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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, Deputy Director
Bureau of Fiscal Management
Division of Health Care Access and Accountability**

BEPS/DFS OPERATIONS MEMO					
No: 13-39					
DATE: 11/12/2013					
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, 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 when the Department will implement the statutory changes that were made to the Estate Recovery Program as a result of 2013 Wis. Act 20, which is known as the "2013-15 State Budget."

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 September 2013, the Legislature's Joint Committee on Finance approved the implementation of some of the changes made to the Estate Recovery Program in the 2013-15 State Budget. These changes 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, living trust or any other arrangement.
- Making death benefits payable from an insurance policy or annuity subject to the Department's right of recovery.
- Defining that the member's interest in property, for estate recovery purposes only, includes all marital property owned 5 years before applying for public assistance (Medicaid, COP, WCDP) or owned while eligible for public assistance. Allowing claims to be filed in the estates of surviving spouses of Medicaid members and presumes that 100% percent of the surviving spouse's estate was marital property of the deceased member, unless rebutted by clear and convincing evidence.
- Revising the Department's affidavit process to allow recovery of previously unrecoverable 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 gives them a right to request the Department waive its claim due to hardship. Establishing a process to allow the Department to compel payment of the Department's claim similar to the one established to collect incorrectly paid Medicaid benefits.
- Requiring recovery of all services for members age 55 and older participating in a long-term care home and community-based waiver program.
- Requiring that the amount of the capitation payments made to the managed care organization be recovered for members participating in a long-term care home and community-based waiver program delivered through managed care.

The Joint Committee on Finance did not approve the implementation of the following changes to the Estate Recovery Program in the 2013-15 State Budget.

- 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.

The new Estate Recovery provisions will apply to recipients who die or receive services on or after the July 1, 2014, for the following areas:

- Expanded definition of assets, marital property, insurance and annuity death benefits, and from the estates of surviving spouses of Medicaid members;
- All services for members participating in a long-term care home and community-based waiver program; and
- Capitation payments for services rendered to members participating in a long-term care home and community-based waiver program.

The new Estate Recovery provisions will not be implemented until notice is provided to all members potentially impacted by the new provisions.

CARES:

There are no CARES changes at this time.

CONTACTS:

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*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/JW