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**State of Wisconsin
Governor Scott Walker**

**TO: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators**

**FROM: Krista Willing, Director
Bureau of Fiscal Management
Division of Health Care Access and Accountability**

DHS OPERATIONS MEMO					
No: DHS 14-11					
DATE: 3/4/2014					
FS <input type="checkbox"/>	MA <input checked="" type="checkbox"/>	BC+ <input type="checkbox"/>			
SC <input type="checkbox"/>	CTS <input type="checkbox"/>	FSET <input type="checkbox"/>			
BC+ Basic <input type="checkbox"/>	BC+ CORE <input type="checkbox"/>				
CC <input type="checkbox"/>	W-2 <input type="checkbox"/>	EA <input type="checkbox"/>			
CF <input type="checkbox"/>	JAL <input type="checkbox"/>	JC <input type="checkbox"/>			
RAP <input type="checkbox"/>	WIA <input type="checkbox"/>	Other <input type="checkbox"/>			
		EP			

SUBJECT: Changes to Estate Recovery Program

CROSS REFERENCE: [Medicaid Eligibility Handbook](#) (MEH) § 22.1 Estate Recovery, Operations Memo [13-39](#), Wis. Stat. §§ 46.27, 49.496, 49.682, 49.849, 632.697, 49.4962, 49.848; 59.43(1)(w), and 701.065.

EFFECTIVE DATE: IMMEDIATELY

PURPOSE:

The purpose of this memo is to clarify changes that were made to the Estate Recovery Program as a result of 2013 Wisconsin Act 92.

BACKGROUND:

The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long-term care services paid for by Medicaid on behalf of recipients. Recovery is made from certain non-probate assets, the estates of recipients and from liens placed on their homes. The money recovered is returned to the Medicaid Program and used to fund Medicaid benefits.

In December 2013, Act 92 made changes to the Estate Recovery Program provisions that were passed as part of the 2013-15 State Budget (2013 Wis. Act 20). These changes include repealing the following provisions that were not approved by Legislature's Joint Committee on Finance in September 2013.

- Allowing the Department to file a request for notice of transfer or encumbrance and potential claim against a member's real estate;
- Requiring trustees of trusts, including special needs and pooled trusts, to provide notice, to report certain information and to meet payment deadlines;
- Allowing the Department to void unrecorded and certain other real property transfers; and
- Limiting the amount retained by a pooled trust.

In addition, Act 92 revised some provisions that had been previously approved by the Joint Committee on Finance, including:

- Replacing the term "living trust" with "revocable trust" in the description of property subject to recovery and adding language to specify that irrevocable trusts are not subject to recovery.
- Repealing the provision that defined the member's interest in property to include all marital property owned 5 years before applying for public assistance (Medicaid, COP, WCDP) or owned while eligible for public assistance.
- Modifying the presumption that 100 percent of the surviving spouse's estate was once marital property held with the member and subject to recovery to read that the presumption must be consistent with the classification of property of spouses under Wis. Stat. § 766.31. Language was kept allowing this presumption to be rebutted, but the condition that it must be by clear and convincing evidence was removed.
- Deleting the language specifying that waiver of estate recovery due to hardship did not apply in the estates of surviving spouses. Hardship waiver provisions now apply to all estates.
- Adding conditions on when liens filed when the member is survived by a spouse or minor or disabled child must be released.

After the changes made by Act 92, the new Estate Recovery provisions that will be implemented July 1, 2014, include:

- The expansion of the definition of recoverable assets to include all property in which the member had any legal interest immediately before death, including assets transferred to a survivor, heir or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust or any other arrangement, excluding an irrevocable trust. This will still include any marital property interest the member had immediately before death.
- Making death benefits payable from an insurance policy or annuity subject to the Department's right of recovery.
- Allowing claims to be filed in the estates of surviving spouses of Medicaid members and presumes, consistent with Wis. Stat. § 766.31, that 100% percent

of the surviving spouse's estate was marital property of the deceased member and subject to recovery. This presumption may be rebutted.

- Revising the Department's affidavit process to allow recovery of additional non-probate assets. Allowing surviving owners and beneficiaries of the property to request a fair hearing on the extent and value of the deceased member's interest in the property and authorizes a right to request the Department waive its claim due to hardship. Authorizing a process to allow the Department to compel payment of the Department's claim.
- Requiring recovery of all services for members age 55 and older participating in a long-term care program, which includes the Program of All-Inclusive Care for the Elderly (PACE) and home and community-based waiver programs.
- Requiring that the amount of the capitation payments made to a managed care organization be recovered for members participating in PACE or a long-term care home and community-based waiver program delivered through managed care.

Notice will be provided to all members potentially impacted by the new provisions.

CARES:

There are no CARES changes at this time.

CONTACTS:

Department of Health Services
Estate Recovery Program
P.O. Box 309
Madison, WI 53701-0309
1-800-362-3002

*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – FoodShare Employment and Training, BC+ Core – BadgerCare Plus Core, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, Other EP – Other Employment Programs.

DHS/DHCAA/BFM/