21 funds received under this subsection, net of any amount claimed under s. 49.849 (5),
22 shall be remitted for deposit in the general fund.

23 **History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

23 **SECTION 9.** 49.682 (4) (a) of the statutes is amended to read:

1 49.682 (4) (a) The department may recover amounts under this section for the
2 provision of aid provided under s. 49.68, 49.683, or 49.685 paid on and after
3 September 1, 1995, and for the provision of aid provided under s. 49.785[✓] paid on or
4 after the effective date of this paragraph[✓].... [LRB inserts date].

5 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

5 **SECTION 10.** 49.682 (4) (b) of the statutes is amended to read:

6 49.682 (4) (b) The department may file a claim under sub. (2)[✓](a) only with
7 respect to a client who dies after September 1, 1995. The department may file a claim
8 under sub. (2)[✓](am) only with respect to a client who dies after the effective date of
9 this paragraph[✓].... [LRB inserts date].

10 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

10 **SECTION 11.** 49.682 (5) of the statutes is amended to read:

11 49.682 (5) The department shall promulgate rules establishing standards for
12 determining whether the application of this section with respect to a claim under
13 sub. (1) (a)[✓]would work an undue hardship in individual cases[✓]. If the department
14 determines that the application of this section with respect to a claim under sub. (1)
15 (a)[✓]would work an undue hardship in a particular case, the department shall waive
16 application of this section in that case.

17 History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92.

17 **SECTION 12.** 49.785 (1m) (d) of the statutes is created to read:

18 49.785 (1m) (d) If the recipient, or the recipient's spouse or another person,
19 owns a life insurance policy insuring the recipient's life and the face value of the
20 policy is more than \$3,000[✓], any amount that the department would be obligated to
21 pay under sub. (1)[✓] shall be reduced by one dollar for every dollar by which the face
22 value of the policy exceeds \$3,000[✓].

23 **SECTION 13.** 49.785 (2) of the statutes is created to read:

1 49.785 (2) The department shall pursue recovery of any amounts paid under
2 sub. (1) from the estate of the recipient and from the estate of any surviving spouse
3 of the recipient as provided in s. 49.682.

4 **SECTION 14.** 49.849 (1) (c) of the statutes is amended to read:

5 49.849 (1) (c) “Nonrecipient surviving spouse” means any person who was
6 married to a recipient while the recipient was receiving or when the recipient
7 received public assistance and who survived the recipient.

8 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

8 **SECTION 15.** 49.849 (1) (e) of the statutes is amended to read:

9 49.849 (1) (e) “Public assistance” means any services provided as a benefit
10 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance
11 under subch. IV, long-term community support services funded under s. 46.27 (7),
12 or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785.

13 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

13 **SECTION 16.** 49.849 (2) (a) (intro.) of the statutes is amended to read:

14 49.849 (2) (a) (intro.) Subject to par. (b), the department may collect from the
15 property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an
16 amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the
17 long-term community support services under s. 46.27 that is recoverable under s.
18 46.27 (7g) (c) 1., or the aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785 that is
19 recoverable under s. 49.682 (2) (a) or (am), and that was paid on behalf of the
20 decedent or the decedent’s spouse, if all of the following conditions are satisfied:

21 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

21 **SECTION 17.** 49.849 (2) (a) 1. of the statutes is amended to read:

1 49.849 (2) (a) 1. The decedent died after September 30, 1991, or for the recovery
2 of aid under s. 49.785 the decedent died after the effective date of this subdivision
3 [LRB inserts date].

4 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

4 **SECTION 18.** 49.849 (2) (a) 2. of the statutes is amended to read:

5 49.849 (2) (a) 2. The decedent is not survived by a spouse, a child who is under
6 age 21, or a child who is disabled, as defined in s. 49.468 (1) (a) 1. This subdivision
7 does not apply for the recovery of aid under s. 49.785.

8 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

8 **SECTION 19.** 49.849 (3) (b) of the statutes is amended to read:

9 49.849 (3) (b) A person who possesses or receives property of a decedent shall
10 transmit the property to the department, if the conditions in sub. (2) (a) 1. and, if
11 applicable, sub. (2) (a) 2. are satisfied, upon receipt of an affidavit by a person
12 designated by the secretary of health services to administer this section showing that
13 the department paid on behalf of the decedent or the decedent's spouse recoverable
14 benefits specified in sub. (2) (a). Upon transmittal, the person is released from any
15 obligation to other creditors or heirs of the decedent.

16 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

16 **SECTION 20.** 49.849 (3) (c) 5. of the statutes is amended to read:

17 49.849 (3) (c) 5. That the person may request from the department a hardship
18 waiver, if the person co-owned the property with the decedent or is a beneficiary of
19 the property. This subdivision does not apply for the recovery of aid under s. 49.785.

20 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

20 **SECTION 21.** 49.849 (3) (c) 6. of the statutes is amended to read:

21 49.849 (3) (c) 6. How to request a hardship waiver under subd. 5. This
22 subdivision does not apply for the recovery of aid under s. 49.785.

23 **History:** 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

23 **SECTION 22.** 49.849 (4) (b) (intro.) of the statutes is amended to read:

1 49.849 (4) (b) (intro.) The Except as provided in par. (bm),[✓] the department may
2 enforce a lien under par. (a) by foreclosure in the same manner as a mortgage on real
3 property, unless any of the following is alive:

4 ^{History:} 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

4 **SECTION 23.** 49.849 (4) (bm) of the statutes is created to read:

5 49.849 (4) (bm) The department may enforce a lien under par. (a)[✓] for the
6 recovery of aid under s. 49.785[✓] by foreclosure in the same manner as a mortgage on
7 real property regardless of whether the decedent's spouse or any child of the decedent
8 is alive.

9 ^X
9 **SECTION 24.** 49.849 (7) of the statutes is amended to read:

10 49.849 (7) **RULES FOR HARDSHIP WAIVER.** The department shall promulgate rules
11 establishing standards to determine whether the application of this section would
12 work an undue hardship in individual cases. If the department determines that the
13 application of this section would work an undue hardship in a particular case, the
14 department shall waive the application of this section in that case. This subsection[✓]
15 does not apply with respect to the recovery of aid under s. 49.785.[✓]

16 ^{History:} 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28.

16 **SECTION 25.** 632.697 of the statutes is amended to read:

17 **632.697 Benefits subject to department's right to recover.** Death
18 benefits payable under a life insurance policy or an annuity are subject to the right
19 of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682,
20 or 49.849 an amount equal to the medical assistance that is recoverable under s.
21 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, ~~or~~ 49.685, or 49.785[✓] that
22 is recoverable under s. 49.682 (2) (a) or (am),[✓] or an amount equal to long-term

1 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
2 1. and that was paid on behalf of the deceased policyholder or annuitant.

3 **History:** 2013 a. 20.

3 **SECTION 26.** 705.04 (2g) of the statutes is amended to read:

4 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health
5 services may collect, from funds of a decedent that are held by the decedent
6 immediately before death in a joint account or a P.O.D. account, an amount equal to
7 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal
8 to aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785 that is recoverable under s. 49.682
9 (2) (a) or (am), or an amount equal to long-term community support services under
10 s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of
11 the decedent or the decedent's spouse.

12 **History:** 1973 c. 291; 1983 a. 186; 1985 a. 37 s. 187; 1995 a. 27 ss. 7065 to 7065c, 9126 (19); 1999 a. 9; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 177; 2013 a. 20.

12 **SECTION 27.** 859.07 (2) (a) 3. of the statutes is amended to read:

13 859.07 (2) (a) 3. The decedent or the decedent's spouse received services
14 provided as a benefit under a long-term care program, as defined in s. 49.496 (1) (bk),
15 medical assistance under subch. IV of ch. 49, long-term community support services
16 funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785.

17 **History:** 1977 c. 73; 1985 a. 29; 1989 a. 31, 96, 359; 1991 a. 39; 1995 a. 27 ss. 7191b to 7191c, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 9; 2001 a. 107; 2007 a. 20 ss. 3768 to 3769, 9121 (6) (a); 2013 a. 20.

17 **SECTION 28.** 867.01 (3) (am) 4. of the statutes is amended to read:

18 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received
19 services provided as a benefit under a long-term care program, as defined in s. 49.496
20 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
21 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683 ~~or 49.685~~, or 49.785.

22 **History:** 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19); 1999 a. 9, 94; 2005 a. 216; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28; 2013 a. 20.

22 **SECTION 29.** 867.01 (3) (d) of the statutes is amended to read:

1 867.01 (3) (d) *Notice.* The court may hear the matter without notice or order
2 notice to be given under s. 879.03. If the decedent or the decedent's spouse received
3 services provided as a benefit under a long-term care program, as defined in s. 49.496
4 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
5 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785,
6 the petitioner shall give notice by certified mail to the department of health services
7 as soon as practicable after filing the petition with the court.

History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19); 1999 a. 9, 94; 2005 a. 216; 2007 a. 20 s. 9121 (6) (a); 2009 a. 28; 2013 a. 20.

8 **SECTION 30.** 867.02 (2) (am) 6. of the statutes is amended to read:

9 867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received
10 services provided as a benefit under a long-term care program, as defined in s. 49.496
11 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
12 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785.

History: 1971 c. 40 s. 93; 1973 c. 90, 243; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27 ss. 2160w, 2170d, 3200 (47); 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7195b to 7196, 9126 (19); 1999 a. 9, 94; 2005 a. 216; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20.

13 **SECTION 31.** 867.03 (1g) (c) of the statutes is amended to read:

14 867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received
15 services provided as a benefit under a long-term care program, as defined in s. 49.496
16 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
17 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683 ~~or~~, 49.685, or 49.875.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92.

18 **SECTION 32.** 867.03 (1m) (a) of the statutes is amended to read:

19 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the
20 decedent at the time of the decedent's death intends to transfer a decedent's property
21 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received
22 services provided as a benefit under a long-term care program, as defined in s. 49.496
23 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support

1 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or~~ 49.685, or 49.785,[✓]
2 the heir, trustee, or person who was guardian of the decedent at the time of the
3 decedent's death shall give notice to the department of health services of his or her
4 intent. The notice shall include the information in the affidavit under sub. (1g) and
5 the heir, trustee, or person who was guardian of the decedent at the time of the
6 decedent's death shall give the notice by certified mail, return receipt requested.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92.

7 **SECTION 33.** 867.03 (1m) (b) of the statutes is amended to read:

8 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent
9 at the time of the decedent's death who files an affidavit under sub. (1g) that states
10 that the decedent or the decedent's spouse received services provided as a benefit
11 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance
12 under subch. IV of ch. 49, long-term community support services funded under s.
13 46.27 (7), or aid under s. 49.68, 49.683, ~~or~~ 49.685, or 49.785,[✓] shall attach to the
14 affidavit the proof of mail delivery of the notice required under par. (a) showing the
15 delivery date.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92.

16 **SECTION 34.** 867.03 (2g) (b) of the statutes is amended to read:

17 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,
18 or guardian is subject to the right of the department of health services to recover
19 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical
20 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under
21 s. 49.68, 49.683, ~~or~~ 49.685, or 49.785,[✓] that is recoverable under s. 49.682 (2) (a) or (am),[✓]
22 or an amount equal to long-term community support services under s. 46.27 that is
23 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or

1 the decedent's spouse. Upon request, the heir, trustee, or guardian shall provide to
2 the department of health services information about any of the decedent's property
3 that the heir, trustee, or guardian has distributed and information about the persons
4 to whom the property was distributed.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92.

5 **SECTION 9318. Initial applicability; Health Services.**

6 (1) FUNERAL EXPENSES AID; ESTATE RECOVERY AND REDUCTION FOR LIFE INSURANCE.

7 The treatment of sections 49.682 (title), (1) (a) and (d), (2) (am), (bm) 1. and 2., and
8 (c) (intro.), (3), (4) (a) and (b), and (5), 49.785 (1m) (d) and (2), 49.849 (1) (c) and (e),
9 (2) (a) (intro.), 1., and 2., (3) (c) 5., (4) (b) (intro.) and (bm), and (7), 632.697, 705.04
10 (2g), 859.07 (2) (a) 3., 867.01 (3) (am) 4. and (d), 867.02 (2) (am) 6., 867.03 (1g) (c), (1m)
11 (a) and (b), and (2g) (b) of the statutes first applies to individuals receiving funeral,
12 burial, and cemetery expenses aid who die on the effective date of this subsection.

13 (END)



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1152/P1
PJK:jld:rs

DOA:.....Dombrowski, BB0408 – Limits under the cemetery, funeral, and burial expenses program

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

PUBLIC ASSISTANCE

Under current law, DHS pays funeral, burial, and cemetery expenses for decedents who, during life, received certain public assistance benefits, such as Wisconsin Works benefits or Medical Assistance benefits, and whose estates at death are insufficient to pay those expenses. If an eligible decedent's total funeral and burial expenses do not exceed \$4,500, DHS pays the lesser of \$1,500 or the amount not paid by the decedent's estate and other persons; if the decedent's total cemetery expenses do not exceed \$3,500, DHS pays the lesser of \$1,000 or the amount not paid by the decedent's estate and other persons. This bill provides that, if an eligible decedent, or the decedent's spouse or another person, owns a life insurance policy insuring the decedent's life and the face value is more than \$3,000, any amount that DHS would otherwise pay for the decedent's funeral, burial, or cemetery expenses will be reduced by one dollar for each dollar that the insurance policy exceeds \$3,000.

The bill also requires DHS to pursue recovery of the amount of funeral, burial, and cemetery expenses aid provided on behalf of a decedent by making a claim in the decedent's estate and in the estate of the decedent's spouse. As with estate recovery for other types of public assistance benefits, DHS may recover from all property of

the decedent or the decedent's spouse, and there is a presumption that all property in the spouse's estate was marital property held with the decedent and that 100 percent of the property in the spouse's estate is subject to the claim of DHS. Unlike estate recovery for other types of public assistance benefits provided to a decedent, however, the claim for funeral, burial, and cemetery expenses aid must be allowed even if the decedent in whose estate the claim is made has a surviving spouse or a surviving child who is under the age of 21 or disabled. Also unlike estate recovery for other types of public assistance benefits, DHS is not permitted to waive recovery if DHS determines that recovering the amount paid on the decedent's behalf would work an undue hardship in a particular case.

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.** 49.682 (title) of the statutes is amended to read:

2 **49.682 (title) Recovery from estates; disease aids and funeral expenses.**

3 **SECTION 2.** 49.682 (1) (a) of the statutes is amended to read:

4 49.682 (1) (a) "Client" means a person who receives or received aid under s.
5 49.68, 49.683, or 49.685 or a person on whose behalf funeral, burial, or cemetery
6 expenses aid was provided under s. 49.785.

7 **SECTION 3.** 49.682 (1) (d) of the statutes is amended to read:

8 49.682 (1) (d) "Nonclient surviving spouse" means any person who was married
9 to a client while the client was receiving or when the client received services or aid
10 for which the cost may be recovered under sub. (2) (a) or (am) and who survived the
11 client.

12 **SECTION 4.** 49.682 (2) (am) of the statutes is created to read:

13 49.682 (2) (am) The department shall file a claim against the estate of a client,
14 and against the estate of a nonclient surviving spouse, for the amount of aid under
15 s. 49.785 paid to or on behalf of the client.

1 **SECTION 5.** 49.682 (2) (bm) 1. of the statutes is amended to read:

2 49.682 (2) (bm) 1. Property that is subject to the department's claim under par.
3 (a) or (am) in the estate of a client or in the estate of a nonclient surviving spouse is
4 all property of a decedent that is included in the estate.

5 **SECTION 6.** 49.682 (2) (bm) 2. of the statutes is amended to read:

6 49.682 (2) (bm) 2. There is a presumption, consistent with s. 766.31, which may
7 be rebutted, that all property in the estate of the nonclient surviving spouse was
8 marital property held with the client and that 100 percent of the property in the
9 estate of the nonclient surviving spouse is subject to the department's claim under
10 par. (a) or (am).

11 **SECTION 7.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

12 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
13 (a) or (am) by up to the amount specified in s. 861.33 (2) if necessary to allow the
14 decedent's heirs or the beneficiaries of the decedent's will to retain the following
15 personal property:

16 **SECTION 8.** 49.682 (3) of the statutes is amended to read:

17 49.682 (3) The department shall administer the program under this section
18 and may contract with an entity to administer all or a portion of the program,
19 including gathering and providing the department with information needed to
20 recover payment of aid provided under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785. All
21 funds received under this subsection, net of any amount claimed under s. 49.849 (5),
22 shall be remitted for deposit in the general fund.

23 **SECTION 9.** 49.682 (4) (a) of the statutes is amended to read:

24 49.682 (4) (a) The department may recover amounts under this section for the
25 provision of aid provided under s. 49.68, 49.683, or 49.685 paid on and after

1 September 1, 1995, and for the provision of aid provided under s. 49.785 paid on or
2 after the effective date of this paragraph [LRB inserts date].

3 **SECTION 10.** 49.682 (4) (b) of the statutes is amended to read:

4 49.682 (4) (b) The department may file a claim under sub. (2) (a) only with
5 respect to a client who dies after September 1, 1995. The department may file a claim
6 under sub. (2) (am) only with respect to a client who dies after the effective date of
7 this paragraph [LRB inserts date].

8 **SECTION 11.** 49.682 (5) of the statutes is amended to read:

9 49.682 (5) The department shall promulgate rules establishing standards for
10 determining whether the application of this section with respect to a claim under
11 sub. (1) (a) would work an undue hardship in individual cases. If the department
12 determines that the application of this section with respect to a claim under sub. (1)
13 (a) would work an undue hardship in a particular case, the department shall waive
14 application of this section in that case.

15 **SECTION 12.** 49.785 (1m) (d) of the statutes is created to read:

16 49.785 (1m) (d) If the recipient, or the recipient's spouse or another person,
17 owns a life insurance policy insuring the recipient's life and the face value of the
18 policy is more than \$3,000, any amount that the department would be obligated to
19 pay under sub. (1) shall be reduced by one dollar for every dollar by which the face
20 value of the policy exceeds \$3,000.

21 **SECTION 13.** 49.785 (2) of the statutes is created to read:

22 49.785 (2) The department shall pursue recovery of any amounts paid under
23 sub. (1) from the estate of the recipient and from the estate of any surviving spouse
24 of the recipient as provided in s. 49.682.

25 **SECTION 14.** 49.849 (1) (c) of the statutes is amended to read:

1 49.849 (1) (c) “Nonrecipient surviving spouse” means any person who was
2 married to a recipient while the recipient was receiving or when the recipient
3 received public assistance and who survived the recipient.

4 **SECTION 15.** 49.849 (1) (e) of the statutes is amended to read:

5 49.849 (1) (e) “Public assistance” means any services provided as a benefit
6 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance
7 under subch. IV, long-term community support services funded under s. 46.27 (7),
8 or aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785.

9 **SECTION 16.** 49.849 (2) (a) (intro.) of the statutes is amended to read:

10 49.849 (2) (a) (intro.) Subject to par. (b), the department may collect from the
11 property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an
12 amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the
13 long-term community support services under s. 46.27 that is recoverable under s.
14 46.27 (7g) (c) 1., or the aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785 that is
15 recoverable under s. 49.682 (2) (a) or (am), and that was paid on behalf of the
16 decedent or the decedent’s spouse, if all of the following conditions are satisfied:

17 **SECTION 17.** 49.849 (2) (a) 1. of the statutes is amended to read:

18 49.849 (2) (a) 1. The decedent died after September 30, 1991, or for the recovery
19 of aid under s. 49.785 the decedent died after the effective date of this subdivision
20 ... [LRB inserts date].

21 **SECTION 18.** 49.849 (2) (a) 2. of the statutes is amended to read:

22 49.849 (2) (a) 2. The decedent is not survived by a spouse, a child who is under
23 age 21, or a child who is disabled, as defined in s. 49.468 (1) (a) 1. This subdivision
24 does not apply for the recovery of aid under s. 49.785.

25 **SECTION 19.** 49.849 (3) (b) of the statutes is amended to read:

1 49.849 (3) (b) A person who possesses or receives property of a decedent shall
2 transmit the property to the department, if the conditions in sub. (2) (a) 1. and, if
3 applicable, sub. (2) (a) 2. are satisfied, upon receipt of an affidavit by a person
4 designated by the secretary of health services to administer this section showing that
5 the department paid on behalf of the decedent or the decedent's spouse recoverable
6 benefits specified in sub. (2) (a). Upon transmittal, the person is released from any
7 obligation to other creditors or heirs of the decedent.

8 **SECTION 20.** 49.849 (3) (c) 5. of the statutes is amended to read:

9 49.849 (3) (c) 5. That the person may request from the department a hardship
10 waiver, if the person co-owned the property with the decedent or is a beneficiary of
11 the property. This subdivision does not apply for the recovery of aid under s. 49.785.

12 **SECTION 21.** 49.849 (3) (c) 6. of the statutes is amended to read:

13 49.849 (3) (c) 6. How to request a hardship waiver under subd. 5. This
14 subdivision does not apply for the recovery of aid under s. 49.785.

15 **SECTION 22.** 49.849 (4) (b) (intro.) of the statutes is amended to read:

16 49.849 (4) (b) (intro.) The Except as provided in par. (bm), the department may
17 enforce a lien under par. (a) by foreclosure in the same manner as a mortgage on real
18 property, unless any of the following is alive:

19 **SECTION 23.** 49.849 (4) (bm) of the statutes is created to read:

20 49.849 (4) (bm) The department may enforce a lien under par. (a) for the
21 recovery of aid under s. 49.785 by foreclosure in the same manner as a mortgage on
22 real property regardless of whether the decedent's spouse or any child of the decedent
23 is alive.

24 **SECTION 24.** 49.849 (7) of the statutes is amended to read:

1 49.849 (7) RULES FOR HARDSHIP WAIVER. The department shall promulgate rules
2 establishing standards to determine whether the application of this section would
3 work an undue hardship in individual cases. If the department determines that the
4 application of this section would work an undue hardship in a particular case, the
5 department shall waive the application of this section in that case. This subsection
6 does not apply with respect to the recovery of aid under s. 49.785.

7 **SECTION 25.** 632.697 of the statutes is amended to read:

8 **632.697 Benefits subject to department's right to recover.** Death
9 benefits payable under a life insurance policy or an annuity are subject to the right
10 of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682,
11 or 49.849 an amount equal to the medical assistance that is recoverable under s.
12 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785 that
13 is recoverable under s. 49.682 (2) (a) or (am), or an amount equal to long-term
14 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
15 1. and that was paid on behalf of the deceased policyholder or annuitant.

16 **SECTION 26.** 705.04 (2g) of the statutes is amended to read:

17 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health
18 services may collect, from funds of a decedent that are held by the decedent
19 immediately before death in a joint account or a P.O.D. account, an amount equal to
20 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal
21 to aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785 that is recoverable under s. 49.682
22 (2) (a) or (am), or an amount equal to long-term community support services under
23 s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of
24 the decedent or the decedent's spouse.

25 **SECTION 27.** 859.07 (2) (a) 3. of the statutes is amended to read:

1 859.07 (2) (a) 3. The decedent or the decedent's spouse received services
2 provided as a benefit under a long-term care program, as defined in s. 49.496 (1) (bk),
3 medical assistance under subch. IV of ch. 49, long-term community support services
4 funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785.

5 **SECTION 28.** 867.01 (3) (am) 4. of the statutes is amended to read:

6 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received
7 services provided as a benefit under a long-term care program, as defined in s. 49.496
8 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
9 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683 ~~or 49.685,~~ or 49.785.

10 **SECTION 29.** 867.01 (3) (d) of the statutes is amended to read:

11 867.01 (3) (d) *Notice.* The court may hear the matter without notice or order
12 notice to be given under s. 879.03. If the decedent or the decedent's spouse received
13 services provided as a benefit under a long-term care program, as defined in s. 49.496
14 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
15 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785,
16 the petitioner shall give notice by certified mail to the department of health services
17 as soon as practicable after filing the petition with the court.

18 **SECTION 30.** 867.02 (2) (am) 6. of the statutes is amended to read:

19 867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received
20 services provided as a benefit under a long-term care program, as defined in s. 49.496
21 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
22 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785.

23 **SECTION 31.** 867.03 (1g) (c) of the statutes is amended to read:

24 867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received
25 services provided as a benefit under a long-term care program, as defined in s. 49.496

1 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
2 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683 ~~or~~, 49.685, or 49.875.

3 **SECTION 32.** 867.03 (1m) (a) of the statutes is amended to read:

4 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the
5 decedent at the time of the decedent's death intends to transfer a decedent's property
6 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received
7 services provided as a benefit under a long-term care program, as defined in s. 49.496
8 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community support
9 services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, ~~or~~ 49.685, or 49.785,
10 the heir, trustee, or person who was guardian of the decedent at the time of the
11 decedent's death shall give notice to the department of health services of his or her
12 intent. The notice shall include the information in the affidavit under sub. (1g) and
13 the heir, trustee, or person who was guardian of the decedent at the time of the
14 decedent's death shall give the notice by certified mail, return receipt requested.

15 **SECTION 33.** 867.03 (1m) (b) of the statutes is amended to read:

16 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent
17 at the time of the decedent's death who files an affidavit under sub. (1g) that states
18 that the decedent or the decedent's spouse received services provided as a benefit
19 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance
20 under subch. IV of ch. 49, long-term community support services funded under s.
21 46.27 (7), or aid under s. 49.68, 49.683, ~~or~~ 49.685, or 49.785 shall attach to the
22 affidavit the proof of mail delivery of the notice required under par. (a) showing the
23 delivery date.

24 **SECTION 34.** 867.03 (2g) (b) of the statutes is amended to read:

