



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

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:

SECTION 1. 49.682 (title) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

867.03 (2g) (b) Property transferred under this section to or by an heir, trustee, or guardian is subject to the right of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, ~~or 49.685~~, or 49.785 that is recoverable under s. 49.682 (2) (a) or (am), or an amount equal to long-term community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's spouse. Upon request, the heir, trustee, or guardian shall provide to the department of health services information about any of the decedent's property that the heir, trustee, or guardian has distributed and information about the persons to whom the property was distributed.

SECTION 9318. Initial applicability; Health Services.

(1) FUNERAL EXPENSES AID; ESTATE RECOVERY AND REDUCTION FOR LIFE INSURANCE. The treatment of sections 49.682 (title), (1) (a) and (d), (2) (am), (bm) 1. and 2., and (c) (intro.), (3), (4) (a) and (b), and (5), 49.785 (1m) (d) and (2), 49.849 (1) (c) and (e), (2) (a) (intro.), 1., and 2., (3) (b) and (c) 5. and 6., (4) (b) (intro.) and (bm), and (7), 632.697, 705.04 (2g), 859.07 (2) (a) 3., 867.01 (3) (am) 4. and (d), 867.02 (2) (am) 6., and 867.03 (1g) (c), (1m) (a) and (b), and (2g) (b) of the statutes first applies to individuals receiving funeral, burial, and cemetery expenses aid who die on the effective date of this subsection.

(END)