### Dodge, Tamara

From:

Handrick, Diane

Sent:

To: Subject: Attachments: Tuesday, May 16, 2017 2:59 PM Dodge, Tamara P draft to a /1 17-1197\_P2.pdf

Follow Up Flag:

FollowUp Flagged

Flag Status:

Hi, Tamara. Can we please get a /1 for this? Thank you. (and just checking...this is the most recent version of this bill, correct? I inherited this from my former coworker.)

Thanks!

**Diane Handrick** Office of Representative Dave Murphy

608-266-7500 Room 318 North, State Capitol Madison WI 53708

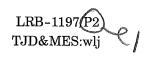


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## State of Misconsin 2017 - 2018 LEGISLATURE



## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



AN ACT to create 20.435 (7) (tf), 20.435 (7) (th), 20.435 (7) (tj), 20.435 (7) (tL),

20.435 (7) (tn), 20.435 (7) (tp), 25.776, 25.777, 25.778, 71.05 (6) (b) 53., 71.05 (6)

(b) 54., 71.05 (6) (b) 55., 71.07 (5) (a) 10., 146.92 and 815.18 (3) (q) of the statutes;

relating to: long-term care investment accounts and making appropriations.

### Analysis by the Legislative Reference Bureau

This bill requires the Department of Health Services to establish a long-term care investment program that is administered and promoted by a manager, for which investments are made by a manager, and that allows an account owner—an individual, a married couple, domestic partners, or a trust—to establish a long-term care investment account to cover long-term care costs. The program's functions of administration, promotion, and investment are performed by one manager or multiple managers performing any combination of the functions. The bill creates a procedure for the selection of a manager and the execution of a contract with that manager and establishes criteria on provisions to be included in the contract with a manager.

Under the bill, an account owner must meet certain criteria, including having attained the age of 18, except for persons designated by a trust, and being listed on the account application. An account owner may contribute to a long-term care investment account or may authorize another person to contribute.

The bill provides that any amount contributed to an account each year, up to \$5,500, or \$8,500 for those over age 50, is exempt from taxation, as is any interest, dividends, or other gain that accrues in the account if such amounts are redeposited

into the account. Amounts withdrawn from the account are also exempt from taxation if the withdrawal is for a qualified use. Beginning in 2018, these dollar amounts are indexed for inflation. Amounts contributed to an account that exceed the maximum amount that is eligible for the tax exemption may be carried forward to the next taxable year. Also under the bill, in calculating the itemized deductions credit, a claimant may not include unreimbursed medical expenses to the extent that such expenses were paid with amounts withdrawn from an account.

The bill also allows the account owner to select or change the beneficiary, and to transfer all or a portion of the account to another account. An account terminates upon the death of the individual account owners, and the proceeds of the account are distributed to a beneficiary, if named by the account owner. A beneficiary may retain the account as a long-term care investment account and becomes the account owner if the beneficiary meets the criteria to be an account owner.

An individual account owner is not eligible for Medical Assistance programs, including certain long-term care programs and Family Care, until the individual spends down the income and assets in the account to a level that would qualify for eligibility for the applicable program. For programs other than Medical Assistance and other programs that provide long-term care services, any person who is determining eligibility for a state or federal program must exclude from the determination any income from or assets accumulated in an account for the account owner, except this exclusion does not apply to eligibility for federal programs unless the federal government approves.

The bill specifies certain uses of account funds that are considered qualified uses. Before a use of account funds is considered a qualified use, a licensed or certified health care professional must submit documentation to the manager that one of the events or conditions specified in the bill has occurred. Payment of a premium for long-term care insurance that meets criteria set by the manager is a qualified use without documentation of one of the specified events or conditions.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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:

- SECTION 1. 20.005(3) (schedule) of the statutes: at the appropriate place, insert
- 2 the following amounts for the purposes indicated:

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2017-18 2018-19

### 20.435 Health services, department of

### (7) DISABILITY AND ELDER SERVICES

(th)	Administrative expenses; long-				
	term care investment trust fund	SEG	A	42,000	42,000
(tL)	Administrative expenses; long-				
	term care investment bank				
	deposit trust fund	SEG	A	42,000	42,000
(tp)	Administrative expenses; long-				
	term care investment credit				
	union deposit trust fund	SEG	A	41,000	41,000

\*\*\*\*NOTE: I created the amounts in the schedule by taking the total amount (\$500,000) in a previous version of this draft and dividing it roughly by 6 to get the administrative expenses. Please let me know if you want different amounts.

**Section 2.** 20.435 (7) (tf) of the statutes is created to read:

20.435 (7) (tf) Payment of qualified long-term care expenses and refunds; long-term care investment trust fund. From the long-term care investment trust fund, a sum sufficient for the payment of qualified use expenses and refunds under s. 146.92.

**SECTION 3.** 20.435 (7) (th) of the statutes is created to read:

20.435 (7) (th) Administrative expenses; long-term care investment trust fund. From the long-term care investment trust fund, the amounts in the schedule for the administrative expenses of the long-term care investment program under s. 146.92, including the expense of promoting the program.

\*\*\*\*NOTE: Please note that this draft replicates all of the appropriations that are used for the EdVest program.

	used to the Edvest program:
1	Section 4. 20.435 (7) (tj) of the statutes is created to read:
2	20.435 (7) (tj) Payment of qualified long-term care expenses and refunds;
3	long-term care investment bank deposit trust fund. From the long-term care
4	investment bank deposit trust fund, a sum sufficient for the payment of qualified use
5	expenses and refunds under s. 146.92.
6	Section 5. 20.435 (7) (tL) of the statutes is created to read:
7	20.435 (7) (tL) Administrative expenses; long-term care investment bank
8	deposittrustfund. From the long-term care investment bank deposit trust fund, the
9	amounts in the schedule for the administrative expenses of the long-term care
10	investment program under s. 146.92, including the expense of promoting the
11	program.
12	<b>Section 6.</b> 20.435 (7) (tn) of the statutes is created to read:
13	20.435 (7) (tn) Payment of qualified long-term care expenses and refunds;
14	long-term care investment credit union deposit trust fund. From the long-term care
15	investment credit union deposit trust fund, a sum sufficient for the payment of
16	qualified use expenses and refunds under s. 146.92.
17	Section 7. 20.435 (7) (tp) of the statutes is created to read:
18	20.435 (7) (tp) $Administrative$ expenses; $long$ -term $care$ investment $credit$ $union$
19	deposit trust fund. From the long-term care investment credit union deposit trust
20	fund, the amounts in the schedule for the administrative expenses of the long-term
21	care investment program under s. 146.92, including the expense of promoting the
22	program. $(1)(\hat{j})$
23	SECTION 8. 25/776 of the statutes is created to read:
	SECTIONI#1. 25.17 of the statutes is created to read!
	SECTION 8. 25,776 of the statutes is created to read:  SECTION #1. 25.17 of the statutes is created to read:  25.17(1) (jn) Long-term care investment trust fund; bank deposit trust fund, and credit union deposit trust fund (55.25.776, 25.777, and

25.776 Long-term care investment trust fund. There is established a separate nonlapsible trust fund designated as the long-term care investment trust fund, consisting of all revenue from enrollment fees for and contributions to long-term care investment accounts under s. 146.92 and from distributions and fees paid by the vendor under s. 146.92 other than revenue from those sources that is deposited into the long-term care investment bank deposit trust fund or the long-term care investment credit union deposit trust fund.

**Section 9.** 25.777 of the statutes is created to read:

25.777 Long-term care investment bank deposit trust fund. There is established a separate nonlapsible trust fund designated as the long-term care investment bank deposit trust fund, consisting of all revenue from enrollment fees for and contributions to long-term care investment accounts under s. 146.92 in which the investment instrument is an account held by a state or national bank, a state or federal savings bank, a state or federal savings and loan association, or a savings and trust company that has its main office or home office or a branch office located in this state and that is insured by the Federal Deposit Insurance Corporation, and all revenue from distributions and fees paid by the vendor of those investment instruments under s. 146.92.

**Section 10.** 25.778 of the statutes is created to read:

25.778 Long-term care investment credit union deposit trust fund. There is established a separate nonlapsible trust fund designated as the long-term care investment credit union deposit trust fund, consisting of all revenue from enrollment fees for and contributions to long-term care investment accounts under s. 146.92 in which the investment instrument is an account held by a state or federal credit union, including a corporate central credit union organized under s. 186.32.

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that has its main office or home office or a branch office located in this state and that
is insured by the National Credit Union Administration, and all revenue from
distributions and fees paid by the vendor of those investment instruments under s.
146.92.

**Section 11.** 71.05 (6) (b) 53. of the statutes is created to read:

71.05 (6) (b) 53. a. Subject to subd. 53. b. and c., each year, and for each account to which a claimant contributes, an amount of up to \$5,500 that is deposited by a claimant into an account described under s. 146.92, and any interest, dividends, or other gain that accrues in the account if the interest, dividends, or other gain is redeposited into the account. Any amount that is paid into an account under this subdivision that exceeds the maximum amount that may be subtracted under this subdivision may be carried forward to the next taxable year, and thereafter, subject to the limitations in this subdivision.

b. If a claimant is more than 50 years of age during the calendar year in which the claimant makes a deposit into an account as described in subd. 53. a., the maximum amount that may be subtracted each year and for each account under subd. 53. a. is \$8,500.

c. For taxable years beginning after December 31, 2017, the dollar amounts in subd. 53. a. and b. shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August 2016, as determined by the federal department of labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this subd. 53.

c. shall be rounded to the nearest multiple of \$10 if the revised amount is not a
multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be
increased to the next higher multiple of \$10. The department of revenue shall
annually adjust the changes in dollar amounts required under this subd. 53. c. and
incorporate the changes into the income tax forms and instructions.
<b>Section 12.</b> 71.05 (6) (b) 54. of the statutes is created to read:
71.05 (6) (b) 54. Any amount that is withdrawn from an account described
under s. 146.92 that is transferred to another account described under s. 146.92.
Section 13. 71.05 (6) (b) 55. of the statutes is created to read:
71.05 (6) (b) 55. Any amount that is withdrawn from an account described
under s. 146.92 if the withdrawal is for a qualified use under s. 146.92 (6).
Section 14. 71.07 (5) (a) 10. of the statutes is created to read:
71.07 (5) (a) 10. The amount claimed as a deduction for unreimbursed medical
expenses under section 213 (a) of the Internal Revenue Code to the extent that the
funds used to pay for the unreimbursed expenses for which the deduction was
claimed were withdrawn from an account described under s. 146.92.
<b>Section 15.</b> 146.92 of the statutes is created to read:
146.92 Long-term care investment program. (1) Definitions. In this
section:
(a) "Account owner" means an individual, a married couple, or domestic
partners under ch. 770, who apply for and establish, or a trust other than a special
needs trust that applies for and establishes, a long-term care investment account
under this section.

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care costs.

1	(b) "Beneficiary" means an individual, a married couple, or domestic partners
2	under ch. 770, to whom any funds remaining in a long-term care investment account
3	pass upon the death of the individual account owners.
4	(c) "Designee of a trust" means the person designated under sub. (5) (g) by a
5	trust instrument or the trustee of a trust that is an account owner. If the person so
6	designated is a married couple or domestic partnership, "designee of a trust" also
7	means either spouse or partner.
8	(d) "Individual account owner" means any of the following:
9	1. In the case of an individual who is an account owner, that individual.
10	2. In the case of a married couple that is an account owner, either spouse.
11	3. In the case of domestic partners under ch. 770 that are an account owner,
12	either domestic partner.
13	4. In the case of a trust that is an account owner, the trust instrument or trustee
14	of the trust.
15	(e) "Manager" means a person that has contracted with the department under
16	sub. (4) to perform the function of investing moneys for, administering, or promoting
17	the long-term care investment program or performing any combination of those
18	functions.
19	(2) Program establishment; rules; information. (a) The department shall
20	establish a long-term care investment program that is administered and promoted
21	by a manager, for which investments are made by a manager, and that allows an

account owner to establish a long-term care investment account to cover long-term

- (b) The department shall keep personal and financial information it has pertaining to an account owner, a designee of a trust, or a beneficiary closed to the public.
- (3) Selection of Manager. (a) The secretary shall form a committee to recommend a manager and propose a contract to perform investment, administration, and promotion functions for the long-term care investment program. The department shall enter either one contract with one manager for all functions of investment, administration, and promotion for the long-term care investment program or multiple contracts with managers to perform one or more functions. The selection and contracting for each manager shall follow the procedure under this subsection.
- (b) The committee formed under par. (a) shall consist of 3 representatives from the investment board; one representative from the Wisconsin Aging Advocacy Network if the network exists or one representative from an aging advocacy organization if the network does not exist; and one representative from a disability advocacy organization. The secretary shall select as chairperson of the committee one of the representatives from the investment board. The committee shall recommend to the secretary a manager and propose a contract to be finalized by the manager and the secretary. The committee shall consider as a manager an entity that has a contract as a vendor of the college savings program under s. 16.255. The secretary shall accept or reject the recommended manager. If the secretary rejects the recommended manager, the committee shall recommend another manager until the secretary accepts the manager. The secretary shall dissolve the committee once a manager for each function described under par. (a) has been accepted.

(4) Contract with manager; disclosure requirement. (a) The department's
contract with a manager under sub. (3) shall include provisions establishing all of
the following, as applicable to the function that the manager is performing for the
long-term care investment program:

- 1. The manager's compensation including any management fee.
- 2. The fees, if any, the manager proposes to charge account owners.
- 3. That the manager performing the administrative function reimburses the state for all administrative costs that the state incurs for the long-term care investment program.
- 4. That each account owner has electronic access to long-term investment account information and receives a quarterly statement that identifies the contributions to the long-term care investment account during the preceding quarter, the total contributions to and the value of the long-term care investment account through the end of the preceding quarter, and any distributions made during the preceding quarter.
- 5. That each account owner receives an annual statement that identifies the contributions made to, the distributions made from, and the value of the long-term care investment account through the end of the preceding calendar year.
- 6. The powers and duties of the manager to perform the applicable function of investment, administration, or promotion.
- 7. Any additional, beneficial services provided by the manager to augment the long-term care investment account program.
- 8. The minimum initial contribution, if any, that the manager requires for a long-term care investment account. The manager may waive an initial contribution if the account owner agrees to contribute to a long-term care investment account

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- through a payroll deduction or automatic deposit plan. The manager shall ensure that any automatic deposit plan permits the adjustment of scheduled deposits because of a change in the account owner's economic circumstances.
  - (b) A manager shall disclose to the department any interest that it or an owner, stockholder, partner, officer, director, member, employee, or agent of the manager has in a business or fund in which the manager invests.
  - (c) The contract requirements under s. 16.705 and the low bid and bid solicitation requirements under s. 16.75 do not apply to the procedure under sub. (3) and any contract under this subsection.

\*\*\*\*NOTE: If the EdVest vendor is unwilling or unable to contract for this program or if the committee rejects that vendor, did you want a competitive sealed bidding process?

- (5) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; WITHDRAWALS; TERMINATION OF INVESTMENT ACCOUNTS. (a) Each application for a long-term care investment account shall meet all of the following criteria:
- 1. The account owner is an individual, a married couple, domestic partners under ch. 770, or a trust other than a special needs trust.
- 2. Each individual account owner has attained the age of 18, unless the account owner is a trust.
- 3. Each individual account owner is a citizen of the United States or has United States permanent resident status, unless the account owner is a trust.
- 4. Each individual account owner, and each designee of a trust if a trust is the account owner, is listed on the application.
  - (b) An account owner may do all of the following:
- 1. Contribute to a long-term care investment account or authorize a person to contribute to the account.

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- 3. Transfer all or a portion of a long-term care investment account to another long-term care investment account at the choice of the account owner.
  - (c) An account owner may use a long-term care investment account to pay long-term care costs of any individual account owner or designee of a trust.
  - (d) 1. A guardian, as defined in s. 54.01 (10), may establish a long-term care investment account on behalf of an account owner who is the guardian's ward and may act on behalf of the account owner for all purposes under this subsection.
  - 2. An individual may name an agent under a power of attorney, as defined in s. 244.02 (9), to act on behalf of him or her to establish an account with the individual as account owner and to act on behalf of the account owner for all purposes under this subsection.
  - (e) 1. A long-term care investment account terminates upon the death of the individual account owners, or, if applicable, upon the occurrence of the event designated under par. (g), and the proceeds of the account are distributed to the beneficiary, including any primary, secondary, or contingent beneficiary, if named by the account owner on a form created by the manager. If no beneficiary is named, the proceeds are distributed to the individual account owner's estate, or, if applicable, the estate of the designee of a trust, and the estate is liable for any income taxes due on the distribution.
  - 2. If a beneficiary obtains the proceeds of the account upon the death of the individual account owners, the beneficiary may retain the account as a long-term care investment account and becomes the account owner if the beneficiary meets the criteria under par. (a). If the beneficiary does not retain the long-term care investment account and instead liquidates the account, the beneficiary is liable for

- any income taxes due on the proceeds. A beneficiary may disclaim the proceeds of the account.
- 3. For purposes of this paragraph, a trust may be designated as a beneficiary or a beneficiary may designate a trust to be an account owner.
- (f) For purposes of establishing a long-term care investment account and for purposes under this subsection, an act of an account owner that is a married couple or domestic partnership requires the affirmative consent of both individual account owners of the couple or partnership except that a qualified use of long-term care investment account funds may be made by an individual account owner of the couple or partnership. For a long-term care investment account that has already been established, an account owner that is a married couple or domestic partnership may authorize, using a form created by the manager, an individual account owner to act on behalf of the account owner that is a couple or partnership.
- (g) At the time a long-term care investment account is established for an account owner that is trust, the trust instrument or a trustee acting on behalf of the trust must designate an individual, married couple, or domestic partnership for whom qualified use of long-term care investment account funds may be made and an event that terminates the long-term care investment account under par. (e). The individual, married couple, or domestic partnership designated in the trust instrument or by the trustee for qualified use of long-term care investment account funds shall meet the requirements under par. (a) for an account owner, except that a designated individual does not need to have attained the age of 18.
- (6) QUALIFIED USES OF ACCOUNT FUNDS. (a) Before a qualified use of long-term care investment account funds may be made under par. (b), a licensed or certified health care professional, such as a physician, nurse, or social worker, shall submit

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#### SECTION 15

L .	to the applicable manager on behalf of the account owner written documentation of
2	one of the following events or conditions:

- 1. Admission to a medical or long-term care facility, including at a hospital, skilled nursing facility, rehabilitation facility, nursing home, hospice care facility, or mental health care facility, that is expected to last at least 90 days.
- 2. Admission to an assisted living facility that is expected to last at least 90 days.
  - 3. Need for home health care for at least 90 days.
- 4. Need for inpatient or outpatient mental health services that is expected to last at least 90 days.
- 5. Need for durable medical equipment the use of which is expected to last at least 90 days.
  - 6. Need for care in the home to assist with personal care, meal preparation, housekeeping, medications, and money management for at least 90 days.
    - 7. Need for staff or assistance to allow for caregiver respite.
  - 8. Need for transportation assistance to medical appointments that is expected to last at least 90 days.
  - 9. Need for funeral planning upon the death of an individual account owner or designee of a trust as indicated by a death certificate.
  - 10. Need for other long-term care services determined acceptable by a team of benefit specialists.
  - (b) Except as provided in pars. (c) and (d), the manager shall consider as qualified uses of long-term care investment account funds only all of the following:
    - 1. In-home, long-term care services.
    - 2. Payment of room and board in facilities specified in par. (a) 1. or 2.

- 3. Caregiver respite services.
  - 4. Transportation to medical appointments.
- 5. Other long-term care services as considered appropriate by a licensed or certified health care professional, such as a physician, nurse, or social worker, of an individual account owner or designee of a trust.
  - 6. Equipment necessary for quality of life.
  - 7. Funeral expenses or estate expenses of a deceased individual account owner or designee of a trust.
    - 8. Medical expenses not covered by another payer.
    - (c) The manager shall consider as a qualified use of long-term care investment account funds payment of a premium for long-term care insurance that meets criteria set by the department, in consultation with the office of the commissioner of insurance, without documentation of an event or condition described under par. (a).
    - (d) An expense that is paid by health insurance or a public benefit program is not a qualified use of long-term care investment account funds. An account owner shall seek any coverage by his or her health insurance policy or plan or a public benefit program before using long-term care investment account funds. An account owner may use long-term care investment account funds for copayments, coinsurance, or deductibles for which the account owner would be responsible to pay out-of-pocket.
  - (e) The manager shall establish a procedure for making payments directly to a 3rd party for a qualified use.
  - (7) CONTRACTS WITH PROFESSIONALS. A manager may enter into a contract for the services of accountants, attorneys, consultants, and other professionals to assist in the administration and evaluation of the long-term care investment program.

- (8) Report. Annually, each manager shall submit to the department a report on the performance of the long-term care investment program, including any recommended changes to the program. The department shall compile the reports, if necessary, and make the report available on the department's Internet site and shall submit the report to the appropriate standing committees of the legislature under s. 13.172 (3).
- (9) Construction. Nothing in this section guarantees a rate of interest or return on a long-term care investment account or the payment of principal, interest, or return on a long-term care investment account.
- (10) EXEMPTION FROM GARNISHMENT, ATTACHMENT, AND EXECUTION; SECURITY FOR LOAN. (a) An account owner's right to qualified withdrawals under this section is not subject to garnishment, attachment, execution, or other process of law.
- (b) No interest in a long-term care investment account may be pledged as security for a loan.
- (11) ELIGIBILITY FOR PUBLIC ASSISTANCE PROGRAMS. (a) An individual account owner or designee of a trust is not eligible for Medical Assistance under subch. IV of ch. 49, a long-term care program under s. 46.27, 46.275, or 46.277, the Family Care benefit under s. 46.286, the Family Care Partnership program, or the long-term care program defined in s. 46.2899 (1) until the individual first spends down the income and assets from the long-term care investment account as necessary to meet the eligibility requirements of the applicable program.
- (b) Any person who is determining eligibility for a program that is not described in par. (a) and does not provide long-term care services shall exclude from the determination any income from or assets accumulated in a long-term care investment account for the account owner or designee of a trust created under this

1	section. This paragraph does not apply to determination of eligibility for a federal
2	program unless approved by the federal government.
3	SECTION 16. 815.18 (3) (q) of the statutes is created to read:
4	815.18 (3) (q) Long-term care investment accounts. An interest in a long-term
5	care investment account under s. 146.92.
6	Section 17. Initial applicability.
7	(1) The treatment of sections $71.05$ (6) (b) $53.$ , $54.$ , and $55.$ and $71.07$ (5) (a) $10.$
8	of the statutes first applies to taxable years beginning on January 1, 2017.
	****Note: If this bill is not enacted by approximately August 1, 2017, the dates in this section and in s. 71.05 (6) (b) 53. c. will need to be advanced because DOR will have printed the tax forms for taxable year 2017.

(END)

# Barman, Mike

From:

Handrick, Diane

Sent:

Thursday, October 12, 2017 10:34 AM

To:

LRB.Legal

Subject:

Draft Review: LRB -1197/1

Please Jacket LRB -1197/1 for the ASSEMBLY.