

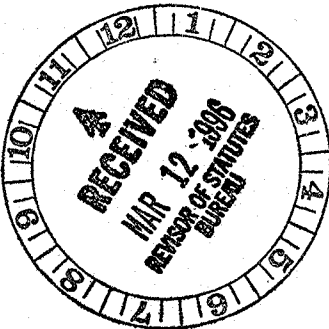
# Clearinghouse Rule 95-186

## CERTIFICATE

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

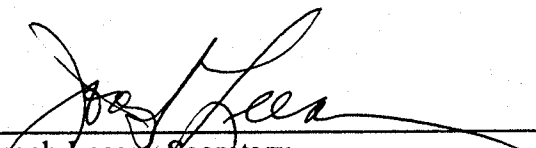
I, Joseph Leean, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to estate recovery under the community options and disease aid programs were duly approved and adopted by this Department on March 12, 1996.

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.



SEAL:

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 12th day of March, 1996.

  
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Joseph Leean, Secretary  
Department of Health and Social Services

5-1-96  
95-186

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
RENUMBERING, AMENDING AND CREATING RULES



To renumber HSS 108.02(12)(f); to amend HSS 108.02(10)(intro.), (b), (c)(intro.), 5 and 6, (11)(a) and (b)1 (intro.) and c and 2 (intro.) and c and (12)(a)2, 4 and 5; and to create HSS 108.02(10)(d) and (12)(f)2, 152.065(7), 153.07(5) and 154.07(5), relating to recovery of the cost of benefits from the estate of a person who was a client of the community options program (COP) or a participant in the aid program for persons with chronic renal disease, the aid program for persons with hemophilia or the aid program for adults with cystic fibrosis, or from the estate of the surviving spouse of that person.

Analysis Prepared by the Department of Health and Social Services

The 1995-97 State Budget Act, 1995 Wisconsin Act 27, created ss. 46.27(7g) and 49.482, Stats., which require the Department of Health and Social Services to file a claim against the estate of a person who received benefits under the long-term community support program under s. 46.27, Stats., as affected by Act 27, the chronic renal disease aid program under s. 49.48, Stats., the adult cystic fibrosis aid program under s. 49.483, Stats., or the hemophilia aid program under s. 49.485, Stats., to recover the cost of care or the amount of assistance provided, or a claim against the estate of the surviving spouse of that person. Sections 46.27(7g)(g) and 49.482(5), Stats., as created by Act 27, require the Department to promulgate rules that establish standards for determining whether the recovery of those costs would work an undue hardship on heirs or beneficiaries in individual cases. If an undue hardship is found to exist, the Department is required to waive application of the recovery requirement in that case.

This rulemaking order contains standards on the basis of which the Department will decide if recovery of assistance from the estate of a client or recipient or the estate of the client's or recipient's surviving spouse would constitute an undue hardship to an heir or beneficiary of the estate. The order also establishes the application and review processes for an undue hardship waiver and the applicant's appeal rights. The provisions are identical to those currently used for undue hardship waivers from estate claims made to recover Medical Assistance benefits.

The Department's authority to create these rules is found in ss. 46.27(7g)(g) and 49.482(5), Stats., as created by 1995 Wisconsin Act 27. The rules interpret ss. 46.27(7g) and 49.482, Stats., as created by 1995 Wisconsin Act 27.

SECTION 1. HSS 108.02(10)(intro.), (b) and (c)(intro.), 3., 4., 5. and 6. are amended to read:

HSS 108.02(10) ESTATE RECOVERY. (intro.) The department shall file a claim against the estate of a recipient or client or against the estate of the surviving spouse of a

recipient or client as provided in ss. 46.27(7g), 49.496 and 867.035, Stats., to recover only the following:

(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)(intro.) 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) or 1396u after the recipient attained 55 years of age:

3. Home and community-based waiver services provided pursuant to ~~s. 46.27, 46.275, 46.277 or 46.278, Stats.~~ a waiver authorized under 42 USC 1396n(c) or 1396u;

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) or 1396u;

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) or 1396u; 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) or 1396u; and

SECTION 2. HSS 108.02(10)(d) is created to read:

HSS 108.02(10)(d) The amount of long-term community support services paid on or after January 1, 1996, on behalf of a client for services funded under s. 46.27(7), Stats., after

the client attained 55 years of age.

SECTION 3. HSS 108.02(11)(a) and (b)1. (intro.) and c. and 2. (intro.) and c. are amended to read:

HSS 108.02(11) ESTATE RECOVERY ADJUSTMENTS. (a) The department may make adjustments to and settle estate claims and liens filed under s. 46.27(7g), 49.496 or 867.035, Stats., to obtain the fullest amount practicable.

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

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

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

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

SECTION 4. HSS 108.02(12)(a)2., 4. and 5. are amended to read:

HSS 108.02(12) HARDSHIP WAIVERS UNDER ESTATE RECOVERY. (a) Definitions. 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. 46.27(7g), 49.496 or 867.035, Stats.

4. "Recipient" means a person who received services funded by medical assistance or the long-term community support program under s. 46.27(7), Stats.

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. 46.27(7g), 49.496 or 867.035, Stats.

SECTION 5. HSS 108.02(12)(f) is renumbered 108.02(12)(f)1.

SECTION 6. HSS 108.02(12)(f)2. is created to read:

HSS 108.02(12)(f)2. Heirs and beneficiaries may apply for a hardship waiver under this subsection from estate claims filed by the department pursuant to s. 46.27(7g) or 867.035, Stats., for services received pursuant to s. 46.27(7), Stats., with respect to a client who died after February 15, 1996.

SECTION 7. HSS 152.065(7) is created to read:

HSS 152.065(7) ESTATE RECOVERY. (a) An heir or beneficiary of the estate of a patient or a patient's surviving spouse may apply to the department for a waiver of an estate claim filed by the department pursuant to s. 49.482 or 867.035, Stats. The criteria for granting waivers in s. HSS 108.02(12)(b) shall apply to applications under this subsection. All of the procedures and rights in s. HSS 108.02(12)(b) to (e) shall apply to this subsection.

(b) For purposes of applying HSS 108.02(12)(b) to (e) to this subsection the following definitions apply:

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 patient or the deceased surviving spouse of a patient who received benefits that are subject to recovery under s. 49.482 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 patient who received reimbursement under s. 49.48, Stats.; and

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. 49.482 or 867.035, Stats.

(c) The department may make adjustments to and settle estate claims filed under s. 49.482 or 867.035, Stats., to obtain the fullest amount practicable.

SECTION 8. HSS 153.07(5) is created to read:

HSS 153.07(5) ESTATE RECOVERY. (a) An heir or beneficiary of the estate of a participant or a participant's surviving spouse may apply to the department for a waiver of an estate claim filed by the department pursuant to s. 49.482 or 867.035, Stats. The criteria for granting waivers in s. HSS 108.02(12)(b) shall apply to applications under this subsection. All of the procedures and rights in s. HSS 108.02(12)(b) to (e) shall apply to this subsection.

(b) For purposes of applying s. HSS 108.02(12)(b) to (e) to this subsection the following definitions apply:

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 participant or the deceased surviving spouse of a participant who received benefits that are subject to recovery under s. 49.482 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 participant who received reimbursement under s. 49.485, Stats.; and

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. 49.482 or 867.035, Stats.

(c) The department may make adjustments to and settle estate claims filed under s. 49.482 or 867.035, Stats., to obtain the fullest amount practicable.

SECTION 9. HSS 154.07(5) is created to read:

HSS 154.07(5) ESTATE RECOVERY. (a) An heir or beneficiary of the estate of a participant or a participant's surviving spouse may apply to the department for a waiver of an estate claim filed by the department pursuant to s. 49.482 or 867.035, Stats. The criteria for granting waivers in s. HSS 108.02(12)(b) shall apply to applications under this subsection. All of the procedures and rights in s. HSS 108.02(12)(b) to (e) shall apply to this subsection.

(b) For purposes of applying s. HSS 108.02(12)(b) to (e) to this subsection the following definitions apply:

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 participant or the deceased surviving spouse of a participant who received benefits that are subject to recovery under s. 49.482 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 participant who received reimbursement under s. 49.483, Stats.; and

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. 49.482 or 867.035, Stats.

(c) The department may make adjustments to and settle estate claims filed under s. 49.482 or 867.035, Stats., to obtain the fullest amount practicable.

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

Dated: March 12, 1996

By: \_\_\_\_\_

  
Joe Lekan  
Secretary

SEAL: