

NO. A05-2346

State of Minnesota
In Court of Appeals

In Re

Estate of Frances E. Barg
a/k/a Frances Edward Barg

APPELLANT'S BRIEF, APPENDIX AND ADDENDUM

JANICE S. KOLB
Mille Lacs County Attorney
By: DAWN R. NYHUS (#0329733)
Assistant Mille Lacs County Attorney
Courthouse Square
535 Second Street S.E.
Milaca, Minnesota 56353
(320) 983-8305

Attorneys for Appellant

MIKE HATCH
Attorney General

ROBIN CHRISTOPHER VUE-BENSON
(#033408X)
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

*Attorneys for Amicus Curiae Commissioner of the
Minnesota Department of Human Services*

THOMAS J. MEINZ (#7181X)
Attorney at Law
515 First Street
Princeton, Minnesota 55371-1603
(763) 389 1243

Attorney for Respondent

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LEGAL ISSUES

- I. The Medicaid Act allows a state to define the term “estate” for benefit recovery purposes to include “any real or personal property in which an individual has any . . . interest (to the extent of such interest).” Property interests are defined by state law. Minnesota uses “marital property” to define the extent of a recoverable interest in a community spouse’s estate. An interest in marital property is an undivided interest in the whole. Can Mille Lacs County recover from the full value of former marital property in order to satisfy a claim for Medicaid recovery?

The district court held: No.

Searles v. Searles, 420 N.W.2d 581 (Minn. 1988)
Estate of Wirtz, 607 N.W.2d 882 (N.D. 2000)
Estate of Brandt, No. C5-98-1924, 1999 WL 319180
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- II. A spouse has an interest in homestead property measurable by methods derived from probate law and the definition of marital property. Federal law does not specify any particular method by which a state must measure an interest in property for purposes of recovery. Congress, nevertheless, intended to give states flexibility in estate recovery in order to maximize recoveries. Mille Lacs County seeks recovery using a marital property method for determining the recoverable interest that allows for greater recovery than the probate method advanced by the personal representative. Is the County allowed to use the marital property method?

The district court held: No.

Wisconsin Dep’t of Health & Family Servs. v. Blumer, 534 U.S. 473, 122 S. Ct. 962 (2002)
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State by Hatch v. Employers Ins. of Wausau, 644 N.W.2d 820, 830 (Minn. Ct. App. 2002)

STATEMENT OF THE CASE

Mille Lacs County appeals a district court (probate) decision denying full reimbursement of Medicaid¹ benefits. Appellant's Appendix ("AA") AA1-6. The matter involves an estate containing marital property that has a value that is more than sufficient to fully repay the decedent's wife's long-term care Medicaid benefits.

As required by law, on July 30, 2004 Mille Lacs County Family Services and Welfare Department ("Mille Lacs County" or "the County") filed a claim against the Estate of Frances Barg for recovery of \$108,413 in Medicaid nursing home benefits paid on behalf of Frances' wife, Dolores Barg. AA23. On October 7, 2004, the Estate's Personal Representative, Michael F. Barg, partially allowed the claim in the amount of \$63,880.00, but disallowed the claim in the amount of \$44,533.53. AA30. On October 11, 2004, Mille Lacs County filed a Petition for Allowance of Claim. AA33. Only the amount disallowed was contested. AA35; Tr. of oral arg. at 7:17. On August 4, 2005, oral arguments were heard by the Mille Lacs County District Court, Judge Steven P. Ruble. AA34. On November 2, 2005, the district court denied the County's petition, holding that Dolores' interest in the estate's assets was limited to only \$63,880.00. AA36. On November 28, 2005, Mille Lacs County filed its Notice of Appeal of this decision, pursuant to Minn. R. Civ. P. 103.03. AA39.

¹ Minnesota's Medicaid program is known as "Medical Assistance" or "MA." For consistency, the term Medicaid will be used throughout this brief to refer to both Medicaid in general and to Medical Assistance.

MEDICAID CONTEXT AND BACKGROUND

This case is about the interpretation and application of federal and state Medicaid laws. Because understanding the Medicaid context is essential to interpreting and applying the specific laws at issue here, it is necessary to begin with a discussion of the Medicaid program as it relates to this case. Even though this case procedurally arose in a probate matter, Medicaid and estate recovery laws must be the primary framework for any analysis. *See Estate of Laughead*, 696 N.W.2d 312, 317 (Iowa 2005) (holding that the general probate code does not apply when a specific Medicaid estate recovery law addresses an issue); *Bonta v. Burke*, 120 Cal.Rptr.2d 72, 76 (Cal. Ct. App. 2002) (holding that the meaning of a term used in Medicaid estate recovery is ascertained not by its use in real property or probate law, “but as a term of art for the purposes of the Medicaid . . . program[.]”).

I. MEDICAID IS A SOCIAL WELFARE SAFETY NET PROGRAM.

Congress created Medicaid in 1965 as Title XIX of the Social Security Act at the same time that it created Medicare as Title XVIII of the act. *Social Security Amendments of 1965*, Pub. L. No. 89-97, 79 Stat. 286 (1965). Unlike Social Security and Medicare, which are premised on a social insurance model in which individuals make specific contributions through payroll taxes entitling them to *future* benefits, Medicaid is based on a social welfare model in which society as a whole funds the *current* costs of benefits. The social welfare model is necessary because Medicaid was conceived as, and continues to be, a safety net program that is the payor of last resort intended only for those without sufficient resources to pay for their necessary medical care and services. Medicaid was

never intended to be free insurance for those who adequate resources. *Meyer v. S.D. Dep't of Soc. Servs.*, 581 N.W.2d 151, 157 (S.D. 1998).

Medicaid's role as a social safety net program is reflected in its eligibility categories and criteria. There are two general categories of eligibility for Medicaid: those who are "categorically needy" and those who are "medically needy." Sen. Sp. Comm. on Aging, *Developments in Aging: 1993 Volume 1*, S. Rep. No. 103-403, at 175 (1994). Medicaid coverage of the categorically needy is mandated as a condition of federal cost-sharing. *Id.* The categorically needy are recipients of cash assistance programs such as Temporary Assistance to Needy Families (which replaced Aid To Families Dependent Children) and Supplemental Security Income ("SSI"). *Id.*; see Minn. Stat. § 256B.055 (2004) (Minnesota eligibility categories). States also have the option of covering those who are not receiving cash assistance but who meet other income-related criteria (referred to as the "optional categorically needy"). *Developments in Aging* at 175.

Medicaid's second eligibility category covers those who are considered to be "medically needy." Individuals eligible under this category have resources that are otherwise sufficient for daily living expenses (based on state-determined income levels), but that are not adequate to pay for their medically necessary services. *Developments in Aging* at 175. Those with excess income or assets are required to "spend down" their assets on medical expenses until they meet an eligibility threshold similar to that for cash-assistance programs. *Estate of Atkinson*, 564 N.W.2d 209, 211 (Minn. 1997).

Recipients in all categories must meet specific income and resource standards that are set by each state. *Developments in Aging* at 175. In Minnesota, individuals with assets over \$3,000 and couples with assets over \$6,000 are ineligible for Medicaid. Minn. Stat. § 256B.056, subd. 3 (2004). The value of a home, however, is excluded for institutionalized individuals until they cannot reasonably be expected to return home and the home is not used by a spouse or a dependant child as a primary residence. *See* Minn. Stat. § 256B.056, subd. 2 (2004). The result of this exclusion is that the home is usually the most significant asset that remains for post-death recovery. *West Virginia v. U.S. Dep't of Health & Hum. Servs.*, 289 F.3d 281, 284 (4th Cir. 2002)

II. MEDICAID'S "COOPERATIVE FEDERALISM"

Congress created Medicaid using its Spending Clause² powers. *See West Virginia*, 289 F.3d at 286. Unlike Social Security and Medicare, which are purely federal programs, Medicaid "is a cooperative endeavor in which the federal government provides financial assistance to participating states to aid them in furnishing [public] health . . . [insurance coverage] to needy persons." *Harris v. McRae*, 448 U.S. 297, 308, 100 S. Ct. 2671, 2683 (1980). State participation in Medicaid is voluntary. *West Virginia*, 289 F.3d at 284. *Id.* The federal share of Medicaid, known as "Federal Financial Participation," is between fifty and eighty-three percent — based on each state's per capita income. *Id.* at 284 n.2. Federal Financial Participation for Minnesota is fifty-percent.

² U.S. Const. art. 1, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States").

As with other Spending Clause-based laws, federal Medicaid payments are accompanied by certain broad conditions to which a state must comply in order to receive federal matching payments. *West Virginia*, 289 F.3d at 284. These conditions are found in the Medicaid Act and refined in its implementing regulations. 42 U.S.C. § 1396 *et seq.*; 42 C.F.R. §§ 430-36, 440-42, 455-56. Within this Medicaid statutory and regulatory framework, participating states enact their own state-specific legislation and rules for the administration of their state programs. State laws and policies are then incorporated into State Medicaid Plans, which must be approved by the Secretary of Health and Human Services before a state may receive federal payments. 42 U.S.C. § 1396a. Congress intended Medicaid to provide states with flexibility in designing plans to meet each state's needs, and states are given considerable latitude in formulating the terms of their plans. *Wisconsin Dep't of Health & Family Servs. v. Blumer*, 534 U.S. 473, 495, 122 S. Ct. 962, 975 (2002).; *see also* 42 C.F.R. § 430.0 (2005) (noting that, within broad federal rules, each state decides its own eligibility, services, administration, and operation procedures). The result is that there is not one uniform national Medicaid program, but over fifty distinct Medicaid programs in states and territories. *Medicaid Program Investigation (Part 1): Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 102nd Cong. 58 (statement of Richard P. Kusserow, Inspector General, U.S. Department of Health and Human Services) (1991).

III. MEDICAID AND LONG-TERM CARE

Over Medicaid's forty-year history, the proportion of Medicaid spending for long-term care of the elderly has increased in relation to other services and populations. Currently, based on 2004 data, long-term care accounts for one-third of all Medicaid spending although less than ten percent of Medicaid beneficiaries use long-term care services. Pew Ctr. on the States, *Special Report on Medicaid: Bridging the Gap Between Care And Cost*, A8 (2006). Medicaid spends over \$77 billion for long-term care provided in nursing homes (\$45.8 billion) and through home and community-based services (\$31.7 billion). *Id.* In Minnesota in 2004 Medicaid spent \$913 million for long-term care for the elderly. Minn. Dep't of Human Servs., *Public and Private Financing of Long-Term Care: Options for Minnesota*, 6 (2005).

Beginning in 1980, Congress began taking steps to restrain these long-term care costs by first allowing, and then by requiring, states to impose increasingly stringent eligibility penalties on transfers of assets and also by allowing states to impose liens on recipient's homes.³ The purpose of these steps was to "assure that all of the resources available to an institutionalized individual, including equity in a home, which are not needed for the support of a spouse or dependent children will be used to defray the costs of supporting the individual in the institution." S. Rep. No. 97-494 at 38, *reprinted in*

³ Congress's efforts have continued through the present. On February 1, 2006, Congress passed the Deficit Reduction Act of 2005 which included Medicaid amendments to, *inter alia*, extend the "look-back" period from three to five years for asset transfers that trigger ineligibility for long-term care. *Deficit Reduction Act of 2005*, S. 1932, 109th Cong. 1st Sess. § 6011 (2006).

1982 U.S.C.C.A.N. 781, 814 (1982). In addition to being a means of reducing spending, these efforts, largely aimed at eligibility, were also intended to prevent the use of Medicaid to “facilitate the transfer of accumulated wealth from nursing home patients to their nondependent children.” H. R. Rep. No. 100-105, at 73; *reprinted in* 1988 U.S.C.C.A.N. 857, 896 (1988). Thus, by 1993, with the passage of the Omnibus Budget Reconciliation Act of 1993 (“OBRA 93”), Congress had significantly tightened asset rules and strengthened lien provisions so that a couple’s resources were either used before a recipient spouse became Medicaid eligible or those resources were preserved for later recovery from a recipient’s or a surviving spouse’s estate. *See* Shawn Patrick Regan, *Comment: Medicaid Estate Planning: Congress’ Ersatz Solution For Long-Term Health Care*, 44 *Cath. U. L. Rev.* 1217, 1227-28 (1995) (summarizing evolution of Medicaid transfer of assets and lien provisions through OBRA 93). As will be discussed shortly, Medicaid estate recovery is a logical extension of these tighter asset transfer and lien provisions because the assets preserved by those provisions will not be recovered without an effective recovery program. *See* General Accounting Office (“GAO”), *Medicaid: Recoveries From Nursing Home Residents’ Estates Could Offset Program Costs*, at 5 (1989) (hereinafter “GAO, *Medicaid Recoveries*”).

IV. LONG-TERM CARE AND SPOUSAL ANTI-IMPOVERISHMENT REFORMS

While seeking to curtail abuse of Medicaid by those with resources, Congress in the 1980’s also sought to remedy the problem of “spousal impoverishment.” The income and assets of married couples are generally considered “available” resources, in full, to an

institutionalized spouse seeking Medicaid eligibility. *Blumer*, 534 U.S. at 479-80, 122 S. Ct. at 967. Thus, before 1988, if one spouse needed institutionalized care, married couples had to “spend down” all of their joint assets for the institutionalized spouse to achieve eligibility. *Atkinson*, 564 N.W.2d at 211. This spend down often left the noninstitutionalized spouse, known as the “community spouse,” destitute. *Blumer*, 534 U.S. at 480, 122 S. Ct. 967. This destitution continued because, to maintain the institutionalized spouse’s eligibility, the community spouse could only retain income up to a “maintenance need level” which was tied to the income limits for SSI or other cash assistance programs (depending on the state). *See* H.R. Rep. No. 100-105, 67-68, *reprinted in* 1988 U.S.C.C.A.N. 857, 890-91 (1988).

In 1988, to address the problem of spousal impoverishment, Congress included a number of Medicaid amendments in the Medicare Catastrophic Coverage Act of 1988 (MCCA). Pub. L. No. 100-360, § 303(a)(1)(B), (subsequently codified in relevant part at 42 U.S.C. § 1396r-5). Congress eased the financial hardship by revising the eligibility and asset allocation requirements — the main causes of spousal impoverishment. The MCCA allowed the community spouse to keep a substantial amount of otherwise available property (called the “Community Spouse Resource Allowance”) without jeopardizing the institutionalized spouse’s Medicaid eligibility. *See* 42 U.S.C. § 1396r-5(c)(2).

These spousal anti-impoverishment changes increased Medicaid long-term care expenditures because institutionalized spouses became Medicaid-eligible faster (i.e., without having to spend down as much of their joint resources). *See* U.S. Dep’t of Health

and Human Servs., Office of Inspector General, *Medicaid Estate Recoveries: National Program Inspection*, iii-iv (1988) (hereinafter “OIG, *National Program Inspection*”) (noting estimates of the cost of spousal impoverishment reforms ranging from \$410 million to \$1.275 billion and “ascend[ing] steeply” in future years).

V. MEDICAID ESTATE RECOVERY

The consequence of eligibility criteria, tightened asset transfer restrictions, and spousal anti-impoverishment reforms is that some resources are temporarily excluded from eligibility calculations and in many cases could be left over after both spouses have passed away.⁴ GAO, *Medicaid Recoveries* at 13-14. For example, a home is temporarily excluded as an available resource while it is needed by a community spouse. *West Virginia*, 289 F.3d at 284. The effect of this exclusion is that someone, despite having a potentially valuable asset in the form of home equity, can still qualify for Medicaid benefits at the same time as others who have fewer resources or who have had to spend down liquid assets. *Id.*

⁴ Congress recently amended the spousal anti-impoverishment provisions in a way that ensures that more of a couple’s resources will be available to pay for care during eligibility or be preserved for later estate recovery. *See Deficit Reduction Act of 2005*, § 6013 (requiring states to use the “income first” method for allocating resources between a community spouse and an institutionalized spouse); *see also Blumer*, 534 U.S. at 484-85, 122 S. Ct. at 969 (discussing “income first” and “resource first” methods).

Congress “addressed this anomaly through estate recovery.” *Id.*⁵ Estate recovery programs, through delayed recovery, require those whose primary assets are their homes to share the cost of their nursing care in the same manner as those whose assets are in more liquid forms. GAO, *Medicaid Recoveries* at 2. In effect, the home is deemed temporarily unavailable for eligibility purposes if it is needed by a community spouse, but is available for purposes of recovery when it is no longer needed.

Estate recovery has been recognized from the beginning of the Social Security Act in 1935 and the creation of Medicaid in 1965. Flint Hills Center for Public Policy, *Kansas Estate Recovery Primer Volume 2: A National History of Estate Recovery*, § II (2005). These early recognitions placed conditions on states that limited the timing of recovery to after the death of the recipient and further delayed recovery if the recipient had a surviving spouse or a dependant child. *Id.* These same limitations on when recovery can be made have remained largely unchanged as part of Medicaid. *See* 42 U.S.C. § 1396p (a)-(b).⁶ Notably, the only limit on *what* states can recover is tied to the amount of the benefits received. *Id.* In addition, although estate recovery before 1993 was often described as “optional,” with the implication that federal law served as a grant of authority, the more accurate view is that federal law never displaced the states’ power

⁵ Congress has recently begun to also address this home equity anomaly by disqualifying individuals with more than \$500,000 in home equity for Medicaid long-term care (unless a community spouse or dependent child resides in the home). *Deficit Reduction Act of 2005*, § 6014.

⁶ The texts of this and other pertinent statutes are provided in the Appellant’s Addendum.

to legislatively establish and define estate recovery other than in its timing and how much a state could claim. *Estate of Turner*, 391 N.W.2d 767, 768 (Minn. 1986) (stating that although there is no inherent common law authority to recover assistance, the legislature may pass laws to recapture such funds); *see also* David C. Baldus, *Welfare As A Loan*, 25 Stan. L. Rev. 123, 125 (1973) (“Recovery laws have existed in the United States for more than 150 years.”).

In the early 1980’s Congress loosened federal restrictions on when states could seek recovery. As noted above, this loosening was a complement to Congress’s efforts to address the exploitation of eligibility loopholes through tighter asset transfer restrictions. Congress rescinded the prohibition on placing a lien on a home while the recipient was still living. 47 Fed. Reg. 43644 (Oct. 1, 1982). This change was aimed at helping prevent the transfer of a home to a family member or friend by an elderly person who anticipated the need for nursing home care, causing the home to escape recovery. *See* S. Rep. No. 97-494 at 38, 1982 U.S.C.C.A.N. at 814; *see also* 47 Fed. Reg. 43644.

In the mid and late 1980’s, Congress instructed the Department of Health and Human Services (“HHS”) and the General Accounting Office (“GAO”) to study Medicaid estate recovery. HHS, *Issues in Medicaid Estate Recoveries: A Report to the United States Congress*, 1-2 (1989) (hereinafter “HHS, *Issues in Medicaid Estate Recoveries*”); GAO, *Medicaid Recoveries* at 1. These studies were aimed at identifying how estate recoveries could be an effective complement to other efforts in controlling Medicaid long-term costs, increasing nontax revenues, and lessening the fiscal impact of spousal anti-impoverishment reforms. HHS, *Issues in Medicaid Estate Recoveries* at 1-2;

GAO, *Medicaid Recoveries* at 2-3; OIG, *National Program Inspection* at iv. These studies found that fewer than half of the states had estate recovery programs and concluded that mandating that all states implement recovery programs modeled after the most effective states could recover over half a billion dollars a year — primarily from the value of home equity. *See, e.g.,* GAO, *Medicaid Recoveries* at 3-4. The absence of effective estate recovery programs was also identified as a factor in elderly not using cost-containment strategies such as private long-term care insurance or relying on family care to delay admission to costly nursing homes. HHS, *Issues In Medicaid Estate Recoveries* at 3.

These reports set the stage for Congress's substantial expansion of Medicaid estate recovery through amendments included in the Omnibus Budget Reconciliation Act of 1993 ("OBRA 93"). Pub. L. No. 103-66, § 13612 (amending 42 U.S.C. § 1396p(b)). Based on the above studies, and faced with the need to come up with program savings, administration, House, and Senate proposals all aimed to making estate recovery stronger. *See Administration's 1994 Health Budget: Hearing Before the Sen. Comm. on Finance*, 103d Cong. 90 (1993) (statement of Donna E. Shalala, Secretary of Health and Human Services); *Medicare and Medicaid Budget Reconciliation Act of 1993*, H.R. 2138, 103d Cong. § 5112 (1993) (as introduced May 17, 1993 by Rep. Henry A. Waxman); *Omnibus Budget Reconciliation Act of 1993*, S. 1134 § 7421 (1993) (as amended June 23, 1993). The final version of OBRA 93 was signed into law August 10, 1993.

With the OBRA 93 amendments, Congress significantly reoriented Medicaid estate recovery. Whereas before estate recovery was simply permitted, OBRA 93 now

required states to use estate recovery. The limitations as to when recovery could take place remained unchanged. *Id.*

Congress also included in the OBRA 93 amendments a minimum definition for the term “estate” and a nonexhaustive and expansive allowance for states to go beyond that minimum definition in their estate recovery programs:

For purposes of [recovery of Medicaid funds], the term “estate,” with respect to a deceased individual:

(A) shall include all real and personal property and other assets included within the individual’s estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include in the case of an individual [who has received benefits from a long-term care insurance policy]) any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

42 U.S.C. § 1396p(b)(4). Thus, the *minimum* floor of what is within an estate for required federal Medicaid recovery is set by state probate law. From this minimum floor, states are permitted to include an expansive range of property and assets connected to the decedent.

VI. MINNESOTA’S MEDICAID ESTATE RECOVERY STATUTE

Minnesota has had public welfare estate recovery laws since at least 1929. *Estate of Paulson*, 245 Minn. 426, 428, 72 N.W.2d 857, 858-59 (1955). Minnesota’s Medicaid estate recovery law, codified at Minnesota Statutes section 256B.15, dates from 1967 which marked the beginning of the state’s participation in Medicaid. *Turner*,

391 N.W.2d at 768. Responsibility for estate recovery is delegated to Minnesota counties. Minn. R. 9505.0135, subp. 4 (2005). Relevant to the matter now before the Court is the requirement under Minnesota's estate recovery statute that:

If a person receives any medical assistance hereunder, on the person's death, if single, or on the death of the survivor of a married couple, either or both of whom received medical assistance, the total amount paid for medical assistance rendered for the person and spouse shall be filed as a claim against the estate of the person or the estate of the surviving spouse in the court having jurisdiction to probate the estate.

Minn. Stat. § 256B.15, subd. 1a (2004). Such a claim is limited in that:

The claim shall include only the total amount of medical assistance rendered after age 55. . . . A claim against the estate of a surviving spouse who did not receive medical assistance, for medical assistance rendered for the predeceased spouse, is limited to the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage.

Minn. Stat. § 256B.15, subd. 2 (2004).

Recovery from the estate of one spouse of the public welfare benefits received by the other spouse has a long history in Minnesota. *See Estate of Eggert*, 245 Minn. 401, 403, 72 N.W.2d 360, 362 (1955) ("the legislature was fully empowered to enact [a 1939 old age assistance provision] making the estate of one spouse subject to the claim for public assistance granted to the other."). The Legislature, by amendment, enacted Minnesota's Medicaid spousal recovery provisions in 1987. *Estate of Edhlund*, 444 N.W.2d 861, 862 (Minn. Ct. App. 1989). The amendments were in response to a 1984 court of appeals decision holding that a claim could not be filed against the estate of the surviving community spouse unless expressly authorized in statute. *Estate of Jobe*,

590 N.W.2d 162, 164 n.1 (Minn. Ct. App. 1999). The substance of these particular provisions have remained unchanged since 1987.

VII. MINNESOTA CASELAW ON MEDICAID SPOUSAL RECOVERY

The Minnesota Court of Appeals has repeatedly upheld the application of these spousal recovery provisions when challenged as conflicting with federal Medicaid law. The court first rejected the preemption argument in *Estate of Jobe*. 590 N.W.2d at 164. There, the only asset in the surviving community spouse's estate was a couple's marital homestead. *Id.* The estate sought to bar Ottertail County's claim on preemption grounds. *Id.* The court held that Minnesota Statutes section 256B.15, subdivision 2, was "entirely consistent with federal law and not preempted" because federal law allows states to define estate to include assets conveyed to a survivor through joint tenancy or other arrangement. *Id.* at 166-67.

A month after the court decided *Jobe*, it again rejected an estate's preemption argument. *Estate of Brandt*, No. C5-98-1924, 1999 WL 319180 at *1 (Minn. Ct. App. April 20, 1999); (unpublished opinion provided in Appellant's Addendum). In *Brandt*, Roseau County sought recovery from the surviving community spouse's estate which consisted of "a contract for deed with a life estate in homestead property . . . and a vendor's interest in a contract for deed on non-homestead property." *Id.* at *1. *Brandt* followed *Jobe's* holding, *id.* at *2, and additionally reasoned that "[i]f the federal statute precluded recovery from a surviving spouse's estate, portions of the federal statute [requiring that recovery be delayed until after the death of a surviving spouse] would be rendered meaningless." *Id.* at *3. Thus, the court concluded that "compliance with both

the state and federal statutes is possible and the county's claim against the estate was properly allowed." *Id.* The court then remanded the matter to the district court "to determine whether the property in [the community spouse's] estate was part of her husband's estate as defined by Minn. Stat. § 256B.15, subd. 2." *Id.*

In *Estate of Gullberg*, the court reversed a district court's refusal to allow *any* claim for recovery from a surviving community spouse's estate. *Estate of Gullberg*, 652 N.W.2d 709 (Minn. Ct. App. 2002). There, the district court had denied Dakota County's claim against the estate, the only asset of which was the marital homestead. *Id.* at 711. The recipient spouse in *Gullberg* had conveyed his interest in the homestead by quit claim deed to his wife shortly before applying for Medicaid benefits. *Id.* The district court had reasoned that federal law limited the recoverable estate to property that a Medicaid recipient had legal title to at the time of death, therefore it preempted Minnesota's statute defining estate "to include any property that was jointly owned at any time during the marriage." *Id.* at 712 (summarizing the district court's reasoning). The court of appeals held that "the county's claim against the estate is clearly allowed" by Minnesota law, and went on to reframe the issue as whether "allowance of the claim *in its entirety* complies with federal law." *Id.* at 713 (emphasis added).

The reason for the *Gullberg* court's reframing of the issue was that, unlike the recipient spouse in *Jobe* who was a joint tenant at the time of death, the recipient spouse in *Gullberg* had conveyed the homestead to the community spouse and thus did not have "legal title" when he died. *Gullberg*, 652 N.W.2d at 713. The court held, nevertheless, that the recipient continued to have a legal interest in the homestead. *Id.* In so holding,

the court cited marital property law and probate law. *Id.* The court then qualified its holding by observing that Minnesota law “goes beyond what is allowed by federal law, which allows recovery only ‘to the extent’ of the individual’s legal interest at the time of death.” *Id.* at 714. The court then remanded the matter to the district court “to determine and reevaluate [the recipient spouse’s] interest in the homestead at the time of his death.” *Id.* at 715. The matter now before the court focuses this part of *Gullberg*, that is on how to determine and value a nontitle holding spouse’s interest in marital property.

Judge Minge concurred in the *Gullberg* majority’s result based on the assumption that, even under the majority’s position, the state would still achieve full recovery on its claim. *Gullberg*, 652 N.W.2d at 715 (Minge, J., specially concurring). Judge Minge disagreed with the majority’s reasoning because it went “down the wrong road” in limiting the state’s efforts “to deal with the unfortunate, but persistent, efforts of some to enhance their final estate by sheltering and divesting assets in order to qualify for Medical Assistance.” *Id.* Judge Minge added that preemption could be avoided by construing the terms of the federal statute “to include any estate, interest, or arrangement that the state by law establishes for purposes of recovery of Medical Assistance (Medicaid) benefits.” *Id.*

With this Medicaid estate recovery background as the context, Appellant now turns to the facts of this particular case.

STATEMENT OF FACTS

In 1962, Dolores and Frances Barg purchased homestead property in Princeton, Minnesota together as husband and wife. AA7-9. On December 20, 2001, Dolores Barg

("Dolores") applied for long-term Medicaid benefits. AA34. At that time, the Bargs' total marital assets were \$137,272.63. AA10-11. Of that total, assets equaling \$104,875, primarily their home then valued at \$92,000, were not counted as being available to pay for Dolores' care. See AA10. Mille Lacs County determined that Dolores was eligible for Medicaid. On July 2, 2002, Barbara Anderson, Guardian to the Estate of Dolores Barg and the Bargs' daughter, executed a Guardian's Deed, conveying the property that had been held by Dolores and Frances Barg in joint tenancy for 40 years to Frances Barg's ("Frances") name only. AA13, 18.

Dolores died January 1, 2004. AA34. Between December 1, 2001, and the date of her death, Dolores received \$108,413.53 in Medicaid benefits. *Id.*

Six months after Dolores' death, Frances, who did not himself receive Medicaid benefits, died leaving a solvent estate with assets totaling \$146,446.29. AA5, 24-29. Included among these assets was the homestead property, the estimated market value of which was \$120,800.00 for 2004. AA25. All other assets were also either jointly held or traceable to jointly-held assets at some time during the Bargs' marriage. AA4.

On August 11, 2004, Michael Barg, personal representative for Frances' estate and the Barg's son, filed a Notice to Commissioner of Human Services regarding possible claims, for Medicaid recovery under Minn. Stat. § 256B.15. AA5. Pursuant to Minnesota's Medicaid estate recovery laws, Mille Lacs County filed a claim in the amount of \$108,413.53 against the estate, seeking recovery of the Medicaid benefits paid on behalf of Dolores. AA23. Michael Barg disallowed the claim in the amount of \$44,533.53, serving his Notice of Disallowance or Partial Allowance of Claim on

October 7, 2004. AA30. On October 11, 2004, the County petitioned Mille Lacs County District Court for allowance of the previously disallowed part of its claim. *See* AA31-33.

In written and oral argument, the County and the personal representative advanced differing theories on how to determine the extent of Dolores' interests for purposes of recovery — both attempting to apply *Gullberg's* holding. The County's theory was (and continues to be) that Dolores had an undivided interest in the whole of all the property now in Frances' estate. This theory is based on the statutory definition of "marital property" found at Minnesota Statutes section 518.54, subdivision 5. The use of this definition in estate recovery is required by the Legislature's use of the term defining the recoverable property when a claim is made against a community spouse's estate. Minn. Stat. § 256B.15, subd. 2; *see Brandt*, 1999 WL 319180 at *3 (remanding to district court "to determine whether the property in [the community spouse's] estate was part of her husband's estate *as defined by Minn. Stat. § 256B.15, subd. 2.*" (emphasis added)).

The personal representative advanced a theory that valuation was determined by reference to probate law. *See* Tr. 26 (he also attempted to argue, contrary to *Gullberg*, that Dolores had *no* interest in any of the property, but did not press that argument). Under the personal representative's probate theory, Dolores' interest is derived largely from the probate statute concerning the descent of homestead property. *See* Minn. Stat. § 524.2-402, subd. (a) (2004) (if there is a surviving spouse and surviving descendants, then the spouse has a life estate in the homestead with the descendants as remaindermen). Under this method, the proportion of Dolores' life estate interest is limited to 48.742% based on her age (77) when she died. *See* Tr. 26. As the district court correctly noted at

oral argument, the use of a life estate results in a different proportional interest depending on the age of the recipient. Tr. 28. *See* Life Estate Mortality Table (in Appellant's Addendum).

Following briefing and oral arguments on these theories, the district court issued a decision denying Mille Lacs County's petition. AA34-38. In explaining its decision, the court recognized that Dolores undisputedly had an interest in the property now in Frances' estate. AA35. The court also found that the conveyance to Frances converting title of their homestead from joint tenancy to Frances' sole ownership constituted an "other arrangement" under 42 U.S.C. § 1396p(b)(4)(B). AA36.

In valuing Dolores' interest, however, the district court selected the personal representative's probate method and disregarded the County's marital property method. AA36. The court interpreted *Gullberg's* limited discussion of a recipient spouse's interest as "implicitly acknowledg[ing] that the rights and interests of non-title holders are not synonymous with the right of common ownership." AA37. The court then rejected the County's marital property theory as "lack[ing] certainty" because the factors involved in marital dissolution "are not suitable for a proceeding such as this one where the spouses are not the actual parties." AA38. (The statutory definition of "marital property" is found in the chapter on marital dissolution.) Without otherwise explaining why the personal representative's probate method was appropriate, the court used that method to hold that Dolores had a life estate interest valued at \$58,800 and a personal property allowance of \$5,000. *Id.*

Mille Lacs County now appeals. The County requests that this court reverse the district court and hold that an institutionalized spouse, for purposes of Medicaid estate recovery from a surviving community spouse's estate, has an undivided interest in the whole of marital property. The County further requests that this Court also hold that a Medicaid recovery claim may therefore be satisfied from the entirety of marital property in the community spouse's estate.

SUMMARY OF ARGUMENT

Federal law relies on state law to define property interests. Minnesota law defines, for the purposes of estate recovery, an institutionalized spouse's interest in marital property as an undivided interest in the whole. Because Minnesota law defines this interest using the statutory definition of marital property, the district court erred in rejecting Mille Lacs County's marital property theory and limiting its recovery claim to a value determined using probate law.

In addition, federal law is silent when it comes to choosing between two equally plausible methods of determining the recoverable interest in property. However, Congress's intent behind the 1993 amendments, and specifically the addition of an optional definition of estate, was to give states flexibility to enhance estate recovery in order to offset Medicaid's rising costs. Mille Lacs County's marital property method enhances recovery more than the personal representative's probate method. In rejecting the marital property method, the district court's decision had no basis in state or federal law.

Mille Lacs County respectfully requests that this Court reverse the district court.

SCOPE OF REVIEW

The question in this case, the allowable scope of a Medicaid recovery claim, is a purely legal one involving statutory interpretation and the examination of legislative intent. Minn. Stat. § 645.16 (2004). As such, this Court reviews the matter *de novo*. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). A district court's decision is not binding upon an appellate court's *de novo* review. *O'Malley v. Utland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

The question presented arises from this court's holding in *Gullberg* that Minnesota Statutes section 256B.15, subdivision 2, is partially preempted by the phrase "to the extent of such interest" found in United States Code title 42, section 1396p(b)(4)(B). Because Minnesota's law can only be preempted to the extent that it is in actual conflict with the federal law, the standards of review governing preemption analysis under the Supremacy Clause⁷ must also be followed. The United States Supreme Court has stated that "[c]onsideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law." *Building & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 224 (1993) (citations and internal quotes omitted). The Supreme Court has also stated that it is

⁷ U.S. Const. art. VI ("[T]he laws of the United States . . . shall be the supreme law of the land."). Although Medicaid is created using a spending clause power, Supremacy Clause preemption analysis has been adopted for evaluating claims of conflict between state and federal law.

“reluctant to infer preemption.” *Id.* (citations omitted). Moreover, the Supreme Court has explained that, in any preemption analysis, “the purpose of Congress is the ultimate touchstone.” *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 9 (1987) (citations and internal quotations omitted). Analyzing federal legislative intent also requires a presumption against preemption, particularly when the objectives of state and federal law are in harmony. *See Forster v. R.J. Reynolds Tobacco Co.*, 437 N.W.2d 655, 658 (Minn. 1989).

ARGUMENT

I. MINNESOTA LAW DEFINES DOLORES’ INTEREST IN MARITAL PROPERTY AS AN UNDIVIDED INTEREST IN THE WHOLE, THE ENTIRETY OF WHICH IS AVAILABLE FOR RECOVERY.

A. The extent of Delores’ interest in marital property is controlled by application of Minnesota law.

Under the Medicaid Act, the minimum definition of a recipient’s estate is that found in a state’s probate law. 42 U.S.C. § 1396p(b)(4)(A). A state is also generally permitted to define “estate,” for purposes of recovery, as “any other real and personal property and other assets in which the [deceased] individual had any legal title or interest at the time of death (to the extent of such interest).” 42 U.S.C. § 1396p(b)(4)(B). The *Gullberg* court identified Congress’s parenthetical use of the phrase “to the extent of such interest” as a limitation on the scope of Minnesota’s recovery statute when applied to a community spouse’s estate that included marital homestead property to which the institutionalized spouse had transferred title to the community spouse. *Gullberg*, 652 N.W.2d at 714.

The Medicaid Act does not define the term “interest” or even suggest how the “extent” of an interest in real or personal property or assets should be determined. This silence is particularly salient in a case in which the marital homestead is the primary asset and it is a community spouse’s estate from which recovery is being sought. Without such guidance, state law must be followed in applying the term “interest” to the facts of this case and in determining the “extent” of that interest under state law for purposes of estate recovery. *Cf. Aquilino v. United States*, 363 U.S. 509, 512-13, 80 S. Ct. 1277, 1280 (1960) (holding that state law controls when determining the nature of a taxpayer’s interest in property sought to be reached by federal revenue statute); *West Virginia*, 289 F.3d. at 294 (“health care and inheritance are subject matters generally reserved to the states”); *see also Eggert*, 245 Minn. at 403, 72 N.W.2d at 362 (“It is well settled that the descent and distribution of property of a decedent is a matter within the exclusive control of the [state] legislature.”). Significantly for this analysis, although property law developed through common law, common law notions of property cannot prevail over statutes that have since displaced or modified the common law. *See Jobe*, 590 N.W.2d at 166. The applicable Minnesota recovery statutes, and the statutes related to recovery, require that Dolores’ interest be defined using the statutory definition of marital property and then construed to allow recovery from the full value of the marital property in Frances’ estate.

B. For purposes of Medicaid estate recovery, Minnesota law requires that marital property be the basis for defining an institutionalized spouse's interest in property acquired during marriage to the community spouse.

Recovery of the Medicaid benefits expended for Dolores' nursing home care is required by both federal and Minnesota law. 42 U.S.C. § 1396p(b)(1)(B)(i); Minn. Stat. § 256B.15, subds. 1a, 2 (2004). However, because she was survived by Frances, her husband, recovery was delayed until after his death. 42 U.S.C. § 1396p(a)(2); Minn. State. § 256B.15, subd. 3 (2004). Even though Frances himself did not receive Medicaid benefits, Minnesota law requires recovery of the benefits Dolores received from his estate because they had been a married couple. Minn. Stat. § 256B.15, subd. 1a (2004) (“ . . . on the death of the survivor of a married couple, either or both of whom received medical assistance . . . the total amount paid for medical assistance rendered for the person and spouse shall be filed as a claim against . . . the estate of the surviving spouse”).

In the present circumstances, Minnesota's Medicaid recovery law requires that the claim for recovery be limited in two respects. First, the claim is limited to the total amount of Medicaid benefits Dolores received after age 55. Minn. Stat. § 256B.15, subd. 2 (2004). Second, because the claim is for Medicaid received by a predeceased spouse and is being made against “the estate of a surviving spouse who did not receive medical assistance,” the claim “is limited to the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage.” *Id.* Thus, Minnesota law, in so limiting a claim for recovery of the predeceased spouse's benefits, requires that any analysis of a limitation on recovery by the generic phrase “to the extent

of such interest” be done in light of how the Legislature intended the extent of an institutionalized spouse’s interest to be defined when the property in question is marital property. *Cf. Brandt*, 1999 WL 319180 at *3 (remanding to district court to determine if property in community spouse’s estate “was marital property or jointly owned property under Minn. Stat. § 256B.15, subd. 2, at the time of [institutionalized spouse’s] death” because that issue was “necessarily raised” when the county brought its claim).

Minnesota’s spousal recovery statute’s limitation of a claim to “the value of the assets . . . that were marital property or jointly owned property at any time during the marriage,” establishes that Minnesota law defines the interest of an institutionalized spouse as an interest the scope of which is based on the concept of “marital property” as it is defined elsewhere in statute. The reference to marital property was added in 1987 to address a court of appeals decision requiring express authorization for a claim against a community spouse’s estate. *Jobe*, 590 N.W.2d at 164 n.1. In making this addition, the Legislature chose a term that already had a statutory definition. *See* Minn. Stat. § 518.54, subd. 5 (1986). The Legislature could not have meant something other than the statutory definition of marital property when it used that specific term. Furthermore, the Legislature used “marital property and jointly owned property” as opposed to simply “marital and jointly owned property.” This usage highlights “marital property” as a distinct term. Moreover, rather than listing the possible types of title or interests, the Legislature carefully selected two terms that defined the kind of interest (marital) and the kind of title (joint) that were recoverable from a community spouse’s estate.

When the Legislature leaves a term undefined in one statute, courts may look to other statutes where it has provided a definition. *See Bd. of Educ. of Minneapolis v. Sand*, 227 Minn. 202, 210, 34 N.W.2d 689, 694 (1948). The only definition of “marital property” in Minnesota statutes is in the definitions section of chapter 518, concerning marital dissolution. *See* Minn. Stat. § 518.54, subd. 5. “Marital property” is defined there as real or personal property “acquired by [a husband and wife], or either of them . . . at any time during the existence of the marriage relation between them.” *Id.* If property was acquired by either spouse while they were married, it is *presumptively*⁸ marital property regardless of how it is titled or the form of ownership. *Id.* Each spouse has a common ownership interest in marital property. *Id.* In a dissolution proceeding, this interest would be finalized by entry of a decree under Minnesota statutes section 518.58 (“Division of Marital Property”). *Id.*

Applying the marital property definition here, the primary question is whether property in the community spouse’s estate was acquired during marriage. If so, the presumption applies. Because the home will usually be the only significant asset in the community spouse’s estate, this determination can be made by simply comparing the purchase date with the date of the couple’s marriage. Dolores and Frances purchased their home as husband and wife. The other assets in Frances’ estate are stipulated to have been jointly owned.

⁸ The presumption of marital property can be overcome by showing that the property is “nonmarital property” (e.g., a gift or inheritance from a third party to one but not the other spouse.”). Minn. Stat. § 518.54, subd. 5.

Although the definition of marital property arises in the context of marital dissolution proceedings, there is no sound reason to reject it as the proper standard to determine the extent of a spouse's interest in the context of Medicaid estate recovery. At the district court, the personal representative argued that there is no interest in marital property using the above statutory definition of marital property because such an interest only vests, under marital dissolution law, after entry of a decree dividing property. Memo. of Pers. Rep. at 7. The district court also appeared to find it difficult to apply the definition of marital property in the absence of a dissolution proceeding. AA38 (legal factors in a dissolution setting are not suitable for a proceeding such as this one).

These concerns, however, miss the point. The Legislature incorporated a specific term with a specific statutory definition. It is simply absurd to require that an interest in marital property in a *recovery* proceeding be vested by a divorce decree when there never was a divorce. It is also absurd to reject the Legislature's use of a specific concept on the basis that there are factors used in an entirely different proceeding which are irrelevant to a recovery proceeding and to which the Legislature *never* referred. The Legislature may incorporate into estate recovery law the *definition* of a term used in a marital dissolution proceeding without having to *also* incorporate the *other features* of a dissolution proceeding. Moreover, the district court's total rejection of marital property has the effect of negating an essential term in the statute. There is no principled basis for this negation. Finally, in rejecting marital property as the basis for defining the interest, the district court failed to follow *Gullberg's* holding recognizing there *is* a marital property interest.

Any doubt that the Legislature intended that an institutionalized spouse's interest be an interest in the whole of marital property should be dispelled by the Legislature's clear directive that recovery laws and laws "involved" in recovery be construed liberally to achieve their purposes. Minn. Stat. § 256B.15, subd. 1(a)(4).⁹ Applying that directive here, the combination of recovery statutes and the incorporated definition of marital property require a holding that fulfills the Legislature's intention that each spouse has an undivided interest in marital property and that the recipient spouse's undivided interest allows recovery up to the full value of the marital property in the surviving spouses estate. *See* Minn. Stat. § 256B.15, subd. 2; *see also* Minn. Stat. § 645.16 (2004) (the object of statutory interpretation is to realize the Legislature's intent); *cf. Estate of Paulson*, 245 Minn. 426, 431, 72 N.W.2d 857, 860 (1955) (construing old age assistance recovery law broadly to avoid "do[ing] violence to the obvious intent of the legislature that the county recover in all cases the amount of old age assistance paid . . . where assets are found available to pay such claims."). In addition, defining the extent of a spouse's interest by using the marital property definition satisfies the Legislature's express intention "that . . . couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the total cost of their care during or after their enrollment in the program." Minn. Stat. § 256B.15, subd. 1(a).

⁹ "[a]ll laws, rules, and regulations governing or *involved with recovery* of medical assistance shall be liberally construed to accomplish their intended purpose." Minn. Stat. § 256B.15, subd. 1(a) (2004) (emphasis added).

Furthermore, using marital property's presumption of an undivided interest in the whole to define, for the purposes of recovery, a recipient spouse's interest in marital property is similar to how the Legislature has otherwise prioritized Medicaid recovery from a homestead. A homestead is generally protected from the claims of creditors without regard to which spouse holds title or which spouse is the debtor. Minn. Stat. § 510.04 (2004). The Legislature, however, includes Medicaid recovery claims among the few exceptions to this exemption. Minn. Stat. § 510.05 (2004). This exception is not limited to a half-interest in the homestead but results in the *whole* of the homestead being subject to a claim. Similarly, in 1982 the Legislature amended the general homestead exemption found in the probate code to require that a homestead passing to a spouse or children remain subject to a Medicaid recovery claim. *Estate of O'Keefe*, 354 N.W.2d 531, 533 (Minn. Ct. App. 1984) (change in law now codified at Minn. Stat. § 524.2-402(c) (2004)). This change "increased the pool of assets from which [Medicaid] could be recovered to include the homestead." *Id.* at 534. With this change, "the legislature recognized that, in some circumstances, the homestead would not necessarily be preserved." *Eustice v. Jewison*, 413 N.W.2d 114, 121 (Minn. 1987). One of these circumstances is when there is a Medicaid recovery claim. *See id.* These prioritizations of Medicaid recovery claims from homestead property, without a qualification that the exceptions attach only to a recipient spouse's partial interest in the homestead, further support the conclusion that Minnesota law determines that a spouse's interest in marital property from which recovery can be made is an interest reaching the entirety of the property.

Finally, defining the recoverable interest as encompassing the whole of marital property is reasonable in light of a husband and wife's statutory liability. Although generally a spouse is not liable for the debts of the other spouse, the Legislature has expressly made an exception "for necessary medical services that have been furnished to either spouse." Minn. Stat. § 519.05 (2004). For these debts, a husband and wife are jointly and severally liable. *Id.* Such liability is congruent with how the Legislature has defined a couple's mutual responsibility for Medicaid recoveries. *See* Minn. Stat. § 256B.15, subd. 2. It would be absurd to allow a *private* medical care creditor to reach more property through section 519.05's joint and several liability while prohibiting the *public* Medicaid program from reaching all of a couple's marital property through estate recovery.

C. Defining a recipient spouse's recoverable interest using marital property is consistent with holdings from this court and the North Dakota Supreme Court.

In *Brandt*, an unpublished opinion released shortly after *Jobe*, this court addressed a claim by an estate that federal law prohibited recovery from a community spouse's estate. *Brandt*, 1999 WL 319180 at *1. The property that was involved there included both homestead and non-homestead property. *Id.* What is significant here is the court's instructions to the district court on remand. The court instructed the district court "to determine whether the property in [the community spouse's] was part of her husband's estate *as defined by Minn. Stat. § 256B.15, subd. 2.*" *Id.* at *3 (emphasis added). This instruction on remand was necessary because the parties had not presented evidence to prove or disprove that the property in the estate "included assets that were marital or

jointly owned at the time of Alvin Brandt's death." *Id.* at *1. The *Brandt* court, in using Minn. Stat. § 256B.15, subd. 2 to provide the necessary elements of a valid estate claim at least implicitly endorsed the County's position here that the a recipient spouse's recoverable interest in property is to be based upon whether the property was marital property or jointly owned.

The North Dakota Supreme Court, in *Estate of Wirtz*, considered the question of "which assets in [a community spouse's] estate are subject to recovery" in light of the definition of estate provided by 42 U.S.C. § 1396p(b). *Estate of Wirtz*, 607 N.W.2d 882, 884 (N.D. 2000). There, the state department of human services had claimed that it could claim recovery from a community spouse's *entire* estate. *Id.* at 883. The estate argued that no property was subject to recovery because the recipient spouse had no title interest in any of the property when he died. *Id.* The court rejected both arguments. *Id.*

After reviewing the federal estate recovery statute, in particular the definition of "assets," the *Wirtz* court concluded that a Medicaid recovery claim could be validly asserted "against real or personal property in which [the recipient spouse] had *any* legal title or other interest at his death." *Wirtz*, 607 N.W.2d at 885. Apparently giving effect to the federal statute's phrase "to the extent of such interest," the court stated that "the recoverable assets do not include all property ever held by *either* party during the marriage." *Id.* at 886 (emphasis added) (*citing Estate of Jobe*, 590 N.W.2d 162, 166 (Minn. App. 1999)). The court then interpreted the federal statute's definition of estate as drawing the line at "assets in which the deceased recipient once held an interest." *Id.*

The specific limiting factors that the court listed all conform to Minnesota's definition for

marital property and the criteria for determining what is nonmarital property: “[i]t does not provide that *separately-owned assets* in the survivor's estate, or *assets in which the deceased recipient never held an interest*, are subject to the department's claim for recovery.” *Id.* (emphasis added). *Wirtz* then reiterated that recovery was not allowed from a community spouse’s “separately-owned assets,” their “entire estate,” or “assets not traceable to the recipient.” *Id.*

The factual basis for the *Wirtz* court’s emphasis of these limitations was that, as in *Brandt*, the estate in *Wirtz* included property that could not readily be characterized as marital property. In addition to a home, the estate included the community spouse’s “*solely-owned* home interior business, automobile, bank account, and miscellaneous personal property.” *Wirtz*, 607 N.W.2d at 886 (emphasis added). The other basis for the court’s concern with ensuring that the outer limits of allowable recovery did not encroach on separately-owned assets (i.e., nonmarital property) is attributable to the difference between North Dakota’s statute and Minnesota’s statute. North Dakota’s recovery statute does not contain the same “marital property or joint property” limitation as does Minnesota’s. *Compare* N.D. Cent. Code 50-24.1-07 (upon death of recipient or spouse, claim for total amount of assistance must be allowed as claim against decedent’s estate); *with* Minn. Stat. § 256B.15, subd. 2 (limiting amount to value of marital or jointly owned property). Thus, the concern that motivated the *Wirtz* court’s desire to judicially

prescribe limits has already been legislatively addressed by Minnesota, with the same outer limits.¹⁰

D. After the death of both spouses, recovery may be made from the recipient spouse's interest in the entirety of marital property.

The definition of marital property functions without problem in the context of a recovery from a surviving community spouse's estate. By the time recovery takes place — after the community spouse's death — there is no need to divide the property, as with a marital dissolution, because both spouses have passed away. Also, the property is no longer needed for the community spouse's use. Any suggestion that not giving effect to the community spouse's interest in marital property is untenable when recovery is made after that spouse's death because public interests must predominate over private interests. *Estate of Turner*, 391 N.W.2d, 767, 770 (Minn. 1986) (“The actual interested parties [in objecting to a recovery from an estate] are the disappointed nondependent devisees, legatees, and heirs of the estate.”); *Eggert*, 245 Minn. at 403, 72 N.W.2d at 362 (“Inheritance is not a natural or absolute right, but the creation of statute law.”).

¹⁰ The *Wirtz* court had only a limited record before it and remanded the case to the district court to allow evidence to be presented that traced the estate's assets to the recipient spouse. *Wirtz*, 607 N.W.2d at 886. *Brandt* required a remand for the same kind of determination. *Brandt*, 1999 WL 319180 at * 3. A remand is not necessary here because the record clearly establishes that the assets in Frances' estate are all marital property or traceable to joint property. See AA4, 7-9; see also Minn. Stat. § 518.54, subd. 5 (property acquired during marriage is presumptively marital property); *Searles v. Searles*, 420 N.W.2d 581, 583 (Minn. 1988) (“spouses have a common ownership interest in property acquired during coverture, regardless of who holds title.”).

While the community spouse lived, the predeceased institutionalized spouse's undivided interest in the whole of marital property continued along side the community spouse's undivided interest in the whole (and ability to use the property for his support). After the community spouse has died, the legitimate and "very important" purpose of funding future services for the medically needy becomes paramount. *See Turner*, 391 N.W.2d at 770; *Jobe*, 590 N.W.2d at 166. Indeed, there is inherent balance in recovery from the whole of marital property because, but for the existence of Medicaid, the community spouse could have had to sell marital property to help pay for the institutionalized spouse's care. *Cf. Kizer v. Hanna*, 767 P.2d 679, 681-82 (Cal. 1989) (recovery from the value of a recipient's home, although it diminished the estate available to heirs, is fair because without Medicaid the home would not have been preserved for the estate). Any marital property remaining in the community spouse's estate was retained because of Medicaid benefits.

In sum, because the Medicaid Act leaves the determination of a spouse's "interest" in property to state law, and because the Minnesota Legislature defines a spouse's recoverable interest as coextensive with the definition of marital property, the district court's decision refusing to follow marital property as a basis for valuing Dolores' interest should be reversed. This interpretation of Minnesota law as defining the interest as an undivided one in the whole of marital property is an independently adequate basis for reversing the district court's denial of the county's petition for full allowance of its claim. An additional basis for reversal is that when two different methods of determining the institutionalized spouse's interest exist, Congress intended that states have the

flexibility to use the method that maximizes recovery, which here is the County's marital property theory.

II. ADDITIONALLY, IF TWO METHODS CAN BE USED TO DEFINE AND VALUE THE RECOVERABLE INTEREST, FEDERAL LAW DOES NOT PREVENT MINNESOTA FROM SELECTING THE METHOD THAT ACHIEVES THE GREATEST RECOVERY.

The narrow task before the district court was to choose between two different methods of identifying (and thus valuing) Dolores' interest in the property that is now in Frances' estate. Despite the undisputed marital nature of the property, the district court rejected the County's marital property method, suggesting that the method lacked certainty. AA38. The district court opted, instead, for the probate method advanced by the personal representative. *Id.* The federal statute's language is silent as to how to choose between two plausible methods of defining a spouse's interest in marital property. *See* 42 U.S.C. § 1396p(b)(4)(B). The statute does not preclude either approach nor does it on its face mandate either approach.

Rejection of the marital property method, on no other basis than because the district court thought it lacked certainty, was an erroneous application of *Gullberg*. Because the question of which method to follow arises in the context of preemption, the answer that must be given is the one that best harmonizes Minnesota's estate recovery statute with whatever outer limits exist under the federal Medicaid Act. *See Martin ex rel Hoff v. City of Rochester*, 642 N.W.2d 1, 11 (Minn. 2002) (conflicting state laws are only preempted to the extent that they actually conflict with federal law); *Gullberg*, 652 N.W.2d at 714 (same). Thus, the appropriate method is the one that satisfies

Minnesota's directive that the limit on the amount of a claim against a surviving spouse's estate is "the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage," while also recognizing Congress's statement that states may define estate to include "any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest)." If there are two types of interest and two methods of valuing those interests, a court must not use its own idea of "certainty" to choose between them, but rather must identify which method best serves the purpose of Medicaid estate recovery. Integral to making this identification is Congress's intended outer limits, if any, to estate recovery. *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608, 99 S. Ct. 1905, 1911 (1979) (a court's role is to interpret a federal statute in light of the purposes Congress sought to achieve).

Ascertaining and giving effect to legislative intent is a court's paramount objective in applying a statute to a given situation. Minn. Stat. § 645.16; *Lemmerman v. ETA Systems, Inc.*, 458 N.W.2d 431, 434 (Minn. Ct. App. 1990). Well-established canons of statutory construction require that courts identify the legislative intent behind a statute from "the occasion and necessity for the law; the circumstances under which it was enacted; the mischief to be remedied; the object to be obtained; . . . the consequences of a particular interpretation; [and] the contemporaneous legislative history." Minn. Stat. § 645.16. Moreover, when it is unclear from the language of a statute how it is to be applied to a particular situation, a court "should interpret the statute as consistently as possible with the purpose of the act." *Johnson v. State Farm Mut. Auto. Ins. Co.*,

574 N.W.2d 468, 471 (Minn. Ct. App. 1998). Certain presumptions also must be considered in ascertaining legislative intent. Minn. Stat. § 645.17 (2004). It should be presumed that a legislature “intends to favor the public interest as against any private interest.” *Id.* Therefore, ““where a public interest is affected, an interpretation is preferred which favors the public. A narrow construction should not be permitted to undermine the public policy sought to be served.”” *Estate of Thompson*, 586 N.W.2d 847, 849 (N.D. 1998) (*quoting* 2B Norman J. Singer, *Sutherland Stat. Constr.* § 56.01 (5th ed. 1992)).

A. The immediate statutory context is evidence that Congress intended the optional definition of estate to be freeing rather than restraining to state recovery efforts.

Congress’s intent in including the option to go beyond a probate definition of estate was to *increase* the scope of recovery, not to *limit* it. The language used by Congress indicates that a reading of “interest” that has the effect of limiting the scope of recovery would be inconsistent with the expansive nature of the definition. The definition is replete with expansive terms:

may *include*, at the option of the State (and shall include in the case of an individual [who has received benefits from a long-term care insurance policy]) *any other real and personal property and other assets*¹¹ in which the individual had *any* legal title or interest at the time of death (to the extent of such interest), *including* such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, *or other arrangement*.

¹¹ Congress defines “assets” when used in the estate recovery section as “includ[ing] all income and resources of the individual and the individual’s spouse.” 42 U.S.C. § 1396p(e)(1).

42 U.S.C. §1396p(b)(4)(B) (emphasis added); *see also Thompson*, 586 N.W.2d at 850 (referring to it as an “expansive definition”). The North Dakota Supreme Court concluded that the optional definition reflected “the Congressional purpose to *broaden* states’ estate recovery programs.” *Thompson*, 586 N.W.2d at 851 (emphasis added). Moreover, the use of the catchall phrase “or other arrangement” at the end of the definition “suggests that Congress intended the definition to be as all-inclusive as possible.” *Bonta v. Burke*, 120 Cal.Rptr.2d 72, 76 (Cal. Ct. App. 2002).

B. The events leading up to OBRA 93’s passage demonstrate that Congress intended its estate recovery provisions to maximize Medicaid estate recoveries.

A court may “consider events leading up to the legislation” when interpreting legislative intent. *Handle with Care, Inc. v. Dept. of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987) (*quoting Sevcik v. Comm’r of Taxation*, 257 Minn. 92, 103, 100 N.W.2d 678, 687 (1959)); *see also* Minn. Stat. § 645.16(1), (3) (2004) (a court may consider “the occasion and necessity for the law” and “the mischief to be remedied”).

1. Full recovery from marital property is consistent with Congress’s intent that estate recovery help offset and contain skyrocketing Medicaid Costs.

Congress’s mandate that all states establish estate recovery programs and Congress’s inclusion of an optional expansive definition of estate was intended “to address the increased demand for Medicaid benefits from the nation’s aging population.” *Estate of DeMartino*, 861 A.2d 138, 144 (N.J. Super. Ct. App. Div. 2004). Requiring estate recovery reflects Congress’s “salutary purpose of maximizing the amount of money available” for Medicaid. *West Virginia v. U.S. Dept. of Health and Human Servs.*,

132 F. Supp.2d 437, 440 (S.D.W.Va. 2001). Congress's mandating of estate recovery in OBRA 93 was done to counterbalance "rocketing" Medicaid expenditures. *Id.* The costs associated with long-term care in particular were disproportionately contributing to rising Medicaid costs. OIG, *National Program Investigation* at 46. The then recent spousal anti-impooverishment reforms also added to Medicaid's rising costs because more resources were being excluded from eligibility. Janel C. Frank, *How Far is Too Far: Tracing Assets In Medicaid Estate Recovery*, 79 N.D. L. Rev. 111, 116 (2003). In 1992, Medicaid spent \$21 billion on nursing home care to 1.6 million elderly, constituting more than one-fourth of all Medicaid spending. Regan, *Medicaid Estate Planning*, 44 Cath. U. L. Rev. at 1219 .

To address these cost concerns, Congress, in 1987 required the federal Department of Health and Human Services to "study the means of recovering amounts from estates of deceased Medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for [long-term care] to such beneficiaries." HHS, *Issues In Medicaid Estate Recoveries* at 2. The resulting HHS study, along with the companion GAO study, identified estate recovery as a significant but untapped source of hundreds of millions of dollars to offset Medicaid spending. *See, e.g.,* GAO, *Medicaid Recoveries* at 4 (estimating that estate recoveries from recipient homeowners or their surviving spouses could defray 68% of Medicaid costs for those recipients). It is thus undisputable that Congress passed the OBRA 93 estate recovery amendments as a way to "stymie the growth of state Medicaid expenditures without

depriving eligible recipients of much-needed care.” *West Virginia*, 132 F. Supp.2d at 440.

The district court’s selection of a probate-based method failed to recognize that Congress intended estate recovery to maximize recovery. The marital property approach, reaching the full value of marital property for recovery is consistent with Congress’s use of Medicaid estate recovery as one means of addressing Medicaid’s increasing costs. It is a method that maximizes recovery and thus better accomplishes Congress’s purpose because “allowing the State to recover as much as possible of the costs of medical services provided to low-income persons furthers the purpose of [state and federal Medicaid programs].” *Bonta*, 120 Cal.Rptr.2d at 76. Furthermore, if a couple’s marital property is partially sheltered from estate recovery — which is the result of the personal representative’s probate method — their children have less incentive to provide informal family care which will delay the need for admission into an expensive nursing home. HHS, *Issues in Medicaid Estate Recovery* at 3. Effective estate recovery is also a way of encouraging the development of private long-term care insurance. *Id.*

2. Congress intended the expanded definition of estate to help, not hinder, estate recovery by negating the Ninth Circuit’s *Kizer* ruling.

In late 1989, the Ninth Circuit ruled in *Citizens Action League v. Kizer* that because Congress did not define “estate” in the federal recovery statute the default definition had to be a state’s probate definition. *Citizens Action League v. Kizer*, 887 F.2d 1003, 1006 (9th Cir. 1989) *cert denied* 494 U.S. 1056, 110 S. Ct. 1524 (1990). This ruling was seen as a significant obstacle to estate recovery because substantial assets,

such as a home, were not included in probate estates and thus escaped recovery.

Medicare and Medicaid Budget Reconciliation: Hearing Before the Subcomm. on Health and the Environ. of the H. Comm. on Energy and Commerce, 103rd Cong. 1st Sess. 350 (1993) (statement of Gerald Rohlfs, California Department of Human Services) (explaining that the *Kizer* holding required the state to refund \$5 million, increased its workload and reduced its estate recoveries). California sought a writ of certiorari which was denied. Even though the U.S. Department of Justice's position was that *Kizer* was wrongly decided, the Solicitor General recommended denial of certiorari because the Department of Health and Human Services believed the decision could be addressed with either an administrative regulation or by Congress passing corrective legislation.¹²

The expanded definition of estate in the OBRA 93 amendments was effectively the legislation that corrected *Kizer*. This definition has its roots in Representative Henry Waxman's proposed uniform national estate recovery program that prescribed major elements of state programs. *See* H.R. 2138, 103rd Cong. 1st Sess. § 5112(c) (1993) (as introduced). The House adopted his proposal. *See* H.R. 2264, 103rd Cong. 1st Sess. § 5102 (1993) (as passed by the House). The final version of OBRA 93 bifurcated the definition into the mandatory minimum definition tied to state probate law and the optional expansive definition. Thus, the minimum definition essentially acknowledged *Kizer's* holding and the optional open-ended definition allowed states wide latitude to go *beyond* traditional probate law in their recovery efforts. Congress's inclusion of an

¹² Brief for U.S. Department of Human Services in Opposition to Petition for (Footnote Continued on Next Page)

open-ended definition for estate thus was intended to help states expand their recovery efforts beyond probate estates.¹³ Here, the district court's use of a probate-based method to limit recovery is inconsistent with the furthering of Congress's intent behind the mandate on states to seek recovery in general and behind the expanded definition in particular.

C. The consequence of using the district court's probate method, which has the effect of sheltering resources, undermines estate recovery.

Under the district court's probate method, the value of an institutionalized spouse's interest in homestead property is limited to a life estate interest. Minn. Stat. § 524.2-402(a). The proportionate value of that life estate is then derived using a standardized table provided by the Department of Human Services. *See* Life Estate Mortality Table. The life estate interest for someone who dies at age 65 is about 68%. *Id.* Starting at age 76, the proportion of a life estate interest will be only 50% (and increasingly less). *Id.*

Thus, under the probate method advocated by the personal representative, the recovery possible from the only remaining significant marital asset, the home, will automatically be reduced by at least one-third or, more likely, by more than

(Footnote Continued From Previous Page)

Certiorari, *available at* <http://www.usdoj.gov/osg/briefs/1989/sg890217.txt>.

¹³ At least one explanation for the definition's bifurcation was that some states, such as Florida, faced state constitutional barriers to recoveries from jointly owned homestead property. These states feared that their inability to make recoveries could jeopardize their federal matching funds and succeeded in persuading Congress to limit the scope of mandatory recovery to probate estates. Ira Steward Wisener, *OBRA '93 and Medicaid: (Footnote Continued on Next Page)*

one-half. The consequences of that limitation here was the reduction of the County's claim by over \$44,000. Thus the probate method will shelter from recovery, when there are surviving decendants, anywhere from one-third to the whole of the value of the homestead, depending on the age at death of the recipient. Such a consequence clearly undermines the purpose of OBRA 93's estate recovery amendments and must be rejected. *See State by Hatch v. Employers Ins. of Wausau*, 644 N.W.2d 820, 830 (Minn. Ct. App. 2002) ("where a law is susceptible of more than one meaning, a reviewing court is not to adopt an interpretation that defeats the purpose of the law.").

In contrast, following the marital property method, the full value of marital property remains available to satisfy recovery in *all* cases. The negative consequence for recovery efforts of adopting the probate method militates against finding any credible basis in federal law for requiring that method as opposed to the marital property method.

D. Congress's silence about how to determine which of two methods to use allows Minnesota to select whichever method furthers the policies behind estate recovery.

Clearly it makes a difference to estate recoveries how a spouse's interest in property is identified and valued. Congress's silence about which of two permissible methods to use, indicates that Minnesota and other states have complete discretion in choosing between the two methods. *Employers Ins. of Wausau*, 644 N.W.2d at 829 (a

(Footnote Continued From Previous Page)

Asset Transfers, Trust Availability, and Estate Recovery Statutory Analysis In Context, 47 Soc. Sec. Rep. Serv. 757, 780 n.147 (1995).

remedial statute should be “broadly construed in favor of the government in order to effectuate its remedial objectives.”).

This conclusion is reinforced by how state and federal courts have interpreted a related question arising from the spousal anti-improvement reforms. That question is which of two methods a state could follow for attributing income and resources between an institutionalized spouse and a community spouse in order to meet the community spouse’s needs without jeopardizing the other spouse’s Medicaid eligibility. These methods are known as the “resource first” or “income first” methods. *See Blumer*, 534 U.S. at 484, 122 S. Ct. at 969. The resource first method is more advantageous to the community spouse because it allows an attribution of income-generating resources to the community spouse. In contrast, the income first method is advantageous to estate recovery because it preserves more assets for later recovery from either spouse’s estate. *See Golf v. N.Y. State Dep’t of Soc. Servs.*, 697 N.E.2d 555, 559 (N.Y. 1998).

Lawsuits aimed at requiring states to use the income first method have been rejected by the U.S. Supreme Court and other courts. In *Blumer*, the Supreme Court held that Wisconsin’s decision to use the income first method was permissible under the Medicaid Act. *Blumer*, 534 U.S. at 496, 122 S. Ct. at 975. The Court explained that the cooperative federalism of Medicaid gave states leeway to make such a choice between two otherwise permissible methods of administration. *Id.* Here, the situation is analogous: the probate method and the marital property method are both permissible means of identifying and valuing a spouse’s interest. Congress has not foreclosed either method, so Minnesota’s election to use marital property as the method to define and

value a recipient spouse's interest is entirely consistent with federal law. *Cf. Golf*, 697 N.E.2d at 559 (concluding that, in the absence of a federal prohibition, a state social services agency's decision to use the income first method was appropriate).

Additionally, the same policy concerns favoring the income first method for eligibility purposes also favor the marital property method for recovery purposes. In *Golf*, New York's highest court concluded that the income first method satisfied various policy objectives. *Golf*, 697 N.E.2d at 559-60. The court observed that the resource-preserving aspects of spousal anti-improvement reforms were "not intended to offer a financial boon for applicants or to provide a route upon which one could bypass the obligation to contribute one's fair share of the costs associated with nursing home care." *Id.* at 560. Here, by analogy, the exclusion of the home (and other marital property) for purposes of determining the eligibility of the institutionalized spouse was intended to provide a *physical shelter* for the community spouse but not to provide an *inheritance shelter* for heirs. HHS, *Issues In Medicaid Estate Recoveries* at 13 (noting that federal transfer rules "convey the clear impression that the purpose [of not penalizing transfers between spouses] is not to place the asset permanently beyond reach of government claim but to ensure that the spouse . . . can have use of the asset until the grounds for that use end," for example, the death of the community spouse).

The *Golf* court also reasoned that adoption of the income first policy "effectively serves the dual goals of ensuring that the community spouse would live comfortably and of protecting against the depletion of limited Medicaid resources by individuals capable of helping themselves." *Golf*, 697 N.E.2d at 561. This method prevented "the creation of

an endowment which not only provides the needed income but also creates a fund which can be passed on to the community spouse's heirs." *Id.* at 561 (quotation marks omitted). Here, the use of the personal representative's probate method has a similar negative effect: it shelters *at least a third* of a homestead's value from recovery and benefits the community spouse's heirs at taxpayer's expense. Such sheltering can only be described as a windfall to the heirs who, without Medicaid, would have seen their inheritances diminished by the need to privately pay for the needed medical care. *Cf. Hanna*, 767 P.2d at 681-82 (recovery from the value of a recipient's home, although it diminished the estate available to heirs, is fair because without Medicaid the home would not have been preserved for the estate).

Finally, the *Golf* court recognized that, to the extent that one method "preserves the public fisc, clearly such a result inures to the benefit of all [] senior citizens in that additional resources are more readily available to meet the needs of eligible applicants." *Golf*, 697 N.E.2d at 563. Here, too, such a consideration applies. The difference between the two competing methods means either the full reimbursement of Medicaid costs for Dolores or a short changing of state and federal taxpayers amounting to over \$44,000.

E. The marital property method is more practical than the probate method.

Not only does the marital property method better serve the purpose of Medicaid estate recovery, it is a more reasonable and practical method for courts to apply. *See Employers Ins. of Wausau*, 644 N.W.2d at 830 ("When choosing between possible

definitions of a statutory term, the reviewing court must adopt the interpretation that appears to be the more logical in concept and more practical in application.”).

First, the calculation to determine the recipient’s interest in the surviving spouse’s estate is a simple one. The only question to answer is whether marital property exists in the estate. Under Minn. Stat. § 518.54, subd. 5, certain property is presumptively marital, but this is a rebuttable presumption that may be contested by the personal representative.

Second, permitting the state to recover from solvent estates for the purpose of ensuring Medicaid programs for future needy individuals is sound public policy. Whenever possible, legislative intent must be read to favor public interest over private interest. Minn. Stat. § 645.17(5) (2004). The public interest is served when the most resources possible are returned to the state to offset the costs of Medicaid. This reimbursement provides for a replenishment and perpetuation of the Medicaid program. To hold otherwise (i.e. to adopt the probate method) would ensure that the state would never fully recover the funds expended in cases such as this one where there are more than adequate assets for reimbursement. *See GAO, Medicaid Recoveries* at 3 (estimating that recoveries from those who own their own homes will pay for two-thirds of the benefits received by them). Any benefit of using the probate method inures only to the heirs of an estate. Thus, public policy is best served by the approach that is more likely to repay the Medicaid program and benefit the public

Finally, it is fair and equitable to permit recovery using the marital property method. By funding an individual’s health care needs through Medicaid, the state and federal governments are essentially providing the institutionalized individual with an

interest-free loan. Like any other loan, then, it follows that the creditor is rightfully permitted to recover the amount lent. Safeguards within this process insure that repayment cannot be sought until certain qualifying events have taken place — in this context, the deaths of the recipient and the community spouse. These protections are provided by law to enable a community spouse to enjoy the marital assets during his lifetime without being penalized for his spouse's utilization of public assistance. However, this benefit is not extended within a vacuum. Once those qualifying events have occurred, and all benefits to the couple have been achieved, it is just that the state be reimbursed when there are assets available to do so. In the present case, the state is asking the Court to recognize that a marital property method alone will achieve an equitable result. Frances' estate contains marital property in an amount well in excess of Mille Lacs County's claim. The use of any other method for determining the extent of Dolores' interest will effectively mean that the State of Minnesota has done two things: 1) provided for the long term medical care of Dolores while permitting Frances to enjoy the shelter of their home; and 2) given the heirs of the Frances' estate a windfall in excess of \$44,000.00. The latter is in direct contravention of state and federal legislative intent.

F. The marital property valuation method fulfills the purposes of Medicaid and Medicaid estate recovery.

In establishing the Medicaid program, Congress stated its intent that Medicaid be the payment source of last resort and that all other available resources must be used before Medicaid funds are made available to eligible recipients. *See* S. Rep. No. 99-146,

459, *reprinted in* 1986 U.S.C.C.A.N. 42 (1985); *see also* H.R. Conf. Report No. 99-453, at 542 (1985). Minnesota law echoes this intent by explicitly requiring that “individuals and couples . . . use their own assets to pay their share of the total cost of their care during or after their enrollment in the [Medical Assistance] program . . .”. Minn. Stat. § 256B.15, subd. 1(a) (2004). Numerous courts recognize that the kind of expansive recovery reflected in the County’s position fulfills these purposes. *See, e.g., Thompson*, 586 N.W.2d at 851.

CONCLUSION

For the reasons set forth above, Mille Lacs County, respectfully requests that this Court reverse the district court’s Order and Judgment and remand this matter to the district court for payment of its estate recovery claim in full.

Dated: 2/9/10

Respectfully submitted,

JANICE S. KOLB
Mille Lacs County Attorney

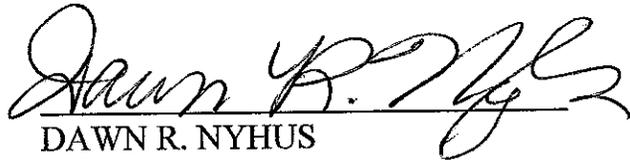

By: Dawn R. Nyhus
Assistant Mille Lacs County Attorney
Atty. Reg. No. 0329733

Courthouse Square
525 2nd Street Southeast
Milaca, MN 56353
ATTORNEYS FOR APPELLANT

CERTIFICATE OF COMPLIANCE

WITH MINN. R. APP. P 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 13,366 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2002, the word processing system used to prepare this Brief.


DAWN R. NYHUS
Assistant Mille Lacs County Attorney

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).