

## **Clearinghouse Rule 19-020**

### **PROPOSED ORDER OF DEPARTMENT OF HEALTH SERVICES TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services (the Department) proposes an order to **repeal** DHS 1.065 (1) (c) (Note); to **amend** DHS 1.065 (3) (d) (Note); and to **repeal and recreate** ch. DHS 1 (Title), DHS 1.01 to DHS 1.07, relating to uniform fee system.

#### **RULE SUMMARY**

##### **Statutes interpreted**

Sections 46.03 (18) (a), (b), (c), (d), and (e), and 46.10 (3), (4) (a), (5), (7), (8) (c) to (e), (10), (11), (14) (a) and (16), Stats.

##### **Statutory authority**

Sections 227.10 (1) and (2m), and 227.11 (2) (a) and (b), Stats.

##### **Explanation of agency authority**

The Legislature directed the Department to establish a uniform system of fees for certain services provided or purchased by the Department or certain county departments. The Department is also directed to make collections, determine ability to pay, enforce or compromise liability and to delegate some of these responsibilities to counties. The proposed rules are necessary to effectuate the purposes of the statutes listed in the “interpreted statutes” section. In addition, the proposed rules are necessary to comply with s. 227.10 (1) and (2m), Stats.

##### **Related statute or rule**

None.

##### **Plain language analysis**

Chapter DHS 1 is outdated. The rule has not been substantively revised since 1978. The Department proposes to restate its provisions more clearly and to minimize confusion and inconsistency of interpretation.

##### **Summary of, and comparison with, existing or proposed federal regulations**

The Department was unable to locate federal regulations that were sufficiently analogous to the proposed rules. However, 42 CFR 51c.303 and 42 CFR 56.303, for example, discuss similar fee, billing, ability to pay and collection requirements to be used by certain federal health centers. Specific program requirements are further contained in compliance manuals (see, for example, Chapter 16, <https://bphc.hrsa.gov/programrequirements/compliancemanual/chapter-16.html>).

##### **Comparison with rules in adjacent states**

Provisions relating to similar subjects of the proposed rule are contained in various sections of code from adjacent states. See, for example, Illinois Admin. Code. tit. 59 §106 (Services Charges), tit. 89 § 103 (Support Responsibility of Relatives), tit. § 545 (Ratemaking), tit. § 560 (Customer Financial Participation), IAC Rules 441.11 (Collection of Public Assistance Debts), IAC Rules 441.36 (Facility Assessments), IAC Rules 445.95 (Collections), Michigan Admin. Code r. 330.8005-330.8284 (Financial Liability for Mental Health Services), Minnesota Rules ch. 9550 Part 9550.6240 (Collections), ch. 9515 Part 9515.2200 (Sources of Income Considered), ch. 9515 Part 9515.2600 (Responsible Relative's Ability to Pay).

### **Summary of factual data and analytical methodologies**

The Department established an advisory committee comprised of representatives from Jackson, Portage, Marathon, Walworth, Green and Outagamie counties, as well as a representative from the Department of Children and Families. The advisory committee held nine open meetings in 2016 and 2017. The Department also reviewed policies and procedure materials from the Western Region of Integrated Care Consortia (Jackson, Monroe and La Crosse counties), Portage, Walworth, Green, Lafayette, Outagamie, and Marathon County collection procedures. In addition, the department solicited comments about the proposed rulemaking through its website and throughout the entire rule promulgation process.

### **Analysis and supporting documents used to determine effect on small business**

The Department collected public comments in regards to economic impact from August 6, 2018 to August 20, 2018. The Department also established an advisory committee comprised of representatives from Jackson, Portage, Marathon, Walworth, Green and Outagamie counties, as well as a representative from the Department of Children and Families. The advisory committee held nine open meetings in 2016 and 2017. The Department also reviewed policies and procedure materials from the Western Region of Integrated Care Consortia (Jackson, Monroe and La Crosse counties), Portage, Walworth, Green, Lafayette, Outagamie, and Marathon County.

### **Effect on small business**

The proposed rule does not affect small business.

### **Agency contacts**

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### **Statement on quality of agency data**

The Department did not rely upon any data in preparing the proposed rule.

### **Place where comments are to be submitted and deadline for submission**

Comments may be submitted to the agency contact person that is listed above or by accessing <https://www.dhs.wisconsin.gov/rules/permanent.htm> until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

## RULE TEXT

**SECTION 1.** DHS 1 (Title) is repealed and recreated to read:

Uniform Fees, Liability and Collections

**SECTION 2.** DHS 1.01 is repealed and recreated to read:

DHS 1.01 Authority and purpose.

This chapter is authorized by s. 227.11 (2) and interprets ss. 46.03 (18) and 46.10, Stats., to establish a system for determining fees, liability, billing, and collection practices for services.

**SECTION 3.** DHS 1.02 is repealed and recreated to read:

DHS 1.02 Definitions.

“Administratively unfeasible” means the cost of collection would likely exceed the fee established for a service.

(1) “Client” means a person that has received services.

“County department” means any of the following:

(2) (a) A county department of social services under ss. 46.215, 46.22, or 46.23, Stats.

(3) (b) A county department of community programs under s. 51.42, Stats.

(c) A county department of developmental disabilities services under s. 51.437, Stats.

(4) “Collection period” means the period of time calculated for each unit of service, which begins on the day a service is provided and ends as provided in ss. 893.87, 893.40, Stats., or as provided under any other applicable statute of limitations.

(5) “Services” means services provided to a person by the department or a county department, or care, maintenance, services and supplies described in s. 46.10 (2), Stats., except:

(a) Services provided by the department or a county department under ch. 48, subch. III of ch. 49, Stats.

(b) Community-based juvenile delinquency-related services.

(c) Juvenile correctional services.

(d) Services provided to courts.

(e) Outreach, information, and referral services.

(f) Services for which the department or a county department determines fee collection would be administratively unfeasible, or assignment of liability for the service would prevent accomplishing the purpose of the service.

(6) (g) Any other services for which the department or a county department may not legally assess a fee, establish liability, or collect payment.

(7) (8) (9) (10) “Department” means the department of health services.

“Fee” means the amount established for a service under s. DHS 1.03.

“Minor” means a person under 18 years of age.

“Parent” means any of the following:

A person who currently has legal custody under Wisconsin law of a minor client who receives services, or who had legal custody under Wisconsin law of a minor at the time services were provided, except when a court determined or ordered that the person is not liable or otherwise responsible for their payment.

(11) (a) A person that a court determines or orders to be liable or otherwise responsible for payment of services provided to a minor.

(b) A resident of the state appointed guardian of a child by a foreign court who brought a child into this state for the purpose of adoption, as described in s. 48.839 (1), Stats.

“Spouse” means any of the following:

- (a) A person who is currently married, as recognized by Wisconsin law, to a person who received services.
- (b) A person who was married, as recognized by Wisconsin law, to a person who received services at the time services were provided.

**SECTION 4.** DHS 1.03 is repealed and recreated to read:

DHS 1.03 Fees.

- (1) The department shall establish fees for services provided by department institutions.

(Note) [Link to fees].

- (2) Fees for services provided by the county department under s. 51.42, Stats., shall be established and approved annually by the county board of supervisors.

**SECTION 5.** DHS 1.04 is repealed and recreated to read:

DHS 1.04 Liability.

GENERAL. Unless otherwise provided by law, the following are liable for services provided to a client:

- (1)
  - (a) A client who is not a minor.
  - (b) A spouse.
  - (c) A parent.
  - (d) Any other person, entity, or estate with liability as provided under s. 46.10, Stats.

- (2) AMOUNT OF LIABILITY. Liability of any person, entity, or estate under sub. (1) for services shall be based upon the fee established under s. DHS 1.03, subject to subs. (4) and (5).

- (3) ENFORCEMENT. The department may bring action to declare the liability of any person or entity under sub. (1), or to enforce payment toward such liability.

- (4) WAIVER. (a)The Department or a county department may permanently waive the liability for a service rendered to a client, , for any of the following reasons:

- 1. The client receives Medicaid.
- 2. The client receives Social Security Disability or Supplemental Security Income.
- 3. No payments are required under s. DHS 1.05 (4).
- 4. The liability is for a service, meeting the exception in s. DHS 1.02 (5) (f).

- (5) (b) Any liability that is waived under sub. (4) shall be documented, as provided in s. DHS 1.05 (5) (e).

NON-COMPLIANCE. A person, entity, or estate under sub. (1) may be deemed liable and billed for the entire fee amount established under s. DHS 1.03 if the department determines that the person, entity, or estate does any of the following:

- (6)
  - (a) Refuses to complete a financial responsibility form or to provide documentation required to verify information provided in a financial responsibility form.
  - (b) Intentionally misrepresents any information provided in a financial responsibility form.

COST-SHARE EXCEPTION. Subsections (1) to (3) do not apply to individuals that are required to meet department cost-sharing requirements under s. 49.45 (18), Stats., for receiving services from community based residential facilities or any other assisted living facility.

**SECTION 6.** DHS 1.05 is repealed and recreated to read:

DHS 1.05 Billing.

- (1) GENERAL. Each month during the collection period, the department shall, as applicable, issue a billing statement that indicates any outstanding liability to the following:

- (a) A client who is not a minor.
- (b) Any and all parents.
- (c) Any and all authorized representatives under sub. (3).
- (2) **THIRD-PARTY PAYERS.** The department or a county department shall file a claim with any third-party payers in a manner consistent with s. Ins 3.40. Medicaid shall be the payer of last resort.
- (3) **AUTHORIZED REPRESENTATIVE.** Upon receipt of proof of any such relationship, billing statements shall be issued to any legal representative of a client, such as a guardian of the estate, a representative payee, or any other person or entity authorized by law or through the client's informed consent, to receive such information.
- (4) **AMOUNT.** The monthly payment amount billed and subject to collections, if any, shall be based upon liability established under this chapter, the Maximum Monthly Payment Schedule, and ability to pay.
  - (a) *Ability to pay.* Ability to pay shall be determined by use of a financial responsibility form that gives due regard to relationship and the present needs of the person or of the lawful dependents. Except as provided in par. (b) or s. DHS 1.04 (5), ability to may be determined at all of the following times during the collection period:
    1. Upon receipt of a financial responsibility form to the department or county department by a person, entity, or estate under s. DHS 1.04 (1).
    2. When there has been a change in the financial circumstances of a person, entity, estate under s. DHS 1.04 (1).
    3. Every 12 months, while services are being rendered.
    4. At the conclusion of services rendered.

(Note) The Maximum Monthly Payment Schedule is available by accessing:  
<https://www.dhs.wisconsin.gov/uniform-fee/index.htm>

(Note) The financial responsibility form is available by accessing:  
<https://www.dhs.wisconsin.gov/forms/f8/f80130.pdf>

- (b) *Shortcut Method.* A person may be deemed unable to pay under par. (a) if any of the following apply:
    1. The person received Medicaid.
    2. The person received Social Security Disability or Supplemental Security Income.
  - (c) *Adjustments.* The department may adjust a past determination of ability to pay, looking back 90 days from the date of receipt of a financial responsibility form under sub. par. (4) (a).
  - (d) *Payment Plans.* The department may establish a payment plan for any amount billed under this subsection.
  - (5) **BILLING STATEMENTS.** At a minimum, billing statements shall include all of the following information:
    - (a) An itemization of any services provided during the billing period, including the date the service was provided, the number of units, and the fee amount.
    - (6) (b) Any claim filed with a third-party payer and any expected payment on the claim.
    - (c) The date and amount of any other payments received during the billing period.
    - (d) The total outstanding liability as of the date of the statement.
    - (e) Any liability that was waived under s. DHS 1.04 (4).
    - (f) The due date and amount of monthly payment required under sub. (4).
- OTHER REQUIREMENTS.** The department or county department shall:

- (a) Maintain documentation of compliance with this section. Counties shall provide such documentation to the department upon request.
- (b) Establish a documented procedure to periodically review accounts for accuracy and compliance with this chapter.
- (c) Establish a written grievance procedure for actions relating to liability determination, billing, and collections.
- (d) Shall not issue a billing statement or collect from the parent of a minor client who is receiving treatment for alcohol or drug abuse, as provided in s. 51.47, Stats.

**SECTION 7.** DHS 1.06 is repealed and recreated to read:

DHS 1.06 Collections.

- (1) **GENERAL.** Subject to s. 46.10 (16), Stats., the department shall collect payment from any liable person, entity, or estate in the amount established under s. DHS 1.05 (4).
- (2) **DELINQUENT ACCOUNT.** The department may deem a client's account to be delinquent, when all of the following have occurred:
  - (a) No payment toward the amount established under s. DHS 1.05 (4) has been received for 90 consecutive days.
  - (b) The department has notified all applicable persons or entities under s. DHS 1.05 (1) at least three times of the missed payments and documented each notification attempt.
- (3) **NON-PURSUIT.** The department shall not attempt to enforce payment of any liability established under this chapter at any time that a liable person, entity, or estate does not have ability to pay under s. DHS 1.05 (4).
- (4) **ENFORCEMENT.** The department may enter into agreement or settlements with liable persons, entities, or estates, or issue orders to compel payment as provided under s. 46.10, Stats. The department shall send an order to compel by certified mail to the last known address of a liable person, entity, or estate.
- (5) **USE OF COLLECTION AGENCIES.** The department may establish a written agreement with a collection agency, or the Wisconsin department of revenue, to perform any duties and responsibilities under this section. Collection agencies must be licensed or certified by the Wisconsin department of financial institutions.
- (6) **COLLECTION REFERRAL.** A county department may refer a delinquent account under sub. (1) to the department for collections.

(Note) A referral may be made by contacting the Division of Enterprises services at: 608-267-7104.

- (7) **APPEALS.** A person aggrieved by an order to compel payment, issued by the department under sub. (4), may appeal the order as a contested case under ch. 227, Stats., as follows:
  - (a) A request for appeal must be mailed to the department of administration's division of hearings and appeals, within 30 days after the date of the order.
  - (b) A request shall be deemed filed on the day that it is received by the department of administration's division of hearings and appeals.

(Note) PO BOX 7875  
4822 Madison Yards Way #5  
Madison, WI 53707-7875

**SECTION 8.** DHS 1.065 (1) (c) is amended to read:

DHS 1.065 (1) (c) This section applies to services for children under the ~~family support children's community options~~ program under s. ~~46.985~~46.272, Stats.

**SECTION 9.** DHS 1.065 (1) (c) (Note) is repealed.

**SECTION 10.** DHS 1.065 (3) (d) (Note) is amended to read:

(Note) The federal poverty guidelines are adjusted yearly by the federal Office of Management and Budget under 42 USC § 9902 (2) and are published annually in the Federal Register. The federal poverty guidelines and the CLTS Parental Payment Limit Worksheet are distributed annually by the Department to counties for use in calculating the parental payment limit. To receive the current federal poverty guidelines and the CLTS Parental Payment Limit Worksheet, contact the Division of ~~Long Term Care Medicaid Services~~, P.O. Box 7851, Madison, WI 53707-7851, ~~or fax at 608-223-7703~~ or visit the Department's website at <http://www.dhs.wisconsin.gov/children/clts/ppl/index.htm>.

**SECTION 11.** DHS 1.07 is repealed and recreated to read:

DHS 1.07 Delegation

GENERAL. The department may delegate duties and responsibilities under this chapter, as provided in ss. 46.03 (18) (e) and 46.10 (16), Stats.

- (1) PROCESS. A request for delegation under sub. (1) shall be submitted to the department. The
- (2) department shall notify a county requesting any such delegation of its approval or denial, and specify any conditions of such delegation.

**SECTION 12.** EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.