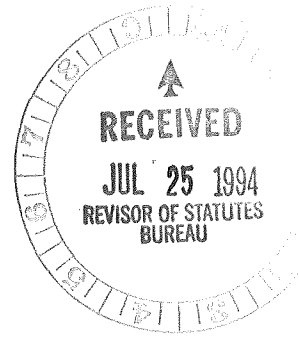


CR 93-239



CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed emergency rules relating to when transfer of resources to an annuity fund is a form of prohibited divestment under the Medical Assistance program were duly approved and adopted by this Department on July 25, 1994.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 25th day of July, 1994.

SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

9-1-94

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
RENUMBERING AND CREATING RULES

To renumber HSS 103.065(3)(a) to (e) and to create HSS 103.065(3)(a), (c), (e), (h) and (i) and 103.065(4)(at), relating to when divestment of resources is a barrier to eligibility for Medical Assistance.

Analysis Provided by the Department of Health and Social Services

To be eligible for Medical Assistance (MA) an applicant or recipient may not have more resources than are permitted under s.49.455, Stats., and s.49.46(1)(e) or 49.47(4)(b), Stats. In practice an applicant or recipient often attempts to meet asset eligibility limits by selling or giving away resources for less than fair market value. This is called divestment. There are restrictions on divestment.

This proposed rulemaking order implements a new restriction on divestment found in s.49.45(17)(e), Stats., as created by 1993 Wisconsin Act 16, and subsequently renumbered s.49.453(4), Stats., and amended by 1993 Wisconsin Act 437. On or after October 1, 1993, a transfer of funds to an irrevocable annuity by an institutionalized individual, his or her spouse or another individual acting on behalf of the institutionalized individual or his or her spouse, in an amount that exceeds the expected value of the benefit will be considered divestment. The amount of resources that is divested is the amount by which the transferred amount exceeds the expected value of the benefit. Under s.49.453(4)(c), Stats., the Department is directed to promulgate rules specifying the method to be used in calculating the expected value of the benefit. The Department is further directed to use Internal Revenue Service (IRS) life expectancy tables found at 26 CFR 1.72-1 to 1.72-18 in calculating the expected value of the benefit.

The proposed rules contained in this order direct economic support agencies to use the MA Divestment-Annuities Life Expectancy Tables developed by the Department and included in the Division of Economic Support's Medical Assistance Handbook to determine an applicant's or recipient's life expectancy or his or her spouse's life expectancy. Table I, based on IRS Table I found at 26 CFR 1.72-9, shows the age at which a male or female chooses the settlement option for his or her annuity and the life expectancy for that individual at that age. Table II, based on IRS Table II found at 26 CFR 1.72-9, shows the ages at which the joint annuitants chose a settlement option for their joint annuity and the life expectancy for individuals of that age and estimated remaining years of life based on those ages at which

the joint annuitants chose the settlement option. The age at which the individual or individuals chose the settlement option for annuitization and the individual's or joint annuitants' gender are factors used to calculate the estimated remaining years of life. The agency is directed to adjust the expected value of the benefits if it receives a physician's statement which states that the applicant or recipient or his or her spouse had a medical condition diagnosed before the funds were transferred to an irrevocable annuity which would shorten his or her life expectancy.

The Department's authority to renumber and create these rules is found in s.49.45(10), Stats., and in s.49.45(17)(e)3, Stats., as created by 1993 Wisconsin Act 16, and subsequently renumbered s.49.453(4)(c), Stats., and amended by 1993 Wisconsin Act 437. The rules interpret s.49.45(17)(e)3, Stats., as created by 1993 Wisconsin Act 16, and subsequently renumbered s.49.453(4)(c), Stats., and amended by 1993 Wisconsin Act 437.

SECTION 1. HSS 103.065(3)(a) to (e) are renumbered HSS 103.065(3)(b), (d), (f), (g) and (j).

SECTION 2. HSS 103.065(3)(a), (c), (e), (h) and (i) are created to read:

HSS 103.065(3)(a) "Annuity" means a written contract under which, in return for payment of a premium or premiums, an individual or individuals have the right to receive fixed, periodic payments for life or up to a fixed point in time.

(c) "Expected value of the benefit" means the amount that a an irrevocable annuity will pay to a primary annuitant or to joint annuitants during his or her expected lifetime.

(e) "Joint annuitants" means the institutionalized individual and his or her spouse named as the payees under an annuity.

(h) "MA eligibility handbook" means the medical assistance program handbook issued by the department's division of economic support for use by agencies in determining eligibility for MA.

(i) "Primary annuitant" means the first individual, which may be either the institutionalized individual or his or her spouse, to receive payment from an annuity.

SECTION 3. HSS 103.065(4)(at) is created to read:

HSS 103.065(4)(at) Transfer of resources to an irrevocable annuity on or after October 1, 1993. 1. Whenever an institutionalized individual or his or her spouse, or another person acting on behalf of the institutionalized individual or

his or her spouse, transfers funds on or after October 1, 1993, to an irrevocable annuity in an amount that exceeds the expected value of the benefit, the institutionalized individual or his or her spouse shall be determined to have divested.

2. The agency shall determine the amount of the divestment under subd. 1 by:

a. Determining the life expectancy of the primary annuitant or joint annuitants using the life expectancy tables included in the MA eligibility handbook. Table I shows the age at which the male or female institutionalized individual chose the settlement option for annuitization, life expectancy for an individual of that age, and estimated remaining years of life based on the age at which the institutionalized individual chose the settlement option. Table II shows the ages at which both the male and female joint annuitants chose the settlement option for annuitization, life expectancy for each individual of that individual's age, and estimated remaining years of life based on the ages at which the joint annuitants chose the settlement option; and

b. Adding together the amount of all the payments from the irrevocable annuity scheduled to be made after the month in which the primary annuitant's age or joint annuitants' ages exceed the estimated remaining years of life. The divested amount is the sum of all the payments to be made from the irrevocable annuity after the month in which the primary annuitant's age or joint annuitants' ages exceed the estimated remaining years of life.

Note: For a copy of the life expectancy tables included in the MA eligibility handbook, write the Bureau of Welfare Initiatives, Division of Economic Support, P.O. Box 7935, Madison, WI 53707.

3. If the agency receives a physician's statement which states that the primary annuitant or joint annuitant had a diagnosed medical condition which would shorten his or her life expectancy and that the medical condition was diagnosed before the institutionalized individual, his or her spouse, or someone acting on behalf of the institutionalized individual or his or her spouse transferred funds to an irrevocable annuity, the agency shall determine the expected value of the benefits based upon the physician's statement instead of using a life expectancy table as provided under subd. 2.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Date: July 25, 1994

By:



Gerald Whitburn
Secretary

SEAL: