



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 4, 2001

Joint Committee on Finance

Paper #476

Treatment of Irrevocable Burial Trusts under MA (DHFS -- Medical Assistance)

[LFB 2001-03 Budget Summary: Page 365, #17]

CURRENT LAW

Treatment of Burial Expenses Under MA. Under current law, persons who are 65 years of age or older, blind or disabled may qualify for medical assistance (MA) if their resources and income do not exceed specified limits. In determining whether an applicant meets the resource criteria, certain types of assets are excluded. One such excluded asset is an irrevocable trust used to fund a burial agreement with a value up to \$2,500. If an applicant has an irrevocable trust with a value that exceeds \$2,500, only the value of the trust that exceeds \$2,500 is considered a countable asset.

In addition to the \$2,500 irrevocable burial trust, other burial assets are excluded from countable assets for the purpose of determining MA eligibility, including: (a) burial plots of any value for any member of the immediate family; (b) burial spaces, which include vaults, caskets, mausoleums, urns, necessary and reasonable improvements upon the burial space such as headstones, and arrangements for opening and closing the gravesite for any member of the immediate family; (c) an insurance policy purchased for the insured person's funeral expenses; and (d) burial funds for the person and his or her spouse, not to exceed the difference of \$1,500 less the sum of any excludable life insurance and the amount in any irrevocable burial trust.

Although MA resource limits exclude all types of prepaid funeral expenses, current law regulating funeral directors requires that any prepayments, except for cemetery lots, graves, outer burial containers preplaced into the burial excavation of a grave, cremation urns, mausoleum spaces or grave or cemetery lot markers or monuments, must be placed into trust. As a result, an MA applicant may not be able to cover the entire funeral and burial costs by purchasing a burial plot (or space), grave marker, and an irrevocable burial trust (which is limited to \$2,500). However, if an individual is willing to use burial insurance, which has no limit, an individual may dedicate as much of their assets as he or she wants to arrange for funeral and burial arrangements.

Individuals may purchase burial insurance by making a lump-sum payment or by making monthly payments. If a burial policy calls for any excess proceeds to be paid to a secondary beneficiary, it is considered to be life insurance, rather than burial insurance, for purposes of MA eligibility. Similarly, if a policy calls for the proceeds to be paid to a private party that is expected, but not legally required to use the funds for the burial costs of the insured, the policy is considered to be life insurance for the purpose of determining MA eligibility. Although it is not tied to burial costs, an individual is allowed to exclude life insurance with a cash value of up to \$1,500, which could serve to pay for funeral expenses.

Current law relating to burial insurance includes a number of provisions that are intended to protect consumers. For example, burial insurance must: (a) limit prices for services to no more than the prices in the funeral establishment's general price list required under the funeral industry practices regulations of the Federal Trade Commission; (b) indicate whether the prices are guaranteed; (c) indicate what is done with any funds remaining after funeral expenses have been paid; and (d) specify what services are to be provided.

All funds for a burial trust must be deposited with a bank, trust company, savings and loan, or credit union. The bank or other entity must be furnished with a copy of the burial contract. Upon receipt of a certified copy of the certificate of death, together with the written statement from the funeral director that the burial agreement was complied with, the bank or other entity must release the trust funds to the funeral director.

Current law requires that the person selling or offering for sale the burial services be made the beneficiary of the trust. The statutes do not specify what is done if a person's funeral and burial costs are less than the amount placed in the irrevocable burial trust. A person may designate a different beneficiary at any time prior to death, after written notice to the current beneficiary. An irrevocable burial trust may have a secondary beneficiary to receive any funds not used for the funeral. Often the secondary beneficiary is the person's estate, in which case DHFS may recover excess funds through the MA estate recovery program. If the beneficiary is a family member, any remaining funds would not be part of the person's estate and could not be pursued under the MA estate recovery program.

County-Funded Burial Expenses. Under current law, if any individual who is receiving public assistance benefits dies, and the estate of that recipient is insufficient to pay the funeral, burial and cemetery expenses for that recipient, the county or tribe is required to pay up to \$1,000 in cemetery expenses and up to \$1,500 for the funeral and burial expenses not paid by the estate of the recipient and other persons. The state is required to reimburse the county or tribe for these expenses. Funding to pay these costs is budgeted in the Department of Workforce Development (DWD). Reimbursement for funeral, burial and cemetery expenses in excess of \$1,000 may be provided if DWD approves the reimbursement due to unusual circumstances.

If the total funeral and burial expenses for the recipient exceed \$3,500, no payment for the funeral and burial expenses is required. Similarly, if the total cemetery expenses exceed \$3,500, the county or tribe is not required to make any payment for the cemetery expenses of the recipient.

Funeral, burial and cemetery expenses may be provided only if the deceased individual was receiving benefits: (a) under a Wisconsin Works (W-2) subsidized employment position; (b) as a custodial parent of an infant age 12 weeks or under in the W-2 program; (c) under the MA program; or (d) under the supplemental security income (SSI) program. The state does not reimburse the funeral and burial costs of persons receiving general assistance (GA), but counties that have a GA program may provide funeral and burial assistance with their own funds. Usually, counties will mirror the state's reimbursement levels. If the state changes its reimbursement levels, counties, although not required, may match those increases.

Funeral and burial expenses may include all costs associated with the preparation of the body, purchase of a casket, burial clothing, and the employment of personnel for funeral and graveside services and transportation. Cemetery expenses may include cremation, cremation permits, interment, opening and closing of the grave, burial plot, perpetual care, use of a lowering device, tent, grass matting, chairs and body storage. When required by the cemetery, expenses may include a crypt, vault or concrete slab covering the top of a wooden box and a grave marker.

GOVERNOR

Increase MA benefits funding by \$501,600 (\$207,800 GPR and \$293,800 FED) in 2002-03 to reflect the projected costs of increasing the maximum amount of an irrevocable burial trust that may be excluded from an MA applicant's countable assets, from \$2,500 to \$3,300. This change would first apply to burial trust agreements entered into on January 1, 2003.

DISCUSSION POINTS

1. Increasing the MA irrevocable burial trust limit may benefit funeral homes because MA recipients may be encouraged to set aside more of their resources for their funeral and burial costs. Although Wisconsin provides funding to counties for the funeral costs of MA recipients if they do not have resources for those services, the funding is limited to \$1,500 for funeral and burial expenses and to \$1,000 for cemetery expenses. The \$1,500 for funeral and burial expenses may not cover the full costs of the funeral, and as a result, the funeral home may not be reimbursed for all of its costs. If more MA recipients place more funds in an irrevocable burial trust or other exempt asset, there may be fewer cases where a funeral homes would receive the lower maximum reimbursement level allowed for an indigent person.

2. In April, 1999, this office surveyed a small sample of counties to obtain information on the typical expenditures made for indigent funerals. At that time, the limit for funeral expenses was \$1,000. From the information received, the limit of \$1,000 for cemetery expenses appeared at that time to be adequate in most cases, although not always. On the other hand, counties indicated that funeral expenses typically exceeded the \$1,000 payment limit. Brown County reported that the average charge for funeral services was \$2,327 in calendar year 1998. Although each county varied, it appeared that at least 80% of the burials had funeral expenses in excess of the \$1,000 maximum. One county reported that every burial involved funeral expenses that exceeded \$1,000.

3. The May, 2001, issue of Consumer Reports contained an article on funeral costs, and found that "throughout the country, there are plenty of standard funerals -- with viewing, ceremonies, and an attractive casket-- costing \$2,500 to \$4,500, excluding cemetery charges." The survey found the median prices charged by small local chains were as follows: (a) \$1,110 for immediate cremation with minimum casket/container; (b) \$1,384 for immediate burial with minimum casket/container; (c) \$3,099 for standard funeral with alternative casket/container; and (d) \$4,067 for standard funeral with 20-gauge steel casket.

4. Increasing the maximum amount of an irrevocable burial trust from \$2,500 to \$3,300 may allow certain elderly and disabled MA applicants to become eligible for MA at an earlier date by allowing such individuals to exclude an additional \$800 of assets, rather than requiring those assets to be used for the cost of their care. It is difficult to precisely estimate the fiscal impact of this change, since there is incomplete information on the use of burial trusts. In addition, since there is no limit on the amount of irrevocable burial insurance, it is not known whether increased use of irrevocable burial trusts would in part or in whole be offset by decreases in the use of burial insurance or the amount of funds used to pre-purchase a burial plot or grave marker.

5. A review of MA applications filed in February 1997, indicated that 16% of MA applicants (approximately 600) in that month reported having burial trusts, with an average value of \$1,500. Since the average value of the burial assets was \$1,500, the sample suggests that fewer than 300 applicants monthly would utilize any expansion in the limit for irrevocable burial trusts. In addition, any increased use of an irrevocable burial trust may be offset by a decrease in the use of burial insurance or other exempt assets. For some individuals, burial insurance, which has no limit, may be preferred. If it is assumed that 200 applicants per month had sufficient assets to utilize the \$800 expansion in an irrevocable burial trust and that there were no offsetting changes in burial insurance or other exempt assets, MA costs would increase by approximately \$960,000 (\$398,400 GPR and \$561,600 FED) annually. On the other hand, if only 60 applicants per month would benefit from the expansion, MA costs would increase by \$288,000 (\$119,500 GPR and \$168,500 FED annually). The funding that would be provided in the bill (\$501,600 all funds) is close to the midpoint of this range.

6. A possible secondary effect of increasing the limit for an irrevocable burial trust is that state costs for indigent funeral and burial costs would be reduced in the future, since the MA recipient would have additional funds in the irrevocable burial trust to support their own funeral and burial costs. Based on inquiries with counties, it appears that MA nursing home recipients often may have some of their assets directed to a burial trust or other burial items. Nursing homes and county workers typically advise MA applicants seeking MA coverage of nursing home services that it may be to their benefit to provide for burial expenses, since otherwise, their MA eligibility would be delayed until their assets have been depleted to MA eligibility levels. MA nursing home recipients make up a significant percentage of individuals receiving public assistance for burial costs. There are approximately 32,000 nursing home residents whose services are funded under MA. Based on a limited survey of counties, it appears that a significant proportion of recipients of public funds for burial costs have some burial funds or other assets to contribute to the cost of the

burial. Although it is a limited sample, perhaps 30% to 40% of recipients of public burial assistance have some burial funds or other resources to contribute to their burial expenses.

7. If the expansion of the limit for the irrevocable burial trust causes a net increase in MA expenditures, MA recipients would have a higher level of exempt resources to support their burial costs. The increase in burial resources, however, may not be fully recovered in lower burial assistance since: (a) some MA recipients may be trying to bypass divestment restrictions by putting more into burial funds than needed in the hope that excess funds are left to family members; (b) more is placed in the burial trust than is needed for burial expenses; and (c) the higher amount of burial resources may result in higher burial expenses (funeral and cemetery expenses could not each exceed \$3,500 and remain eligible, though, for public assistance). In addition, any reduced public assistance funeral costs would not occur immediately, but at a later time. It might be expected that any savings would not occur for two to three years. In nursing homes, approximately 32% of discharges in a year are due to death.

8. In summary, the projected increase in MA costs would likely be partially offset by savings for state expenses for public burials. However, the savings would not be realized in the current biennium, and the savings would likely be less than the increase in MA costs. It is not known what portion of the increase in MA costs would be offset by funeral savings, but it may be reasonable to assume that the offsetting savings would range of 20% to 40%.

9. Although there are a number of exempt assets that may be used to fund funeral and burial expenses, increasing the limit for an irrevocable burial trust may provide potential MA recipients more flexibility in providing for their funeral and burial expenses. Since the average cost of standard funerals -- with viewing, ceremonies, and casket-- costs from \$2,500 to \$4,500 excluding cemetery charges, a limit higher than \$2,500 may reasonable.

10. The estimated cost of increasing the limit from \$2,500 to \$3,300 on January, 2003 is \$501,600 all funds. If the limit were to be increased further to \$4,000 on January, 2003, the estimated additional cost would be \$294,100 all funds (\$122,000 GPR and \$172,000 FED). These amounts represent the cost for six months. If these limits were in effect for the whole year, the annual cost would be twice these amounts.

11. The disadvantage of increasing the limit is that it increases the range of exempt assets, and would allow a number of persons to become eligible for MA sooner, and would increase MA expenditures. Given that there are a number of exempt assets, including all irrevocable burial insurance, irrevocable burial trusts up to \$2,500, burial space and marker of any value, life insurance with a cash value of \$1,500, and any assets up to \$2,000, it could be argued that there are enough options for an individual to provide for their funeral costs, and that the current limit of \$2,500 is sufficient.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation.

Alternative 1	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	\$207,800	\$293,800	\$501,600
<i>[Change to Bill]</i>	\$0	\$0	\$0]

2. Increase the irrevocable burial trust limit to \$3,000 on January 1, 2003. Reduce MA benefits funding in the bill by \$188,100 (\$77,700 GPR and \$110,400 FED) in 2003-03.

Alternative 2	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	\$130,100	\$183,400	\$313,500
<i>[Change to Bill]</i>	- \$77,700	- \$110,400	- \$188,100]

3. Increase the irrevocable burial trust limit to \$3,500 on January 1, 2003. Increase MA benefits funding by \$106,600 (\$44,200 GPR and \$62,400 FED) to reflect the projected costs of increasing the limit.

Alternative 3	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	\$252,000	\$356,200	\$608,200
<i>[Change to Bill]</i>	\$44,200	\$62,400	\$106,600]

4. Increase the irrevocable burial trust limit to \$4,000 on January 1, 2003. Increase MA benefits funding by \$294,100 (\$122,000 GPR and \$172,000 FED) in 2002-03 to reflect the projected costs of increasing the limit.

Alternative 4	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	\$329,800	\$465,900	\$795,700
<i>[Change to Bill]</i>	\$122,000	\$172,100	\$294,100]

5. Delete provision.

Alternative 5	GPR	FED	TOTAL
2001-03 FUNDING (Change to Base)	\$0	\$0	\$0
<i>[Change to Bill]</i>	- \$207,800	- \$293,800	- \$501,600]

Prepared by: Richard Megna.