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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 14-20			
DATE:		6/4/2014			
FS	<input type="checkbox"/>	MA	<input checked="" type="checkbox"/>	BC+	<input checked="" type="checkbox"/>
SC	<input type="checkbox"/>	CTS	<input type="checkbox"/>	FSET	<input type="checkbox"/>

SUBJECT: Changes to the Estate Recovery Program Begin August 1, 2014

CROSS REFERENCE: Medicaid Eligibility Handbook (MEH) § 22.1 Estate Recovery, Operations Memo 14-11.

EFFECTIVE DATE: August 1, 2014

PURPOSE:

The purpose of this memo is to describe statutory changes for the Estate Recovery Program as a result of 2013 Wis. Act 20 and 2013 Wis. Act 92.

BACKGROUND:

The Wisconsin Medicaid Estate Recovery Program (ERP) 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 for others.

Both Act 20 and Act 92 made changes to the Estate Recovery Program and are outlined in this memo. The changes affecting property recovery will be effective for members who die on or after August 1, 2014. Changes in the recovered services will be effective for services received on or after August 1, 2014.

POLICY:

LIFE ESTATES

A "Life Estate" is created when a property holder transfers ownership of the property to someone else (remainderer) and retains the right to reside in, and benefit from the real estate, such as receiving rent. The life tenant's percentage interest is determined using the life expectancy tables at the time the life estate is created. The rest of the interest is owned by the remainderer (for example, a child or children). When the life tenant dies, the entire property interest passes to the remainderer.

Formerly, ERP did not pursue recovery from life estates. ERP will now pursue recovery from life estates created on or after August 1, 2014. The Department would recover only the life tenant's interest remaining at the time of death.

LIENS

The ERP uses two types of liens: (1) Pre-death liens are imposed on the homes of living Medicaid recipients determined to be permanently institutionalized and not likely to return home to live. These types of liens are called "TEFRA" liens since they must follow rules set out in the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982; and (2) Post-death liens which are often part of the probate process.

TEFRA liens have been used since the start of the program in 1991; however, liens were not placed against life estate interests in homes. ERP will now pursue recovery through TEFRA liens placed on **life estates** created on or after August 1, 2014.

SURVIVING SPOUSE'S ESTATE

Marital property is property owned by a legally married couple. A member's ownership in marital property immediately before passing away is limited to one-half. This is consistent with the classification of property of spouses under state law (Wis. Stat. § 766.31).

ERP has not sought recovery from a Medicaid member's surviving spouse's estate since 1995. **Starting August 1, 2014**, recovery will now be pursued from 50% of the surviving spouse's estate.

JOINT TENANCY PROPERTY

ERP will now pursue estate recovery of joint tenancy property after the death of the member from **joint tenancies created on or after August 1, 2014**. The Department would recover only the fractional interest in the property that the member had at the time of death. Pre-death liens, however, will continue to be filed on jointly owned homes regardless of when the joint tenancy was created.

LIFE INSURANCE

ERP will now pursue recovery from all life insurance policies created on or after August 1, 2014, regardless of the beneficiary. Formerly, recovery was made only from policies designating the estate as beneficiary or if the beneficiary predeceased the insured.

REVOCABLE TRUSTS

A trust is a device in which a property interest is held by one person for the benefit of another. A revocable trust, formerly known as a “living trust,” is a trust that may be revoked by the trustee. Irrevocable trusts may not be revoked.

Act 92 specifically granted the authority to recover from revocable trusts and thus ERP will now pursue recovery from those **revocable trusts** created on or after August 1, 2014. This applies to recovery after the death of the member. Pre-death liens will continue to be filed on homes in revocable trusts regardless of when the trust was created.

Estate recovery cannot be made from irrevocable trusts, with the exception of those assigned to a funeral home. Wis.Stat. § 49.47 (4) (cm) 3 provides that such trusts must specify that the Department is secondary beneficiary of any funds that exceed the burial costs. Irrevocable Special Needs Trusts and Pooled Trusts are also not affected by this prohibition. Repayment of Medicaid benefits from those trusts is required as a condition of eligibility and is not considered part of the estate recovery provisions.

SERVICES SUBJECT TO RECOVERY

All services received on or after August 1, 2014 will be recovered for any member age 55 or older participating in a long-term care program. Long-term care programs include all home and community-based waiver programs and the Program of All-Inclusive Care for the Elderly (PACE).

Managed Care Organizations (MCOs) receive a monthly capitation rate payment from DHS for each enrolled member/recipient. Members' long-term care and acute health care costs, including physician services, are paid out of this capitation payment.

Formerly, ERP recovered the costs of services provided as reported by the MCO. As authorized, ERP will pursue recovery of **capitation payments to MCOs made after August 1, 2014**, for a member participating in a long-term care program.

Non-probate property not listed above will be recovered for any member who **dies on or after August 1, 2014**.

Notice will be provided to all members potentially impacted by these statutory changes.

CARES:

There are no CARES changes at this time.

CONTACTS:

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BEPS CARES Information & Problem Resolution Center

*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, FSET – FoodShare Employment and Training.

DHS/DHCAA/BFM/