



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5198/1
TJD&MES:wlj

2017 SENATE BILL 758

February 1, 2018 - Introduced by Senators MILLER, CARPENTER and RINGHAND, cosponsored by Representatives MURPHY, ANDERSON, PETRYK, MILROY, POPE, HEBL, SKOWRONSKI, BERCEAU, HORLACHER, SHANKLAND, VRUWINK, MEYERS, HESSELBEIN, SPIROS, SARGENT, SPREITZER, ZEPNICK and CONSIDINE. Referred to Committee on Revenue, Financial Institutions and Rural Issues.

1 **AN ACT** *to create* 20.435 (7) (tf), 20.435 (7) (th), 20.435 (7) (tj), 20.435 (7) (tL),
2 20.435 (7) (tn), 20.435 (7) (tp), 25.17 (1) (jn), 25.776, 25.777, 25.778, 71.05 (6)
3 (b) 53., 71.05 (6) (b) 54., 71.05 (6) (b) 55., 71.07 (5) (a) 10., 146.92 and 815.18 (3)
4 (q) of the statutes; **relating to:** long-term care investment accounts and
5 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,

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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 Amounts withdrawn from the account are also exempt from taxation if the withdrawal is for a qualified use.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:

1 **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

1 **20.435 Health services, department of**

2 (7) DISABILITY AND ELDER SERVICES

3 (th) Administrative expenses; long-
4 term care investment trust fund SEG A 42,000 42,000

5 (tL) Administrative expenses; long-
6 term care investment bank
7 deposit trust fund SEG A 42,000 42,000

8 (tp) Administrative expenses; long-
9 term care investment credit
10 union deposit trust fund SEG A 41,000 41,000

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

12 20.435 (7) (tf) *Payment of qualified long-term care expenses and refunds;*
13 *long-term care investment trust fund.* From the long-term care investment trust
14 fund, a sum sufficient for the payment of qualified use expenses and refunds under
15 s. 146.92.

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

17 20.435 (7) (th) *Administrative expenses; long-term care investment trust fund.*
18 From the long-term care investment trust fund, the amounts in the schedule for the
19 administrative expenses of the long-term care investment program under s. 146.92,
20 including the expense of promoting the program.

21 **SECTION 4.** 20.435 (7) (tj) of the statutes is created to read:

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1 20.435 (7) (tj) *Payment of qualified long-term care expenses and refunds;*
2 *long-term care investment bank deposit trust fund.* From the long-term care
3 investment bank deposit trust fund, a sum sufficient for the payment of qualified use
4 expenses and refunds under s. 146.92.

5 **SECTION 5.** 20.435 (7) (tL) of the statutes is created to read:

6 20.435 (7) (tL) *Administrative expenses; long-term care investment bank*
7 *deposit trust fund.* From the long-term care investment bank deposit trust fund, the
8 amounts in the schedule for the administrative expenses of the long-term care
9 investment program under s. 146.92, including the expense of promoting the
10 program.

11 **SECTION 6.** 20.435 (7) (tn) of the statutes is created to read:

12 20.435 (7) (tn) *Payment of qualified long-term care expenses and refunds;*
13 *long-term care investment credit union deposit trust fund.* From the long-term care
14 investment credit union deposit trust fund, a sum sufficient for the payment of
15 qualified use expenses and refunds under s. 146.92.

16 **SECTION 7.** 20.435 (7) (tp) of the statutes is created to read:

17 20.435 (7) (tp) *Administrative expenses; long-term care investment credit union*
18 *deposit trust fund.* From the long-term care investment credit union deposit trust
19 fund, the amounts in the schedule for the administrative expenses of the long-term
20 care investment program under s. 146.92, including the expense of promoting the
21 program.

22 **SECTION 8.** 25.17 (1) (jn) of the statutes is created to read:

23 25.17 (1) (jn) Long-term care investment trust fund, bank deposit trust fund,
24 and credit union deposit trust fund (ss. 25.776, 25.777, and 25.778);

25 **SECTION 9.** 25.776 of the statutes is created to read:

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1 **25.776 Long-term care investment trust fund.** There is established a
2 separate nonlapsible trust fund designated as the long-term care investment trust
3 fund, consisting of all revenue from enrollment fees for and contributions to
4 long-term care investment accounts under s. 146.92 and from distributions and fees
5 paid by the vendor under s. 146.92 other than revenue from those sources that is
6 deposited into the long-term care investment bank deposit trust fund or the
7 long-term care investment credit union deposit trust fund.

8 **SECTION 10.** 25.777 of the statutes is created to read:

9 **25.777 Long-term care investment bank deposit trust fund.** There is
10 established a separate nonlapsible trust fund designated as the long-term care
11 investment bank deposit trust fund, consisting of all revenue from enrollment fees
12 for and contributions to long-term care investment accounts under s. 146.92 in
13 which the investment instrument is an account held by a state or national bank, a
14 state or federal savings bank, a state or federal savings and loan association, or a
15 savings and trust company that has its main office or home office or a branch office
16 located in this state and that is insured by the Federal Deposit Insurance
17 Corporation, and all revenue from distributions and fees paid by the vendor of those
18 investment instruments under s. 146.92.

19 **SECTION 11.** 25.778 of the statutes is created to read:

20 **25.778 Long-term care investment credit union deposit trust fund.**
21 There is established a separate nonlapsible trust fund designated as the long-term
22 care investment credit union deposit trust fund, consisting of all revenue from
23 enrollment fees for and contributions to long-term care investment accounts under
24 s. 146.92 in which the investment instrument is an account held by a state or federal
25 credit union, including a corporate central credit union organized under s. 186.32,

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1 that has its main office or home office or a branch office located in this state and that
2 is insured by the National Credit Union Administration, and all revenue from
3 distributions and fees paid by the vendor of those investment instruments under s.
4 146.92.

5 **SECTION 12.** 71.05 (6) (b) 53. of the statutes is created to read:

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

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

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

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1 c. shall be rounded to the nearest multiple of \$10 if the revised amount is not a
2 multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be
3 increased to the next higher multiple of \$10. The department of revenue shall
4 annually adjust the changes in dollar amounts required under this subd. 53. c. and
5 incorporate the changes into the income tax forms and instructions.

6 **SECTION 13.** 71.05 (6) (b) 54. of the statutes is created to read:

7 71.05 (6) (b) 54. Any amount that is withdrawn from an account described
8 under s. 146.92 that is transferred to another account described under s. 146.92.

9 **SECTION 14.** 71.05 (6) (b) 55. of the statutes is created to read:

10 71.05 (6) (b) 55. Any amount that is withdrawn from an account described
11 under s. 146.92 if the withdrawal is for a qualified use under s. 146.92 (6).

12 **SECTION 15.** 71.07 (5) (a) 10. of the statutes is created to read:

13 71.07 (5) (a) 10. The amount claimed as a deduction for unreimbursed medical
14 expenses under section 213 (a) of the Internal Revenue Code to the extent that the
15 funds used to pay for the unreimbursed expenses for which the deduction was
16 claimed were withdrawn from an account described under s. 146.92.

17 **SECTION 16.** 146.92 of the statutes is created to read:

18 **146.92 Long-term care investment program. (1) DEFINITIONS.** In this
19 section:

20 (a) "Account owner" means an individual, a married couple, or domestic
21 partners under ch. 770, who apply for and establish, or a trust other than a special
22 needs trust that applies for and establishes, a long-term care investment account
23 under this section.

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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
22 account owner to establish a long-term care investment account to cover long-term
23 care costs.

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1 (b) The department shall keep personal and financial information it has
2 pertaining to an account owner, a designee of a trust, or a beneficiary closed to the
3 public.

4 **(3) SELECTION OF MANAGER.** (a) The secretary shall form a committee to
5 recommend a manager and propose a contract to perform investment,
6 administration, and promotion functions for the long-term care investment
7 program. The department shall enter either one contract with one manager for all
8 functions of investment, administration, and promotion for the long-term care
9 investment program or multiple contracts with managers to perform one or more
10 functions. The selection and contracting for each manager shall follow the procedure
11 under this subsection.

12 (b) The committee formed under par. (a) shall consist of 3 representatives from
13 the investment board; one representative from the Wisconsin Aging Advocacy
14 Network if the network exists or one representative from an aging advocacy
15 organization if the network does not exist; and one representative from a disability
16 advocacy organization. The secretary shall select as chairperson of the committee
17 one of the representatives from the investment board. The committee shall
18 recommend to the secretary a manager and propose a contract to be finalized by the
19 manager and the secretary. The committee shall consider as a manager an entity
20 that has a contract as a vendor of the college savings program under s. 16.255. The
21 secretary shall accept or reject the recommended manager. If the secretary rejects
22 the recommended manager, the committee shall recommend another manager until
23 the secretary accepts the manager. The secretary shall dissolve the committee once
24 a manager for each function described under par. (a) has been accepted.

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1 **(4) CONTRACT WITH MANAGER; DISCLOSURE REQUIREMENT.** (a) The department's
2 contract with a manager under sub. (3) shall include provisions establishing all of
3 the following, as applicable to the function that the manager is performing for the
4 long-term care investment program:

5 1. The manager's compensation including any management fee.

6 2. The fees, if any, the manager proposes to charge account owners.

7 3. That the manager performing the administrative function reimburses the
8 state for all administrative costs that the state incurs for the long-term care
9 investment program.

10 4. That each account owner has electronic access to long-term investment
11 account information and receives a quarterly statement that identifies the
12 contributions to the long-term care investment account during the preceding
13 quarter, the total contributions to and the value of the long-term care investment
14 account through the end of the preceding quarter, and any distributions made during
15 the preceding quarter.

16 5. That each account owner receives an annual statement that identifies the
17 contributions made to, the distributions made from, and the value of the long-term
18 care investment account through the end of the preceding calendar year.

19 6. The powers and duties of the manager to perform the applicable function of
20 investment, administration, or promotion.

21 7. Any additional, beneficial services provided by the manager to augment the
22 long-term care investment account program.

23 8. The minimum initial contribution, if any, that the manager requires for a
24 long-term care investment account. The manager may waive an initial contribution
25 if the account owner agrees to contribute to a long-term care investment account

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1 through a payroll deduction or automatic deposit plan. The manager shall ensure
2 that any automatic deposit plan permits the adjustment of scheduled deposits
3 because of a change in the account owner's economic circumstances.

4 (b) A manager shall disclose to the department any interest that it or an owner,
5 stockholder, partner, officer, director, member, employee, or agent of the manager has
6 in a business or fund in which the manager invests.

7 (c) The contract requirements under s. 16.705 and the low bid and bid
8 solicitation requirements under s. 16.75 do not apply to the procedure under sub. (3)
9 and any contract under this subsection.

10 **(5) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; WITHDRAWALS; TERMINATION**
11 **OF INVESTMENT ACCOUNTS.** (a) Each application for a long-term care investment
12 account shall meet all of the following criteria:

13 1. The account owner is an individual, a married couple, domestic partners
14 under ch. 770, or a trust other than a special needs trust.

15 2. Each individual account owner has attained the age of 18, unless the account
16 owner is a trust.

17 3. Each individual account owner is a citizen of the United States or has United
18 States permanent resident status, unless the account owner is a trust.

19 4. Each individual account owner, and each designee of a trust if a trust is the
20 account owner, is listed on the application.

21 (b) An account owner may do all of the following:

22 1. Contribute to a long-term care investment account or authorize a person to
23 contribute to the account.

24 2. Select or change a beneficiary of a long-term care investment account.

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1 3. Transfer all or a portion of a long-term care investment account to another
2 long-term care investment account at the choice of the account owner.

3 (c) An account owner may use a long-term care investment account to pay
4 long-term care costs of any individual account owner or designee of a trust.

5 (d) 1. A guardian, as defined in s. 54.01 (10), may establish a long-term care
6 investment account on behalf of an account owner who is the guardian's ward and
7 may act on behalf of the account owner for all purposes under this subsection.

8 2. An individual may name an agent under a power of attorney, as defined in
9 s. 244.02 (9), to act on behalf of him or her to establish an account with the individual
10 as account owner and to act on behalf of the account owner for all purposes under this
11 subsection.

12 (e) 1. A long-term care investment account terminates upon the death of the
13 individual account owners, or, if applicable, upon the occurrence of the event
14 designated under par. (g), and the proceeds of the account are distributed to the
15 beneficiary, including any primary, secondary, or contingent beneficiary, if named by
16 the account owner on a form created by the manager. If no beneficiary is named, the
17 proceeds are distributed to the individual account owner's estate, or, if applicable,
18 the estate of the designee of a trust, and the estate is liable for any income taxes due
19 on the distribution.

20 2. If a beneficiary obtains the proceeds of the account upon the death of the
21 individual account owners, the beneficiary may retain the account as a long-term
22 care investment account and becomes the account owner if the beneficiary meets the
23 criteria under par. (a). If the beneficiary does not retain the long-term care
24 investment account and instead liquidates the account, the beneficiary is liable for

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1 any income taxes due on the proceeds. A beneficiary may disclaim the proceeds of
2 the account.

3 3. For purposes of this paragraph, a trust may be designated as a beneficiary
4 or a beneficiary may designate a trust to be an account owner.

5 (f) For purposes of establishing a long-term care investment account and for
6 purposes under this subsection, an act of an account owner that is a married couple
7 or domestic partnership requires the affirmative consent of both individual account
8 owners of the couple or partnership except that a qualified use of long-term care
9 investment account funds may be made by an individual account owner of the couple
10 or partnership. For a long-term care investment account that has already been
11 established, an account owner that is a married couple or domestic partnership may
12 authorize, using a form created by the manager, an individual account owner to act
13 on behalf of the account owner that is a couple or partnership.

14 (g) At the time a long-term care investment account is established for an
15 account owner that is trust, the trust instrument or a trustee acting on behalf of the
16 trust must designate an individual, married couple, or domestic partnership for
17 whom qualified use of long-term care investment account funds may be made and
18 an event that terminates the long-term care investment account under par. (e). The
19 individual, married couple, or domestic partnership designated in the trust
20 instrument or by the trustee for qualified use of long-term care investment account
21 funds shall meet the requirements under par. (a) for an account owner, except that
22 a designated individual does not need to have attained the age of 18.

23 **(6) QUALIFIED USES OF ACCOUNT FUNDS.** (a) Before a qualified use of long-term
24 care investment account funds may be made under par. (b), a licensed or certified
25 health care professional, such as a physician, nurse, or social worker, shall submit

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

3 1. Admission to a medical or long-term care facility, including at a hospital,
4 skilled nursing facility, rehabilitation facility, nursing home, hospice care facility, or
5 mental health care facility, that is expected to last at least 90 days.

6 2. Admission to an assisted living facility that is expected to last at least 90
7 days.

8 3. Need for home health care for at least 90 days.

9 4. Need for inpatient or outpatient mental health services that is expected to
10 last at least 90 days.

11 5. Need for durable medical equipment the use of which is expected to last at
12 least 90 days.

13 6. Need for care in the home to assist with personal care, meal preparation,
14 housekeeping, medications, and money management for at least 90 days.

15 7. Need for staff or assistance to allow for caregiver respite.

16 8. Need for transportation assistance to medical appointments that is expected
17 to last at least 90 days.

18 9. Need for funeral planning upon the death of an individual account owner or
19 designee of a trust as indicated by a death certificate.

20 10. Need for other long-term care services determined acceptable by a team of
21 benefit specialists.

22 (b) Except as provided in pars. (c) and (d), the manager shall consider as
23 qualified uses of long-term care investment account funds only all of the following:

24 1. In-home, long-term care services.

25 2. Payment of room and board in facilities specified in par. (a) 1. or 2.

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

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1 **(8) REPORT.** Annually, each manager shall submit to the department a report
2 on the performance of the long-term care investment program, including any
3 recommended changes to the program. The department shall compile the reports,
4 if necessary, and make the report available on the department's Internet site and
5 shall submit the report to the appropriate standing committees of the legislature
6 under s. 13.172 (3).

7 **(9) CONSTRUCTION.** Nothing in this section guarantees a rate of interest or
8 return on a long-term care investment account or the payment of principal, interest,
9 or return on a long-term care investment account.

10 **(10) EXEMPTION FROM GARNISHMENT, ATTACHMENT, AND EXECUTION; SECURITY FOR**
11 **LOAN.** (a) An account owner's right to qualified withdrawals under this section is not
12 subject to garnishment, attachment, execution, or other process of law.

13 (b) No interest in a long-term care investment account may be pledged as
14 security for a loan.

15 **(11) ELIGIBILITY FOR PUBLIC ASSISTANCE PROGRAMS.** (a) An individual account
16 owner or designee of a trust is not eligible for Medical Assistance under subch. IV of
17 ch. 49, a long-term care program under s. 46.27, 46.275, or 46.277, the Family Care
18 benefit under s. 46.286, the Family Care Partnership program, or the long-term care
19 program defined in s. 46.2899 (1) until the individual first spends down the income
20 and assets from the long-term care investment account as necessary to meet the
21 eligibility requirements of the applicable program.

22 (b) Any person who is determining eligibility for a program that is not described
23 in par. (a) and does not provide long-term care services shall exclude from the
24 determination any income from or assets accumulated in a long-term care
25 investment account for the account owner or designee of a trust created under this

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1 section. This paragraph does not apply to determination of eligibility for a federal
2 program unless approved by the federal government.

3 **SECTION 17.** 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 18. 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.

9 (END)