

CERTIFICATE

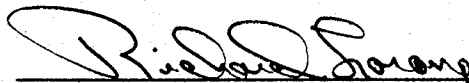
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Richard W. Lorang, Acting Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to estate recovery under the Medical Assistance program were duly approved and adopted by this Department on May 15, 1995.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 15th day of May, 1995.

SEAL:

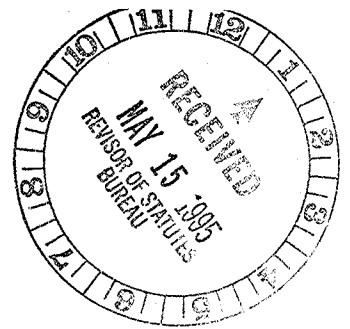


Richard W. Lorang, Acting Secretary
Department of Health and Social Services



7-1-95

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
CREATING RULES



To create HSS 108.02(10), (11) and (12), relating to filing a claim against the estate of a Medical Assistance recipient or against the estate of the surviving spouse of a Medical Assistance recipient for certain services for the recipient that were paid for by the Medical Assistance program.

Analysis Prepared by the Department of Health and Social Services

Session law 1993 Wisconsin Act 437 amended ss. 49.496 and 867.035, Stats., to require the Medical Assistance program to file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient when the recipient received certain services from the Medical Assistance program after the recipient reached 55 years of age.

This rulemaking order establishes the services for which the Department is required to file a claim. Those services include all services provided to recipients aged 55 years and over under a home-and-community-based waiver such as the Community Integration Program (CIP) or the Community Options Waiver Program (COP-W), and inpatient and legend drug services provided to those recipients while they were enrolled in a home-and-community-based waiver program. The Department is also required to submit a claim for home health services and private duty nursing services received by any recipient aged 55 years or over, and a claim for services received while a recipient was an inpatient in a hospital and was required to contribute to the cost of care.

The order also contains criteria for the Department to decide, on undue hardship grounds, not to pursue a claim against an estate, and the application and review processes for an undue hardship waiver and the applicant's appeal rights.

The Department's authority to create these rules is found in ss. 49.45(10), 49.496(3)(a)2 and (6m) and 867.035(5), Stats. The rules interpret ss. 49.496(3) to (6m), and 867.035, Stats.

SECTION 1. HSS 108.02 (10), (11) and (12) are created to read:

HSS 108.02 (10) ESTATE RECOVERY. The department shall file a claim against the estate of a recipient or against the estate of the surviving spouse of a recipient as provided in ss. 49.496 and 867.035, Stats., to recover only the following:

(a) The amount of medical assistance paid on or after October 1, 1991, on behalf of the recipient while the recipient resided in a nursing home;

(b) The amount of medical assistance paid on or after July 1, 1995, on behalf of the recipient while the recipient was an inpatient in a hospital and was required to contribute to the cost of care pursuant to s. HSS 103.07(1)(d); and

(c) The amount of medical assistance paid on or after July 1, 1995, for any of the following services provided to the recipient under the medical assistance program or any federal medical assistance waiver program under 42 USC 1396n(c) after the recipient attained 55 years of age:

1. The following home health services:

a. Skilled nursing services specified in s. HSS 107.11 (2) (a);

b. Home health aide services specified in s. HSS 107.11 (2) (b);

c. Therapy and speech pathology services specified in s. HSS 107.11 (2) (c);

2. Private duty nursing services specified in s. HSS 107.12;

3. Home and community-based waiver services provided pursuant to s. 46.27, 46.275, 46.277 or 46.278, Stats.;

4. Inpatient covered hospital services specified in s. HSS 107.08(1)(a) provided during a period of time in which the recipient was approved to have home and community-based waiver services funded pursuant to 42 USC 1396n(c);

5. Inpatient services which are billed separately by providers and which are listed as non-covered hospital services in s. HSS 107.08 (4) (d) provided during a period of time in which the recipient was approved to have home and community-based waiver services funded pursuant to 42 USC 1396n(c); and

6. Legend drugs under s. HSS 107.10 provided during a period of time in which the recipient was approved to have home and community-based waiver services funded pursuant to 42 USC 1396n(c).

(11) ESTATE RECOVERY ADJUSTMENTS. (a) The department may make

adjustments to and settle estate claims and liens filed under s. 49.496 or 867.035, Stats., to obtain the fullest amount practicable.

(b) The department shall take a lien in full or partial settlement of an estate claim against the portion of an estate that is a home if either of the following apply:

1. A child of the recipient, regardless of age, resides in the decedent's home and that child resided in the home for at least 24 months before:

a. The date the recipient was admitted to a nursing home, the expenses for which are subject to recovery under sub. (10) (a), and that child provided care to the recipient that delayed the recipient's admission to the nursing home;

b. The date the recipient was admitted to a hospital, the expenses of which are subject to recovery under sub. (10) (b), and that child provided care to the recipient that delayed the recipient's admission to the hospital; or

c. The date the recipient began receiving services which are subject to recovery under sub. (10) (c) 3., and that child provided care to the recipient that delayed the recipient's receipt of such services.

2. A sibling of the recipient resides in the decedent's home and that sibling resided in the home for at least 12 months before:

a. The date the recipient was admitted to a nursing home, the expenses for which are subject to recovery under sub. (10) (a);

b. The date the recipient was admitted to a hospital, the expenses for which are subject to recovery under sub. (10) (b); or

c. The date the recipient began receiving services which are subject to recovery under sub. (10) (c) 3.

(c) Except as provided in par. (d), the lien shall be payable upon the death of the child or sibling or upon the transfer of the property, whichever comes first.

(d) If the child or sibling sells the home against which the department has taken a lien under par. (b) and uses the proceeds of that sale to buy another home which will be used as the child's or sibling's primary residence, then the following apply:

1. If the amount of the child's or sibling's payment for or down payment on the second home is equivalent to or greater than the amount received as the proceeds from the sale of the first home, the department shall transfer the lien to the second home.

2. If the amount of the child's or sibling's payment for or down payment on the second home is less than the amount received as the proceeds from the sale of the first home, the department may recover the amount of the lien to the extent that the proceeds from the sale of the first home exceed the amount of the child's or sibling's payment or down payment on the second home. The department shall transfer any remaining portion of the lien to the second home.

(12) **HARDSHIP WAIVERS UNDER ESTATE RECOVERY.** (a) Definitions. In this subsection:

1. "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

2. "Decedent" means a deceased recipient or the deceased surviving spouse of a recipient who received MA benefits that are subject to recovery under s. 49.496 or 867.035, Stats.

3. "Heir" means any person who is entitled under the statutes of intestate succession, ch. 852, Stats., to an interest in property of a decedent.

4. "Recipient" means a person who received services funded by medical assistance.

5. "Waiver applicant" means a beneficiary or heir of a decedent who requests the department to waive an estate claim filed by the department pursuant to s. 49.496 or 867.035, Stats.

(b) Hardship waiver criteria. 1. A beneficiary or heir of a decedent may apply to the department for a waiver of an estate claim filed by the department. The department shall review an application for a waiver under this subsection and shall determine whether the applicant meets the criterion under subd. 2. a., b. or c. If the department determines that the criterion under subd. 2. a., b or c.. is met, the department shall waive its claim as to that applicant.

2. Any of the following situations constitutes an undue hardship on the waiver applicant:

a. The waiver applicant would become or remain eligible for supplemental security income (SSI), food stamps under 7 USC ss. 2011 to 2029, aid to families with dependent children (AFDC), or medical assistance if the department pursued its claim;

b. A decedent's real property is used as part of the waiver applicant's business, which may be a working farm, and recovery by the department would affect the property and would result in the waiver applicant losing his or her means of livelihood; or,

c. The waiver applicant is receiving general relief, relief to needy Indian persons (RNIP) or veterans benefits based on need under s. 45.351 (1), Stats.

(c) Notice. 1. The department shall provide written notice of the hardship waiver provisions to the person handling the decedent's estate, if that person can be ascertained from the probate information provided to the department, or, if that person cannot be ascertained, the department shall include the notice with the copy of the claim it files with the probate court.

2. The person handling the decedent's estate shall be responsible for notifying the decedent's beneficiaries and heirs of the hardship waiver provisions.

3. The department's notice shall include the following information:

a. The individuals who are eligible to apply for a waiver;

- b. The criteria for granting a waiver as specified in par. (b) 2.a., b. or c,
- c. The application and review process as specified in par. (d); and
- d. The waiver applicant's right to a hearing as specified in par. (e).

(d) Application and review process. 1. A waiver applicant shall mail his or her application for a waiver in writing to the department within 45 days after the date the department mailed its claim or affidavit pursuant to s. 49.496 or 867.035, Stats., or its notice under par. (c), whichever is later. The application shall include the following information:

- a. The relationship of the waiver applicant to the decedent and copies of documents establishing that relationship; and
- b. The criterion under par. (b) 2.a., b., or c.. which is the basis for the application and documentation supporting the waiver applicant's position.

2. The department shall review each application and issue a written decision within 90 days after the application was received by the department. The department shall consider all information received within 60 days following receipt of the application. The department's decision shall be based on information received within that time-period. The department's written decision shall include information regarding the waiver applicant's right to a hearing under par. (e).

(e) Hearing rights. 1. If a waiver applicant wishes to contest the department's decision denying a waiver, the waiver applicant shall serve the department with a request for a hearing within 45 days of the date the department's decision was mailed. The hearing request shall be in writing and shall identify the basis for contesting the decision. The request shall be submitted to the department's office of administrative hearings. The date on which the department's office of administrative hearings receives the request shall be the date of service.

Note: The mailing address of the Office of Administrative Hearings is P. O. Box 7895,
CH01059.JC/CODE

Madison, Wisconsin 53707.

2. If a waiver applicant wishes to introduce information at the hearing that he or she did not submit to the department under par. (d), the applicant shall provide the department with that information by mailing it to the department with a postmark of at least 7 working days prior to the hearing date.

3. The issue for hearing shall be whether the department's decision was correct based on the information submitted to the department by the waiver applicant within the time periods specified in par. (d) 2. and subd. 2. No other information may be considered by the hearing examiner unless the hearing examiner finds that the applicant did not timely provide the information to the department for good cause. The hearing decision shall be the final decision of the department. The hearing shall be held in accordance with the provisions of ch. 227, Stats.

(f) Applicability. Heirs and beneficiaries may apply for a hardship waiver under this subsection from estate claims filed by the Department pursuant to s. 49.496 or 867.035, Stats., in the estates of persons who die on or after April 1, 1995.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health
and Social Services

Date: May 15, 1995

By: _____

Richard W. Lorang
Acting Secretary

SEAL:

