



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0749/2  
TJD:kjf:jf

DOA:.....Iwata, BB0289 - Alter divestment provisions to prevent individuals with sufficient financial means from being eligible for Medical Assistance

**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION**

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

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*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. Eligibility for certain MA programs, especially those providing long-term care services, involves satisfying certain income and asset requirements. An individual who divests income or assets, or disposes of income or assets for less than fair market value, may be ineligible for a MA program for a certain period of time. This bill makes various changes to the laws regarding divestment and financial eligibility for MA programs.

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 the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. An institutionalized individual, under current law, is an individual who is an inpatient in a nursing facility or a medical institution or an individual who meets certain criteria and would require the level of care provided in a hospital,

nursing facility, or intermediate care facility for persons with an intellectual disability if the individual was not receiving certain home-based or community-based services. A noninstitutionalized individual, under current law, is an individual who is receiving home health services, home and community care services as a functionally disabled elderly individual, or certain personal care services provided by a qualified provider in the individual's home or other noninstitutional location. The bill specifies that an ineligibility period applies for an institutionalized or noninstitutionalized individual regardless of whether the assets transferred for less than fair market value are considered excluded assets, if retained, under federal law.

Under current law, one of the exceptions DHS is required to make from imposing an ineligibility period for the transfer of assets for less than fair market value applies if the assets are exempt under federal law. The bill specifies that to make a satisfactory showing to the state to meet one of the federal exemptions and to adjust the ineligibility period, the individual must demonstrate that all of the assets, or cash equal to the value of the assets, that were transferred at less than fair market value have been returned to him or her.

Current law specifies a method for determining the starting date for a period of ineligibility for MA resulting from a divestment. This bill specifies that the current law method for determining the starting date for a period of ineligibility applies to applicants for MA. The bill sets as the starting date for a period of ineligibility for MA for an individual who is already receiving long-term care services through MA the first day of the month following the month in which the individual receives advance notice of that period of ineligibility.

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 triggers an ineligibility period 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 specifies that a promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of divestment and eligibility for MA.

Current law provides for protection of certain income and resources for a spouse who is not receiving long-term care services through MA, known as the community spouse, of an institutionalized individual. Under current law, after an institutionalized spouse is determined to be eligible for MA and during a continuous period of institutionalization, the resources of the community spouse are considered to be unavailable to the institutionalized spouse. This bill specifies that even though the community spouse's resources are considered unavailable the transfer of those resources or other assets by the community spouse within the first five years of eligibility for MA may result in a period of ineligibility for MA for the institutionalized spouse. The bill also allows DHS to deny MA eligibility to an institutionalized spouse if the institutionalized spouse and community spouse do not

provide the total value of their assets and information on income and resources to the extent required under federal law or do not sign the MA application.

Current law allows a community spouse to have a minimum monthly maintenance needs allowance and the community spouse is allowed a resource allowance to generate the income to provide the minimum monthly maintenance needs allowance. If either spouse establishes at a fair hearing that the resource allowance determined outside the fair hearing does not generate enough income to meet the minimum monthly maintenance needs allowance, DHS is required, under current law, to establish an amount that results in a sufficient minimum monthly maintenance needs allowance. The bill specifies that DHS must base the amount to be used to raise the income to the level of the minimum monthly maintenance needs allowance on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raise the community spouse's income to the minimum monthly maintenance needs allowance. The community spouse, however, is not required to actually purchase the annuity to receive the amount.

Under current law, certain individuals are eligible for MA for the medically indigent if they also meet limitations on income and resources. Eligibility for the program is contingent on the applicant's property not exceeding certain parameters. Certain applicants, under current law, are eligible only if the total face value of all of their life insurance policies that have a cash surrender value is \$1,500 or less. The bill changes this parameter such that those applicants are eligible only if the combined cash surrender value of all life insurance policies with cash surrender values, including riders and other attachments is \$1,500 or less.

The bill also changes the definition of financial institution for purposes of verifying the assets of applicants for and recipients of MA programs.

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

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

**SECTION 1.** 49.45 (4m) (a) 3. of the statutes is renumbered 49.45 (4m) (a) 3. (intro.) and amended to read:

49.45 (4m) (a) 3. (intro.) "Financial institution" ~~has the meaning given in 12 USC 3401 (1).~~ means any of the following:

**SECTION 2.** 49.45 (4m) (a) 3. a. to f. of the statutes are created to read:

49.45 (4m) (a) 3. a. A depository institution, as defined in [12 USC 1813](#) (c).

b. An institution–affiliated party, as defined in [12 USC 1813](#) (u), of a depository institution under subd. 3. a.

c. A federal credit union, as defined in [12 USC 1752](#), or state credit union, as defined in [12 USC 1752](#).

d. An institution–affiliated party, as defined in [12 USC 1786](#) (r), of a credit union under subd. 3. c.

e. A benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this state.

f. A broker–dealer, as defined in s. 551.102 (4).

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

49.453 (2) (a) *Institutionalized individuals.* (intro.) Except as provided in sub. (8), if an institutionalized individual or his or her spouse, or another person acting on behalf of the institutionalized individual or his or her spouse, transfers assets; regardless of whether those assets, if retained, are excluded under [42 USC 1396p](#); for less than fair market value on or after the institutionalized individual’s look–back date, the institutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

**SECTION 4.** 49.453 (2) (b) (intro.) of the statutes is amended to read:

49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in sub. (8), if a noninstitutionalized individual or his or her spouse, or another person acting on behalf of the noninstitutionalized individual or his or her spouse, transfers assets; regardless of whether those assets, if retained, are excluded under [42 USC 1396p](#); for less than fair market value on or after the noninstitutionalized individual’s look–back date, the noninstitutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

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

49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins on either of the following for an applicant for Medical Assistance:

**SECTION 6.** 49.453 (3) (ag) of the statutes is created to read:

49.453 (3) (ag) The period of ineligibility under this subsection for a transfer of assets made at the time the individual is receiving long-term care services through Medical Assistance begins on the first day of the month following the month in which the individual receives advance notice of the period of ineligibility.

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

49.453 (4c) (c) A promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of this section.

**SECTION 8.** 49.453 (8) (a) 1. of the statutes is amended to read:

49.453 (8) (a) 1. The assets are exempt under [42 USC 1396p](#) (c) (2) (A), (B), or (C). To make a satisfactory showing to the state under [42 USC 1396p](#) (c) (2) (C) and adjust the ineligibility period under sub. (3), the individual shall demonstrate that all of the assets transferred for less than fair market value, or cash equal to the value of the assets transferred for less than fair market, have been returned to him or her.

**SECTION 9.** 49.455 (5) (title) of the statutes is amended to read:

49.455 (5) (title) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY.

**SECTION 10.** 49.455 (5) (d) of the statutes is amended to read:

49.455 (5) (d) During a continuous period of institutionalization, after an institutionalized spouse is determined to be eligible for medical assistance, no resources of the community spouse are considered to be available to the

institutionalized spouse, except that a transfer of those resources or other assets by the community spouse within the first 5 years of eligibility of the institutionalized spouse may result in a period of ineligibility under s. 49.453 (2) and (3) for the institutionalized spouse.

**SECTION 11.** 49.455 (5) (e) of the statutes is created to read:

49.455 (5) (e) The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.

**SECTION 12.** 49.455 (8) (d) of the statutes is renumbered 49.455 (8) (d) 1. and amended to read:

49.455 (8) (d) 1. If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6) (b) 1. to 2. or 4. without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c), the department shall establish, under subd. 2., an amount to be used under sub. (6) (b) 3. that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c).

3. Except in exceptional cases which would result in financial duress for the community spouse, the department may not establish an amount to be used under sub. (6) (b) 3. unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if the institutionalized spouse does not have sufficient income to make available to the

community spouse the maximum monthly income allowance permitted under sub. (4) (b), unless the institutionalized spouse makes all of his or her income, except for an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and the amount incurred as expenses for medical or remedial care for the institutionalized spouse under sub. (4) (a) 4., available to the community spouse as a community spouse monthly income allowance under sub. (4) (b).

**SECTION 13.** 49.455 (8) (d) 2. of the statutes is created to read:

49.455 (8) (d) 2. The department shall base the amount to be used under sub. (6) (b) 3. on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raises the community spouse's income to the minimum monthly maintenance needs allowance. Any resource, regardless of whether the resource generates income, may be transferred in an amount that, combined with the community spouse resource allowance calculated before the fair hearing, provides the community spouse with sufficient funds to purchase the annuity. The community spouse is not required to purchase an annuity to obtain this amount.

**SECTION 14.** 49.47 (4) (b) 2w. of the statutes is amended to read:

49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4., life insurance with cash surrender values if the ~~total face~~ combined cash surrender value of all life insurance policies, including riders and other attachments, is not more than \$1,500.

**SECTION 15.** 224.42 (1) (a) of the statutes is amended to read:

224.42 (1) (a) "Financial institution" has the meaning given in [12 USC 3401](#) (1) ~~s. 49.45 (4m) (a) 3.~~

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

(1) **MEDICAL ASSISTANCE DIVESTMENT; APPLICANTS.** The treatment of sections 49.453 (2) (a) (intro.) and (b) (intro.), (3) (a) (intro.), (4c) (c), and (8) (a) 1., 49.455 (5) (e), 49.47 (4) (b) 2w., and 224.42 (1) (a) of the statutes, the renumbering and amendment of sections 49.45 (4m) (a) 3. and 49.455 (8) (d) of the statutes, and the creation of sections 49.45 (4m) (a) 3. a. to f. and 49.455 (8) (d) 2. of the statutes first apply to determinations of initial eligibility for Medical Assistance for individuals who apply for Medical Assistance on the effective date of this subsection.

(2) **MEDICAL ASSISTANCE DIVESTMENT; RECIPIENTS.** The treatment of sections 49.453 (3) (ag) and 49.455 (5) (d) of the statutes first applies to a transfer of assets made by a recipient of Medical Assistance or a spouse of a recipient of Medical Assistance on the effective date of this subsection.

**(END)**