CHAPTER 49

PUBLIC ASSISTANCE AND CHILDREN AND FAMILY SERVICES

SUBCHAPTER I
DEFINITIONS
49.001 Definitions.
SUBCHAPTER II
RELIEF BLOCK GRANTS
49.01 Definitions.
49.015 Relief eligibility.
49.02 Relief block grant administration.
49.029 Block grants to tribal governing bodies; medical relief.
49.08 Recovery of relief and other assistance.
SUBCHAPTER III
CHILDREN AND FAMILY SUPPORT SERVICES
49.11 Definitions.
49.114 Contract powers of the department.
49.131 Electronic transfer of benefits.
49.133 Refusal to pay child care providers.
49.134 Child care resource and referral service grants.
49.136 Child care start−up and expansion.
49.137 Child care quality improvement.
49.1375 Early childhood excellence initiative.
49.138 Emergency assistance for families with needy children.
49.139 Emergency shelter funding.
49.141 Wisconsin works; general provisions.
49.143 Wisconsin works; agency contracts.
49.145 Wisconsin works; eligibility for employment positions.
49.1452 Payment of support arrears.
49.1455 Child support demonstration project.
49.146 Employer criteria.
49.147 Wisconsin works; work programs and job access loans.
49.1473 Wisconsin works; domestic abuse screening and training.
49.1475 Follow−up services.
49.148 Wisconsin works; wages and benefits.
49.149 Wisconsin works; education and training.
49.15 Wisconsin works; 2−parent families.
49.151 Wisconsin works; sanctions.
49.1515 Determining nonparticipation.
49.152 Review of agency decisions.
49.153 Notice before taking certain actions.
49.155 Wisconsin Shares; child care subsidy.
49.157 Wisconsin works; transportation assistance.
49.159 Wisconsin works; noncustodial and minor and other custodial parents.
49.161 Wisconsin works; overpayments.
49.162 Substance abuse screening and testing for certain work experience programs.
49.163 Transform Milwaukee Jobs program and Transitional Jobs program.
49.1635 Wisconsin Trust Account Foundation.
49.165 Domestic abuse grants.
49.167 Alcohol and other drug abuse treatment grant program.
49.169 Literacy grants.
49.175 Public assistance and local assistance allocations.
49.19 Aid to families with dependent children.
49.195 Recovery of aid to families with dependent children, Wisconsin Works benefits, and overpayments of emergency assistance.
49.197 Fraud investigation and reduction and error reduction.
49.22 Child and spousal support; establishment of paternity; medical liability.
49.225 Ordering genetic tests.
49.227 Program for publication of delinquent child support obligors.
49.24 Child support incentive payments.
49.25 Incentive payments for identifying children with health insurance.
49.26 Learnfare program.
49.265 Community action agencies.
49.27 Legal actions.
49.273 Research, investigations.
49.275 Cooperation with federal government.
49.29 Loss of eligibility.
49.32 Department; powers and duties.
49.325 County department budgets and contracts.
49.34 Purchase of care and services.
49.343 Rates for residential care centers, group homes, and child welfare agencies.
49.345 Cost of care and maintenance; liability; collection and deportation counsel; collections; court actions; recovery.
49.348 Recidivism reduction program.
49.35 Public assistance; supervisory functions of department.
49.36 Work experience program for noncustodial parents.
49.38 Menominee Enterprises, Inc., bonds, acquisition.
49.385 No action against members of the Menominee Indian tribe in certain cases.
SUBCHAPTER IV
MEDICAL ASSISTANCE
49.43 Definitions.
49.45 Medical assistance; administration.
49.452 Counting promissory notes as assets for certain Medical Assistance programs.
49.453 Divestment of assets.
49.454 Treatment of trust amounts.
49.455 Protection of income and resources of couple for maintenance of community spouse.
49.46 Medical assistance; recipients of social security aids.
49.465 Presumptive medical assistance eligibility.
49.468 Expanded medicare buy−in.
49.47 Medical assistance; medically indigent.
49.471 BadgerCare Plus.
49.472 Medical assistance purchase plan.
49.473 Medical assistance; women diagnosed with breast or cervical cancer or precancerous conditions.
49.475 Information about assistance program beneficiaries; electronic submission of claims.
49.48 Denial, nonrenewal and suspension of certification of service providers based on certain delinquency in payment.
49.485 False claims.
49.49 Medical assistance offenses.
49.493 Benefits under uninsured health plans.
49.496 Recovery of correct medical assistance payments.
49.497 Recovery of incorrect Medical Assistance or Badger Care payments and of unpaid employer penalties.
49.498 Requirements for skilled nursing facilities.
49.499 Nursing facility resident protection.
SUBCHAPTER V
OTHER SUPPORT AND MEDICAL PROGRAMS
49.66 Definitions.
49.665 Badger care.
49.68 Aid for treatment of kidney disease.
49.682 Recovery from estates; disease aids and funeral expenses.
49.683 Cystic fibrosis aids.
49.685 Hemophilia treatment services.
49.686 AZT and pentamidine reimbursement program.
49.687 Disease aids; patient requirements; rebate agreements; cost containment.
49.688 Prescription drug assistance for elderly persons.
49.70 County home; establishment.
49.703 County homes; commitments; admissions.
49.71 County hospitals; establishment.
49.713 County hospitals; admissions.
49.72 County infirmaries; establishment.
49.723 County infirmaries, admissions; standards.
49.726 County infirmaries; cost of treatment, care and maintenance of patients.
49.729 County infirmaries; fees and expenses of proceedings.
49.73 Residential care institutions; establishment.
49.74 Institutions subject to chapter 150.
49.76 Department duties relating to hunger prevention.
49.77 State supplemental payments.
49.775 Payments for the support of children of supplemental security income recipients.
49.776 Payment of support arrears.
49.78 Income maintenance administration.
49.785 Funeral expenses.
49.79 Food stamp administration.
49.793 Recovery of food stamps.
49.796 Food stamp reinstatement.
49.797 Electronic benefit transfer.
SUBCHAPTER VI
GENERAL PROVISIONS
49.81 Public assistance recipients' bill of rights.
49.82 Administration of public assistance programs.
49.825 Department administration in Milwaukee County.
49.826 Administration of child care provider services in certain counties.
49.83 Limitation on giving information.
49.835 Statements in applications.
49.84 Verification of public assistance applications.
49.845 Fraud investigation and error reduction.
49.846 Jurisdiction of the department of justice.
49.847 Recovery of incorrect payments under certain public assistance programs.
49.849 Recovery of correct payments under certain public assistance programs.
49.85 Certification of certain public assistance overpayments, payment recoveries, and delinquent loan repayments.
49.852 Delinquent support payments; pension plans.
49.853 Financial record matching program.
49.854 Liens against property for delinquent support payments.
49.855 Certification of delinquent payments.

49.856 Notification of delinquent payments.
49.857 Administrative enforcement of support; denial, nonrenewal, restriction and suspension of licenses.
49.858 General provisions related to administrative support enforcement.
49.86 Disbursement of funds and facsimile signatures.
49.89 Third party liability.
49.90 Liability of relatives; enforcement.
49.96 Assistance grants exempt from levy.

SUBCHAPTER I

DEFINITIONS

49.001 Definitions. In this chapter:

(1) "Child care provider" means a child care provider that is licensed under s. 48.65 (1), certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(1m) "Essential person" means any person defined as an essential person under federal Title XVI.

(2) "Federal Title XVI" means Title XVI of the federal social security act.

(3) "Foster home" has the meaning given in s. 48.02 (6).

(3m) "Intentional program violation" means intentionally making a false or misleading statement, intentionally misrepresenting or withholding facts, or intentionally committing any act that constitutes a violation of state or federal law for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking benefits under this chapter.

(4) "Municipality" means any town, city or village.

(5) "Poverty line" means the poverty line as defined and revised annually under 42 USC 9902 (2).

(5m) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or, 55.13, or 55.135 or ch. 980. "Prisoner" does not include any person who is serving a sentence of detention under s. 973.03 (4) unless the person is in the county jail under s. 973.03 (4) (c).

(5p) "Relief block grant" means a block grant awarded to a county or tribal governing body under s. 49.025, 2009 stats., s. 49.027, 2009 stats., or s. 49.029.

(6) "Residence" means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(8) "Voluntary" means according to an individual's free choice, if competent, or by choice of his or her guardian if the individual is adjudicated incompetent.

(9) "Wisconsin Works agency" means a person under contract under s. 49.143 to administer Wisconsin Works under ss. 49.141 to 49.161. If no contract is awarded under s. 49.143, "Wisconsin Works agency" means the department of children and families.

History: 1995 a. 27 ss. 2639, 2644, 2654 to 2666, 3083; 1995 a. 289; 1997 a. 3; 2005 a. 264, 387; 2007 a. 20, 45; 2009 a. 28; 2011 a. 202.

SUBCHAPTER II

RELIEF BLOCK GRANTS

49.01 Definitions. As used in this subchapter:

(1g) "American Indian" means a person who is recognized by an elected tribal governing body in this state as a member of a federally recognized Wisconsin tribe or band of Indians.

(1m) "Department" means the department of health services.

(2) "Dependent person" means an individual who is eligible for relief under s. 49.015.

(2g) "Health care services" means such emergency and nonemergency medical, surgical, dental, hospital, nursing and optometric services as are reasonable and necessary under the circumstances, as determined by the county or tribal governing body. "Health care services" does not include services described under s. 51.42 (3) (ar) 4.

(3) "Relief" means assistance that is provided to a dependent person and funded by a relief block grant.

(3m) "Relief agency" means a tribal governing body or an agency under contract with a tribal governing body to administer relief if the tribal governing body operates a relief program funded by a relief block grant.

(8L) "Tax−free land" means land in this state within the boundaries of a federally recognized reservation or within the bureau of Indian affairs service area for the Winnebago tribe, which is not subject to assessment or levy of a real property tax either as a general tax or as a payment in lieu of taxes.

(8p) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

History: 1973 c. 147, 333; 1979 c. 34; 1981 c. 20; 1983 a. 27; 1983 a. 189 ss. 35 to 37, 329 (19); 1985 a. 29 ss. 932 to 935, 996, 997, 3200 (23); 1985 a. 176; 1989 a. 359; 1991 a. 316; 1993 a. 99 s. 72; 1993 a. 446; 1995 a. 18; 1995 a. 27 ss. 2648 to 2668, 2753, 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2009 a. 28.

49.015 Relief eligibility. (1) GENERAL ELIGIBILITY REQUIREMENTS. Except as provided in subs. (1m) to (2m), an individual is eligible for relief if the individual meets all of the following conditions:

(a) Except as provided in sub. (3) (a), the individual resides on tax−free land on which the tribal governing body operates a program funded by a relief block grant.

(am) The individual authorizes any program or resource for which he or she is determined to be eligible to reimburse the relief agency for health care services provided to the individual if the program or resource permits reimbursement for the services provided.

(c) The individual qualifies under written criteria of dependency under s. 49.02 (1) (b) established by the relief agency on that tax−free land.

(1m) STATE RESIDENCY REQUIREMENTS. (a) In this subsection, "close relative" means the person's parent, grandparent, brother, sister, spouse or child.

(b) No individual is eligible for relief unless the individual has resided in this state for at least 60 consecutive days before applying for relief. This requirement does not apply if the individual resides in this state and meets any of the following conditions:

1. The individual was born in this state.

2. The individual has, in the past, resided in this state for at least 365 consecutive days.

3. The individual came to this state to join a close relative who has resided in this state for at least 180 days before the arrival of the individual.

4. The individual came to this state to accept a bona fide offer of employment and the individual was eligible to accept the employment.

5. The individual has infectious tuberculosis, as defined in s. 252.07 (1g) (a), or suspect tuberculosis, as defined in s. 252.07 (1g) (d).

(2) RECIPIENTS OF OTHER AID. Except as provided in sub. (3), an individual is not eligible for relief for a month in which the individual has received aid to families with dependent children under s. 49.19 or supplemental security income under 42 USC 1381 to 1383c or has participated in a Wisconsin works employment position under s. 49.147 (3) to (5) or in which aid to families with dependent children, supplemental security income benefits or a Wisconsin works employment position is immediately available to the individual.

(2m) INELIGIBILITY DUE TO MEDICAL ASSISTANCE DIVESTMENT. Any person found ineligible for medical assistance because of the divestment provisions under s. 49.453 is ineligible for relief

funded by a relief block grant for the same period during which ineligibility exists under s. 49.453.

(3) WAIVER OF CERTAIN ELIGIBILITY REQUIREMENTS. (a) A relief agency may waive the requirement under sub. (1) (a) for an individual receiving health care services from a trauma center that meets the criteria established by the American College of Surgeons for classification as a Level I trauma center.

(b) A relief agency may waive the requirement under sub. (2) or (2m) in case of unusual misfortune or hardship. Each waiver shall be reported to the department. The department may make a determination as to the appropriateness of the waiver under rules promulgated by the department under s. 49.02 (7m) (d).

History: 1985 a. 120; 1987 a. 27, 399; 1991 a. 313; 1993 a. 99; 1995 a. 27 ss. 2669 to 2682, 2687b, 2710; 1995 a. 289; 1999 a. 9; 2009 a. 28.

States may deny benefits to those who fail to prove they did not quit job in order to obtain benefits. Lavine v. Milne, 424 U.S. 577 (1976).

Constitutional law: residency requirements. 53 MLR 439.

49.02 Relief block grant administration. (1) ELIGIBILITY FOR RELIEF BLOCK GRANTS. A tribal governing body is eligible to receive a relief block grant if all of the following conditions are met:

(a) The tribal governing body adopts a resolution applying for a relief block grant.

(b) The tribal governing body establishes written criteria to be used to determine dependency and reviews these written criteria at least annually.

(c) The tribal governing body submits to the department a plan for the provision of services to be funded by the relief block grant. The plan shall include all of the following:

1. How the tribal governing body will determine eligibility and how these eligibility determinations may be appealed. The procedures for determining eligibility and for notice, fair hearing, and review shall be consistent with rules promulgated by the department under sub. (7m).

2. How the tribal governing body will determine which health care services are needed by a dependent person.

3. The cost containment mechanisms that will be used, including what limitations will be placed on the inappropriate use of emergency room care and what limitations will be placed on payments to providers contracted for under sub. (2).

(d) The department has approved the plan under par. (c). The department shall approve or disapprove the plan within a reasonable period of time after the plan is submitted.

(1e) RELIEF AGENCIES. If a tribal governing body is eligible to receive a relief block grant, the tribal governing body shall establish or designate a relief agency to administer relief under this section.

(2) CONTRACTING WITH PRIVATE HEALTH CARE PROVIDERS. A relief agency may use a relief block grant to provide health care services directly or, if the conditions in this subsection are met, by contracting with private health care providers, or by a combination of contracting with private health care providers and providing services directly. A relief agency may contract with a private health care provider to provide health care services under this subsection only if all of the following conditions are met:

(a) The relief agency enters into a contract with the private health care provider to provide specified health care services.

(b) The contract between the relief agency and the private health care provider provides that all records of the health care provider relating to the administration and provision of the health care services shall be open to inspection at all reasonable hours by authorized representatives of the tribal governing body and the department.

(d) The contract limits payment for services under the contract to the amount payable by medical assistance for care for which a medical assistance rate exists.

(e) The contract does not provide for payment for hospitalization or care provided as uncompensated services required under 42 USC 291c.

(f) The contract prohibits the health care provider from holding an individual recipient of health care services funded under this section liable for the difference between the costs of the health care services and the amount paid to the health care provider by the tribal governing body for the services.

(5) LIABILITY FOR HEALTH CARE SERVICES. (b) A relief agency is not liable for health care services provided to a dependent person if the hospital provides the health care services to the person as uncompensated services required under 42 USC 291c.

(bm) A relief agency shall limit its liability for health care services funded by a relief block grant to the amount payable by medical assistance under subch. IV for care for which a medical assistance rate exists.

(6g) LIABILITY OF RECIPIENTS. No individual who receives health care services funded by a relief block grant may be liable for the difference between the costs of the services charged by the health care provider and the amount paid by the relief agency.

(7) NOTIFICATION REQUIREMENT. Whenever the department or a relief agency has reason to believe that a person receiving relief is engaging in conduct or behavior prohibited in ch. 944 or ss. 940.225, 948.02, 948.025 or 948.06 to 948.11 the department or relief agency shall promptly notify the law enforcement officials of the county thereof, including facts relating to such person's alleged misconduct or illegal behavior.

(7m) RULES. The department shall promulgate rules regarding use of relief block grants. The rules shall include all of the following:

(a) Procedures that relief agencies shall follow in making eligibility determinations.

(b) Procedures for appealing eligibility determinations under s. 49.015. These procedures shall provide for notice, fair hearing and review.

(c) Procedures that relief agencies shall follow to obtain relief block grants under sub. (1).

(d) Standards for a waiver of any eligibility requirement under s. 49.015.

(11) DEPARTMENT OF TRANSPORTATION RECORDS. A relief agency may use vehicle registration information from the department of transportation in determining eligibility for relief.

History: 1975 c. 184 s. 13; 1981 c. 20, 317; 1983 a. 27 ss. 1005 to 1011, 2202 (20); 1983 a. 205; 1985 a. 29 ss. 936g to 962m, 3200 (23); 1985 a. 120; 1987 a. 18, 27; 1987 a. 332 s. 64; 1989 a. 31, 56, 359; 1991 a. 39, 322; 1993 a. 227, 437; 1995 a. 18, 27; 2007 a. 20; 2009 a. 28.

Cross−reference: See also chs. DHS 250 and 251, Wis. adm. code.

49.029 Block grants to tribal governing bodies; medical relief. (1) APPLICABILITY. This section applies only to tribal governing bodies.

(2) AMOUNT AND DISTRIBUTION OF RELIEF BLOCK GRANT. From the appropriation under s. 20.435 (4) (kb), the department shall distribute a relief block grant to each eligible tribal governing body in an amount and in a manner determined in accordance with rules promulgated by the department. The department shall promulgate the rules after consulting with all tribal governing bodies eligible for a relief block grant. In promulgating rules under this section, the department shall consider each tribe's economic circumstances and need for health care services.

(3) USE OF RELIEF BLOCK GRANT FUNDS. A tribal governing body may use moneys received as a relief block grant only for the purpose of providing health care services to dependent persons. Notwithstanding s. 49.01 (2g), health care services may include treatment services for alcohol and other drug abuse and mental health services.

History: 1995 a. 27, 216; 1997 a. 27; 1999 a. 9, 185; 2007 a. 20.

Cross−reference: See also ch. DHS 250, Wis. adm. code.

49.08 Recovery of relief and other assistance. If any person is the owner of property at the time of receiving general relief under ch. 49, 1993 stats., relief funded by a relief block grant or other assistance as an inmate of any county or municipal institution in which the state is not chargeable with all or a part of the

inmate's maintenance or as a tuberculosis patient provided for in ss. 252.07 to 252.10, or at any time thereafter, or if the person becomes self−supporting, the authorities charged with the care of the dependent, or the board in charge of the institution, may sue for the value of the relief or other assistance from the person or the person's estate. Except as otherwise provided in this section, the 10−year statute of limitations may be pleaded in defense in an action to recover relief or other assistance. Where the recipient of relief or other assistance is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse, surviving spouse or child is dependent on the property for support. The court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records kept by the municipality, county or institution are prima facie evidence of the value of the relief or other assistance furnished.

History: 1975 c. 94; 1975 c. 413 s. 18; 1979 c. 102 s. 237; 1983 a. 27; 1985 a. 29; 1989 a. 96; 1993 a. 27; 1995 a. 27; 1999 a. 9.

A dependent of a relief applicant incurs no liability to repay any portion of relief granted under the application. Claims against the recipient's estate are not limited to recovery of relief granted less than 10 years prior to death. In re Estate of Bundy, 81 Wis. 2d 32, 259 N.W.2d 701 (1977).

SUBCHAPTER III

CHILDREN AND FAMILY SUPPORT SERVICES

49.11 Definitions. In this subchapter:

(1c) "Community−based juvenile delinquency−related services" means juvenile delinquency−related services provided under ch. 938 other than services provided for a juvenile who is under the supervision of the department of corrections under s. 938.183, 938.34 (2), (4h), (4m), (4n), or (7g), or 938.357 (4).

NOTE: Sub. (1c) is shown as amended eff. 7−1−17, or on the 2nd day after publication of the 2017−19 biennial budget act, whichever is later, by 2015 Wis. Act 55. Prior to that date it reads:

(1c) "Community−based juvenile delinquency−related services" means juvenile delinquency−related services provided under ch. 938 other than services provided for a juvenile who is under the supervision of the department of corrections under s. 938.183, 938.34 (2), (4h), (4m), (4n) (a), or (7g), or 938.357 (4).

(1e) "Department" means the department of children and families.

(2) "Secretary" means the secretary of children and families.

History: 1995 a. 27 ss. 2770, 9130 (4); 1997 a. 3; 2007 a. 20; 2015 a. 55.

49.114 Contract powers of the department. (1) RELIGIOUS ORGANIZATIONS; LEGISLATIVE PURPOSE. The purpose of this section is to allow the department to contract with, or award grants to, religious organizations, under any program administered by the department, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(2) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS. If the department is authorized under ch. 16 to contract with a nongovernmental entity, or is authorized to award grants to a nongovernmental entity, religious organizations are eligible, on the same basis as any other private organization, as contractors under any program administered by the department so long as the programs are implemented consistent with the First Amendment of the U.S. Constitution and article I, section 18, of the Wisconsin Constitution. Except as provided in sub. (10), the department may not discriminate against an organization that is or applies to be a contractor on the basis that the organization has a religious character.

(3) RELIGIOUS CHARACTER AND FREEDOM. (a) The department shall allow a religious organization with which the department contracts or to which the department awards a grant to retain its independence from state and local governments, including the organization's control over the definition, development, practice and expression of its religious beliefs.

(b) The department may not require a religious organization to alter its form of internal governance or to remove religious art, icons, scripture or other symbols in order to be eligible for a contract or grant.

(4) RIGHTS OF BENEFICIARIES OF ASSISTANCE. If an individual has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program administered by the department, the department shall provide such individual, if otherwise eligible for such assistance, within a reasonable period of time after the date of the objection with assistance from an alternative provider that is accessible to the individual. The value of the assistance offered by the alternative provider may not be less than the value of the assistance which the individual would have received from the religious organization.

(5) EMPLOYMENT PRACTICES. To the extent permitted under federal law, a religious organization's exemption provided under 42 USC 2000e−la regarding employment practices is not affected by its participation in, or receipt of funds from, programs administered by the department.

(6) NONDISCRIMINATION AGAINST BENEFICIARIES. A religious organization may not discriminate against an individual in regard to rendering assistance funded under any program administered by the department on the basis of religion, a religious belief or refusal to actively participate in a religious practice.

(7) FISCAL ACCOUNTABILITY. (a) Except as provided in par. (b), any religious organization that contracts with, or receives a grant from, the department is subject to the same laws and rules as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(b) If the religious organization segregates funds provided under programs administered by the department into separate accounts, then only the financial assistance provided with those funds shall be subject to audit.

(8) COMPLIANCE. Any party that seeks to enforce its rights under this section may assert a civil action for injunctive relief against the entity or agency that allegedly commits the violation.

(9) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES. No funds provided directly to religious organizations by the department may be expended for sectarian worship, instruction or proselytization.

(10) PREEMPTION. Nothing in this section may be construed to preempt any provision of federal law, the U.S. Constitution, the Wisconsin Constitution or any other statute that prohibits or restricts the expenditure of federal or state funds in or by religious organizations.

History: 1997 a. 27.

Grants to a faith−based counseling organization that integrated religion into its counseling program were unconstitutional when there were insufficient safeguards in place to insure that public funding did not contribute to a religious end. Freedom From Religion Foundation v. McCallum, 179 F. Supp. 2d 950 (2002).

49.131 Electronic transfer of benefits. (1) The department shall request any necessary authorization from the appropriate federal agency to deliver benefits that are administered by the department to recipients of benefits by an electronic benefit transfer system.

(2) Subject to receiving any necessary approval from the appropriate federal agency under sub. (1), and subject to sub. (3m), the department may implement a program to deliver by an electronic benefit transfer system any benefit that is administered by the department.

(3m) Prior to implementing, and receiving funding for implementing, any program to deliver by electronic means Wisconsin Works benefits or child care subsidies under s. 49.155, the department shall submit a plan for implementation to the joint committee on finance. Any plan submitted by the department shall include specific information on the vendor selected, the total start−up and

ongoing costs, and how issues of fraud and program integrity will be addressed. If the department submits a plan and the cochairpersons of the committee do not notify the department within 14 working days after the date that the department submits the plan that the committee has scheduled a meeting for the purpose of reviewing the plan, the plan may be implemented and the department shall receive the necessary funding. If, within 14 working days after the date that the department submits a plan, the cochairpersons notify the department that the committee has scheduled a meeting for the purpose of reviewing the plan, the plan may be implemented, and funding received, only upon approval of the committee.

History: 2001 a. 16 ss. 1656ug, 1656uh, 1656uv, 1656uw; 2013 a. 20.

49.133 Refusal to pay child care providers. (1m) (a) If a child care provider is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, the department or a county department under s. 46.215, 46.22, or 46.23 shall refuse to pay the child care provider for any child care provided under s. 49.132, 1995 stats., or any other program beginning on the date of the conviction or delinquency adjudication.

(b) If a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, the department or county department under s. 46.215, 46.22, or 46.23 shall immediately suspend payment to the child care provider for any child care provided under s. 49.132, 1995 stats., or any other program until the department obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment.

(2m) The department or a county department under s. 46.215, 46.22, or 46.23 may refuse to pay a child care provider for child care provided under s. 49.132, 1995 stats., or any other program if any of the following applies to the child care provider or to a caregiver specified in s. 48.685 (1) (ag) 1. a. or nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider:

(a) The person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, as defined in s. 48.685 (1) (c) 3m., but the department, county department under s. 46.215, 46.22, or 46.23, agency contracted with under s. 48.651 (2), or school board determines under s. 48.685 (5m) that the offense substantially relates to the care of children or the department or county department determines that the offense substantially relates to the operation of a business.

(b) The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending criminal charge that the department, county department under s. 46.215, 46.22, or 46.23, agency contracted with under s. 48.651 (2), or school board determines substantially relates to the care of children.

(c) The person has been determined under s. 48.981 to have abused or neglected a child.

(d) The department or county department under s. 46.215, 46.22, or 46.23 reasonably suspects that the person has violated any provision under the program under which the payments are made or any rule related to the program.

History: 1989 a. 31; 1995 a. 404 s. 122; Stats. 1995 s. 49.133; 1997 a. 252; 2009 a. 28, 76.

49.134 Child care resource and referral service grants. (1) DEFINITIONS. In this section:

(a) "Indian tribe" means a federally recognized American Indian tribe or band in this state.

(b) "Local agency" means a nonprofit, tax−exempt corporation or an Indian tribe that provides or proposes to provide child care resource and referral services that are funded under this section.

(c) "Nonprofit, tax−exempt corporation" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that is exempt from taxation under section 501 (c) of the internal revenue code.

(2) RESOURCE AND REFERRAL SERVICE GRANTS. (a) From the allocation under s. 49.155 (1g), the department shall make grants to local agencies to fund child care resource and referral services provided by those local agencies. The department shall provide an allocation formula to determine the amount of a grant awarded under this section.

(c) A local agency that is awarded a grant under this section shall contribute matching funds equal to 25 percent of the amount awarded under this section. The match may be in the form of money or in−kind goods or services, or both.

(d) The department may award a grant under this section to a local agency only if that local agency meets any of the following requirements:

1. The local agency is solely in the business of providing child care resource and referral services.

2. If the local agency provides services, or is affiliated with a person who provides services, other than child care resource and referral services, the local agency, or the person with whom the local agency is affiliated, is not a provider of child care services or of early childhood education services and the local agency has an advisory committee to provide oversight for the portion of the local agency's services that are child care resource and referral services.

(3) USE OF GRANT FUNDS. (a) A local agency that is awarded a grant under this section may use the funds to provide any of the following services:

1. Technical assistance and support to child care providers.

2. Recruitment of child care providers in areas of need.

3. Information on the child care service options that are available in the community served by the local agency.

4. A data resource file that identifies the child care service options that are available in the community served by the local agency and that documents the requests and needs of parents in that community for child care services.

5. Programs or information on continuing education and training for child care providers.

6. Any other information regarding the availability and quality of child care services in the community served by the local agency.

(b) A local agency that is awarded a grant under this section may not use the funds to supplant any other funds that the local agency uses to provide child care resource and referral services at the time of the awarding of the grant.

(4) DEPARTMENT RESPONSIBILITIES. The department shall do all of the following:

(a) Administer, or contract for the administration of, the grant program under this section, provide an application procedure for that program and disburse funds awarded under that program.

(b) Provide consultation and technical assistance to local agencies in the preparation of grant applications and the operation of child care resource and referral services programs funded under this section.

(c) Monitor the child care resource and referral services provided by a grant recipient.

History: 1991 a. 275; 1993 a. 16; 1995 a. 27; 1995 a. 404 ss. 123 to 129; Stats. 1995 s. 49.134; 1997 a. 27, 79; 2005 a. 25; 2007 a. 20.

49.136 Child care start−up and expansion. (1) DEFINITIONS. In this section:

(ad) "Child care center" means a facility operated by a child care provider that provides care and supervision for 4 or more children under 7 years of age for less than 24 hours a day.

(am) "Child care program" means a program established and provided by a school board under s. 120.13 (14) or purchased by a school board from a provider licensed under s. 48.65, which combines care for a child who resides with a student parent who is a parent of that child with parenting education and experience for that student parent.

(b) "Child care provider" means a provider licensed under s. 48.65, certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(g) "Employer" means a person who engages the services of an employee, and includes the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the courts and the legislature.

(j) "Family child care center" means a child care center that provides care and supervision for not less than 4 nor more than 8 children.

(k) "Group child care center" means a child care center that provides care and supervision for 9 or more children.

(m) "Parent" means a parent, guardian, foster parent, legal custodian, or a person acting in the place of a parent.

(n) "Student parent" means a pupil who is enrolled in a middle school, junior high school or senior high school and who is a parent.

(2) START−UP AND EXPANSION. (a) From the allocation under s. 49.155 (1g), the department may award grants for the start−up or expansion of child care services.

(b) If the department awards grants under this section, the department shall attempt to award the grants to head start agencies designated under 42 USC 9836, employers that provide or wish to provide child care services for their employees, family child care centers, group child care centers and child care programs for the children of student parents, organizations that provide child care for sick children, and child care providers that employ participants or former participants in a Wisconsin Works employment position under s. 49.147 (3) to (5).

(cm) A person who is awarded a grant under this subsection shall contribute matching funds equal to 25 percent of the amount awarded under this subsection. The match may be in the form of money or in−kind goods or services, or both.

(6) LIMIT ON EXPENDITURE OF FUNDS. No funds provided under this section may be used for the purchase or improvement of land or for the purchase, construction or permanent improvement, other than minor remodeling, of any building or facility.

(7) GRANT ADMINISTRATION. (a) The department shall establish guidelines for eligibility for a grant under this section. The department need not promulgate those guidelines as rules under ch. 227.

(b) The department may administer the grant application process under this section or contract for the administration of that process.

History: 1991 a. 275; 1993 a. 16; 1995 a. 27, 289; 1995 a. 404 ss. 131 to 141; Stats. 1995 s. 49.136; 1997 a. 27; 1999 a. 9; 2005 a. 25; 2007 a. 20; 2009 a. 28, 185.

49.137 Child care quality improvement. (1) DEFINITIONS. In this section:

(ab) "Child care center" has the meaning given in s. 49.136 (1) (ad).

(am) "Child care provider" means a provider licensed under s. 48.65, certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(bd) "Family child care center" has the meaning given in s. 49.136 (1) (j).

(c) "Family child care system" means a centralized administrative unit that offers technical assistance and support to a group of child care providers with the goal of improving child care services.

(e) "Group child care center" has the meaning given in s. 49.136 (1) (k).

(2) STAFF RETENTION GRANTS. (a) From the allocation under s. 49.155 (1g), the department may award grants to child care providers that meet the quality of care standards established under s. 49.155 (1d) (b) to improve the retention of skilled and experienced child care staff. In awarding grants under this subsection, the department shall consider the applying child care provider's total enrollment of children and average enrollment of children who receive or are eligible for publicly funded care from the child care provider.

(b) A child care provider that is awarded a grant under this subsection shall contribute matching funds equal to 25 percent of the amount awarded under this subsection. The match may be in the form of money or in−kind goods or services, or both.

(c) A child care provider that is awarded a grant under this subsection may use the funds to provide advanced training for the child care provider's child care staff, to improve the salaries and benefits provided to the child care provider's child care staff and to undertake other activities or projects to improve the retention of the child care provider's child care staff.

(3) QUALITY IMPROVEMENT GRANTS. (a) From the allocation under s. 49.155 (1g), the department may award grants to child care providers for assistance in meeting the quality of care standards established under s. 49.155 (1d) (b).

(b) A child care provider that is awarded a grant under this subsection shall contribute matching funds equal to 25 percent of the amount awarded under this subsection. The match may be in the form of money or in−kind goods or services, or both.

(c) A child care provider that is awarded a grant under this subsection shall use the grant funds to attempt to meet the quality of care standards established under s. 49.132 (4) (e), 1995 stats., within 24 months after receipt of the grant.

(4) TRAINING AND TECHNICAL ASSISTANCE CONTRACTS. From the allocation under s. 49.155 (1g), the department may contract with one or more agencies for the provision of training and technical assistance to improve the quality of child care provided in this state. The training and technical assistance activities contracted for under this subsection may include any of the following activities:

(a) Developing and recommending to the department a system of higher payment rates or a program of grants for child care providers that meet the quality of care standards established under s. 49.132 (4) (e), 1995 stats.

(b) Developing a plan for a uniform, statewide system of career development, credentialing and training for individuals who provide child care.

(c) Disseminating to the public information about child care that meets the quality of care standards established under s. 49.132 (4) (e), 1995 stats.

(d) Providing informational resources to child care providers.

(e) Providing advanced training to child care providers and the staff of child care providers.

(f) Developing family child care systems.

(g) Developing resources to provide child care in a generic setting for children with special needs.

(gm) Providing training to child care providers in providing child care for children with special needs and developing a network of child care providers who are qualified to provide child care for children with special needs.

(h) Providing any other services to improve the availability and quality of child care in this state.

(4m) LOCAL PASS−THROUGH GRANT PROGRAM. From the allocation under s. 49.155 (1g), the department shall award grants to local governments and tribal governing bodies for programs to improve the quality of child care. The department shall promulgate rules to administer the grant program, including rules that specify the eligibility criteria and procedures for awarding the grants.

(5) LIMIT ON EXPENDITURE OF FUNDS. No funds provided under this section may be used for the purchase or improvement of land or for the purchase, construction or permanent improvement, other than minor remodeling, of any building or facility.

(6) GRANT ADMINISTRATION. The department may administer the grant application processes under subs. (2) and (3) or contract for the administration of that process.

History: 1991 a. 275; 1993 a. 16; 1995 a. 27, 289; 1995 a. 404 ss. 142 to 161; Stats. 1995 s. 49.137; 1997 a. 27, 252; 2001 a. 16; 2005 a. 25; 2007 a. 20; 2009 a. 185; 2013 a. 20.

Cross−reference: See also ch. DCF 204, Wis. adm. code.

49.1375 Early childhood excellence initiative. (1) The department shall establish a grant program to develop at least 5 early childhood centers for children under the age of 5 who are eligible to receive temporary assistance to needy families under 42 USC 601 et seq. Centers awarded a grant under this subsection shall provide outreach and training for parents of the children served by the center and training for child care providers. The centers shall emphasize stimulation of the child's language skills and senses of vision and touch. A person who is awarded a grant under this subsection shall contribute matching funds from local or private sources equal to 25 percent of the amount awarded under this subsection.

(2) The department shall establish a grant program under which a child care provider that receives training at a center that is awarded a grant under sub. (1) may apply for a grant to establish an early childhood program that serves children specified under sub. (1). The program developed under a grant received under this subsection shall emphasize stimulation of the children's language skills and senses of vision and touch. A person who is awarded a grant under this subsection shall contribute matching funds from local or private sources equal to 25 percent of the amount awarded under this subsection.

History: 1999 a. 9.

49.138 Emergency assistance for families with needy children. (1d) In this section:

(a) "Administering agency" means the department or, if the department has contracted with a Wisconsin works agency under sub. (3), the Wisconsin works agency.

(b) "Needy person" has the meaning specified by the department by rule.

(1m) The department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. The department shall establish the maximum amounts of aid to be granted. The department need not establish the maximum amounts by rule under ch. 227. The department shall publish the maximum amounts in the Wisconsin administrative register if the department does not establish the maximum amounts by rule. Emergency assistance provided to needy persons under this section may only be provided to a needy person once in a 12−month period. Emergency assistance provided to needy persons under this section in cases of homelessness or impending homelessness may be used only to obtain or retain a permanent living accommodation. For the purposes of this section, a family is considered to be homeless, or to be facing impending homelessness, if any of the following applies:

(a) The family must leave its current housing because it is uninhabitable as determined by a local building inspector, a local health department or another appropriate local authority.

(am) The family is experiencing a financial crisis that makes it very difficult for the family to make a rent payment, mortgage payment or property tax payment and the family has been notified that it will be required to leave its current housing if it does not make that payment immediately.

(b) The family has a current residence that is a shelter designed for temporary accommodation such as a motel, hotel, shelter facility or transitional shelter facility.

(c) A member of the family was a victim of domestic abuse, as defined in s. 968.075 (1) (a).

(d) The family is without a fixed, regular and adequate nighttime residence.

(e) The family is living in a place that is not designed for, or ordinarily used as, a regular sleeping accommodation.

(3) The department may contract with a Wisconsin works agency to administer this section.

(4) (a) Any individual whose application for emergency assistance under this section is not acted upon with reasonable promptness after the filing of the application, as defined by the department by rule, or is denied in whole or in part, or who believes that the assistance amount was calculated incorrectly, may petition the administering agency for a review of such action. Review is unavailable if the action by the administering agency occurred more than 45 days prior to submission of the petition for review.

(b) Upon a timely petition under par. (a), the administering agency shall give the petitioner reasonable notice and opportunity for a review. The administering agency shall render its decision as soon as possible after the review and shall send by 1st class mail a certified copy of its decision to the petitioner. The administering agency shall deny a petition for a review or shall refuse to grant relief if the petitioner does any of the following:

1. Withdraws the petition in writing.

2. Abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled review without good cause, as defined by the department by rule.

(c) If the administering agency is a Wisconsin works agency, the department may review the decision of the Wisconsin works agency if, within 14 days after the date on which the certified copy of the decision of the Wisconsin works agency is mailed, the applicant or participant petitions the department for a review of that decision.

(5) (a) The department shall recover from an individual receiving emergency assistance under this section an overpayment of the emergency assistance if the overpayment resulted from a misrepresentation by the individual applying for the assistance with respect to any fact having an effect on the individual's eligibility for, or the amount of, the assistance granted.

(b) If an overpayment of emergency assistance provided under this section resulted from an error made by a Wisconsin Works agency, the department shall recover the overpayment from the Wisconsin Works agency and may do so by offsetting the amount from amounts otherwise due the agency under a contract under s. 49.143.

(c) The department may recover overpayments of emergency assistance under par. (a) or (b) in the manners provided in ss. 49.195 (3m) and 49.85. Nothing in this paragraph or par. (b) precludes the department from recovering emergency assistance overpayments through any other legal means.

History: 1995 a. 289 ss. 83e, 103d; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 45; 2015 a. 55.

Cross−reference: See also ch. DCF 120, Wis. adm. code.

49.139 Emergency shelter funding. From the appropriation account under s. 20.437 (2) (f), the department shall provide $50,000 annually, beginning on October 1, 2009, to the Emergency Shelter of the Fox Valley to provide services to homeless individuals and families.

History: 2009 a. 28.

49.141 Wisconsin works; general provisions. (1) DEFINITIONS. As used in ss. 49.141 to 49.161 and 49.26:

(a) "Community service job" means a work component of Wisconsin works administered under s. 49.147 (4).

(b) "Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2) (a).

(c) "Dependent child" means a person who resides with a parent and who is under the age of 18 or, if the person is a full−time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19.

(d) "Financial and employment planner" means a caseworker employed by a Wisconsin works agency who provides financial or employment counseling services to a participant.

(e) "Job access loan" means a loan administered under s. 49.147 (6).

(f) "Migrant worker" has the meaning given in s. 103.90 (5).

(g) "Minimum wage" means the state minimum hourly wage under s. 104.035 (1) or the federal minimum hourly wage under 29 USC 206 (a) (1), whichever is applicable.

(h) "Noncustodial parent" means, with respect to a dependent child, a parent who is not the custodial parent.

(i) "Nonmarital coparent" means, with respect to an individual and a dependent child, a parent who is not married to the individual, resides with the dependent child and is either an adjudicated parent or a parent who has signed and filed with the state registrar under s. 69.15 (3) (b) 3. a statement acknowledging paternity.

(j) "Parent" means any of the following:

1. A biological parent.

2. A person who has consented to the artificial insemination of his wife under s. 891.40.

3. A parent by adoption.

4. A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803.

5. A man who has signed and filed with the state registrar under s. 69.15 (3) (b) 3. a statement acknowledging paternity.

(k) "Participant" means an individual who participates in any component of the Wisconsin works program.

(L) "Strike" has the meaning provided in 29 USC 142 (2).

(m) "Transitional placement" means a work component of Wisconsin works administered under s. 49.147 (5).

(n) "Trial employment match program job" means a work component of Wisconsin Works administered under s. 49.147 (3).

(p) "Wisconsin works" means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161.

(r) "Wisconsin works employment position" means any job or placement under s. 49.147 (3) to (5).

(s) "Wisconsin Works group" means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent, and all dependent children with respect to whom the individual's dependent child is a custodial parent. "Wisconsin Works group" includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.

(3) APPLICATIONS. Any individual may apply for any component of Wisconsin works. Application for each component of Wisconsin works shall be made on a form prescribed by the department. The individual shall submit a completed application form to a Wisconsin works agency in the geographical area specified by the department under s. 49.143 (6) in which the individual lives and in the manner prescribed by the department.

(4) NONENTITLEMENT. Notwithstanding fulfillment of the eligibility requirements for any component of Wisconsin works, an individual is not entitled to services or benefits under Wisconsin works.

(5) NONSUPPLANT. (am) No Wisconsin works employment position may be operated so as to do any of the following:

1. Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring an individual under s. 49.147 (3), (4) or (5).

2. Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit.

3. Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

(bm) The department shall promulgate rules specifying a grievance procedure for resolving complaints of alleged violations of par. (am).

(6) PROHIBITED CONDUCT. A person, in connection with Wisconsin works, may not do any of the following:

(a) Knowingly and willfully make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment.

(b) Having knowledge of the occurrence of any event affecting the initial or continued eligibility for a benefit or payment under Wisconsin works, conceal or fail to disclose that event with an intent fraudulently to secure a benefit or payment under Wisconsin works either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

(7) SUSPENSIONS. (c) Except as provided in par. (d), in addition to the penalties applicable under s. 946.90 (2) or (3), a person shall be suspended from participating in Wisconsin Works for a period of 10 years, beginning on the date of conviction, if the person is convicted in a federal or state court for any of the following:

1. Violating sub. (6) (a) or s. 946.90 (2) (a) with respect to his or her identity or place of residence for the purpose of receiving simultaneously from this state and at least one other state assistance funded by a block grant under Title I of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

2. Fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving simultaneously from this state and at least one other state benefits under the medical assistance program under 42 USC 1396 et seq.

3. Fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving simultaneously in this state and at least one other state benefits under the federal food stamp program under 7 USC 2011 to 2029.

4. Fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving simultaneously in this state and at least one other state benefits under the federal supplemental security income program under 42 USC 1381 to 1383d.

(d) A person who has been suspended from participating in Wisconsin works under par. (c) and whom the president of the United States has pardoned with respect to the conduct for which the person had been suspended may have his or her eligibility to participate in Wisconsin works reinstated beginning on the first day of the first month beginning after the pardon.

(8) DAMAGES. If a person is convicted under s. 946.90 (2) or (3), the state has a cause of action for relief against the person in an amount equal to 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under s. 946.90 (2) or (3) is conclusive proof in a civil action of the state's right to damages and the only issue

in controversy shall be the amount, if any, of the actual damages sustained. Actual damages consist of the total amount of excess payments, any part of which is paid with state funds. In a civil action under this subsection, the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

History: 1995 a. 289; 1997 a. 27, 41, 283; 1999 a. 9; 2001 a. 105, 109; 2003 a. 173; 2005 a. 443 s. 265; 2009 a. 28; 2013 a. 20, 226; 2015 a. 55.

Cross−reference: See also ch. DCF 101, Wis. adm. code.

49.143 Wisconsin works; agency contracts. **(1)** AWARDING CONTRACTS. (a) Except as provided in par. (ar), the department may do any of the following:

1. Award a contract, on the basis of a competitive process approved by the secretary of administration, to any person to administer Wisconsin works in a geographical area determined by the department under sub. (6). The competitive process shall include cost and prior experience criteria.

2. Contract with a Wisconsin works agency to administer Wisconsin works if that agency has met the performance standards established by the department under sub. (3), during the immediately preceding contract period.

(ac) 1. Except for a county department under s. 46.21, 46.22, or 46.23 or a tribal governing body, a person who submits a bid in a competitive process under par. (a) 1. shall include with the proposal a filing fee of $50 and a statement of economic interests that discloses all of the following information:

a. The person's assets and liabilities.

b. The sources of the person's income.

c. All of the person's other clients, as well as a description of the goods or services provided to those clients.

d. The identity of all of the person's subsidiaries, affiliates, and parent companies, if any.

2. Except for a county department under s. 46.21, 46.22, or 46.23 or a tribal governing body, a Wisconsin Works agency that enters into a succeeding contract with the department under par. (a) 2. shall, before executing the succeeding contract, submit to the department a filing fee of $50 and a statement of economic interests that discloses the information specified in subd. 1. a. to d.

3. One year after entering into a contract under par. (a) 1. or 2., a Wisconsin Works agency that is not a county department under s. 46.21, 46.22, or 46.23 or a tribal governing body shall submit to the department a filing fee of $50 and an updated statement of economic interests that discloses the information specified in subd. 1. a. to d.

(ag) A contract entered into under par. (a) 2. shall be for a term of at least 2 years. A Wisconsin works agency may elect not to enter into a contract under par. (a) 2. if the Wisconsin works agency informs the department by the date established by the department that the Wisconsin works agency has made that election. A Wisconsin works agency that has not met the performance standards established by the department under sub. (3) may apply for a contract under the competitive process established under par. (a) 1.

(ar) If the department changes the geographical areas for which a Wisconsin works agency administers Wisconsin works as provided under sub. (6), the department shall award contracts on the basis of the competitive process established by the department under par. (a) 1. regardless of whether a Wisconsin works agency has met the performance standards established by the department under sub. (3) and is eligible to contract with the department under par. (a) 2.

(ay) A county or tribal governing body that enters into a contract under par. (a) but elects not to compete for a subsequent contract under par. (a) 1. shall provide the notice required under this paragraph at least 6 months prior to the expiration of its contract under par. (a). A county or tribal governing body that elects not to enter into a contract under par. (a) 2. or to compete for a contract under par. (ag) shall provide the notice required under this paragraph by the date established by the department, by rule, under par. (ag). The notice shall be provided to all employees of the county or tribal governing body who may be laid off as a result of the county's or tribal governing body's election not to enter into or compete for a contract and to the certified or recognized collective bargaining representatives of such employees, if any. The notice shall inform the employees and the representatives that the county or tribal governing body is making the election not to enter into or compete for a contract; that the employees may be laid off as a result of that election; that the employees may wish to consider forming a private agency to bid on the contract under par. (a) 1.; that the employees may obtain information from the department on the competitive process under par. (a) 1. and the contract requirements under this section; and that the employees may obtain information from the department on steps that the employees might take to organize themselves to form a private agency for the purposes of competing for a contract under par. (a) 1. The department shall provide the information specified in this paragraph upon the request of any employee or collective bargaining representative described in this paragraph.

(b) If no acceptable provider in a geographical area is selected under par. (a), the department shall administer Wisconsin works in that geographical area.

(2) CONTRACT REQUIREMENTS. Each contract under sub. (1) shall contain performance−based incentives established by the department. The contract shall require a Wisconsin works agency to do all of the following:

(a) Establish at least one community steering committee within 60 days after the date on which the contract is signed. A Wisconsin Works agency must establish as many committees as necessary to allow the representation required under subd. 1m. on each committee without exceeding the maximum number of members under subd. 1m. All of the following apply to a community steering committee created under this paragraph:

1m. The Wisconsin Works agency shall appoint the members of the committee within the following parameters:

a. The total number of members on the committee may not exceed 20.

b. Each county that the Wisconsin Works agency serves must be represented on a committee by a member who is a representative of a county department responsible for economic development, of a city department responsible for economic development for a city that is in that county, or of the business community in that county. The Wisconsin Works agency shall appoint at least one representative of business interests as a member of the committee.

2m. The members of the committee shall appoint a chairperson who shall be a person who represents business interests.

3m. The committee may foster and guide the entrepreneurial efforts of participants who are eligible for Wisconsin Works and provide mentors, both from its membership and from recruitment of members of the community, to provide job−related guidance, including assistance in resolving job−related issues and the provision of job leads or references, to persons who are eligible for Wisconsin Works.

4m. The committee shall do all of the following:

a. Advise the Wisconsin works agency concerning employment and training activities.

b. Identify and encourage employers to provide permanent jobs for persons who are eligible for Wisconsin Works.

c. Create, and encourage others to create, subsidized jobs for persons who are eligible for Wisconsin Works.

d. Create, and encourage others to create, work experience opportunities, including supported work experience, for persons who are eligible for Wisconsin Works.

e. Coordinate with local workforce development boards established under 29 USC 2832 to ensure compatibility of purpose and no duplication of effort.

(c) Employ at least one financial and employment planner. The financial and employment planner shall work with a participant to facilitate the participant's achievement of the maximum degree of self−sufficiency. The department shall ensure that a financial and employment planner employed by a Wisconsin works agency meets certification and training requirements established by the department by rule and that appropriate training is provided by a Wisconsin works agency.

(cg) Employ staff, if necessary, to meet the needs of participants who are refugees and who have cultural or linguistic barriers to participation in Wisconsin works.

(cm) If a significant proportion of the population served by the Wisconsin works agency is comprised of a refugee group, employ staff that is proficient in the language of the refugee group to aid the financial and employment planner in locating appropriate employment opportunities that do not require English proficiency for participants who are members of that refugee group.

(cr) Provide, or contract with another person to provide, credit establishment and credit repair assistance to participants. Prior to providing, or contracting with another to provide, the assistance specified under this paragraph, the Wisconsin works agency shall submit a proposed plan for the provision of that assistance to the department.

(d) If the Wisconsin works agency is not a county department under s. 46.215, 46.22 or 46.23 or tribal governing body, cooperate with the county department or tribal governing body to ensure that services delivered under Wisconsin works, the food stamp program and medical assistance are coordinated with the county or tribal governing body in a manner that most effectively serves the recipients of those services.

(em) Determine eligibility for and administer child care assistance under s. 49.155, if the department contracts with the Wisconsin Works agency to do so.

(es) Provide to every individual who requests assistance from the Wisconsin works agency a single−page description of all of the benefits and services that may be provided to any individual by the Wisconsin works agency. The department shall develop the description and distribute it to all Wisconsin works agencies. The department shall update the description as frequently as necessary to reflect all benefits and services that may be offered by Wisconsin works agencies.

(f) Perform any other tasks specified by the department in the contract that the department determines are necessary for the administration of Wisconsin works.

(g) If the Wisconsin Works agency is not a county department under s. 46.21, 46.22, or 46.23 or a tribal governing body, provide to the department, one year after the date on which the contract under sub. (1) was signed, a filing fee of $50 and an updated statement of economic interests that discloses the information specified in sub. (1) (ac) 1. a. to d.

(2m) NUTRITION OUTREACH. A Wisconsin works agency may establish a nutrition outreach program with the community steering committee established under sub. (2) (a). The Wisconsin works agency and community steering committee may coordinate with local food pantries and food banks and other interested parties to increase the supply of food available. Under the outreach program, the Wisconsin works agency may do anything that it determines would best effect the desired outcome of the program, including any of the following:

(a) Establish a local drop−off point for donated food.

(b) Establish a hotline for information about the availability of food and the types of food to donate.

(c) Coordinate with volunteer organizations for food collection activities.

(d) Seek ongoing periodic commitments of donations from individuals, businesses, religious associations and civic groups.

(e) Recruit mentor families.

(f) Establish a subcommittee of the community steering committee that includes qualified aliens and that may do any of the following:

1. Develop flyers identifying culture−specific foods and preferred packaging of donated food.

2. Plan meal−oriented social events for mentors and qualified aliens.

(g) Obtain culture−specific food from statewide food banks.

(2r) JOB PROGRAMS. A Wisconsin Works agency shall collaborate with the local workforce development board to connect individuals seeking employment with employment opportunities, including the trial employment match program under s. 49.147 (3).

(3) PERFORMANCE STANDARDS. The department shall establish performance standards for the administration of Wisconsin works. If a Wisconsin works agency does not meet the standards established under this subsection, the department may withhold or recover any or all payment from the Wisconsin works agency.

(3g) PERFORMANCE BONUSES. (a) The department shall base any performance bonus calculation that it makes for Wisconsin works agencies on all of the following performance criteria:

1. The placement of participants in Wisconsin Works employment positions into unsubsidized employment, as defined in s. 49.147 (1).

2. Whether the placement under subd. 1. is full time or part time.

3. The job retention rate, as defined by the department, of former participants in Wisconsin works employment positions.

4. Wages and benefits earned by former participants in Wisconsin works employment positions.

5. Appropriate implementation of Wisconsin works.

6. Customer satisfaction.

(b) The department may not base any performance bonus payments on caseload decreases, or reduced spending by the Wisconsin works agency, that are not directly attributable to placement of participants in unsubsidized employment.

(4) AUDITS. The department may require a Wisconsin works agency to submit to an independent annual audit paid for by the Wisconsin works agency.

(5) REQUESTS FOR INFORMATION. (a) In accordance with rules promulgated by the department, a Wisconsin works agency may request from any person any information that it determines appropriate and necessary for the administration of Wisconsin works. Any person in this state shall provide this information within 7 days after receiving a request under this paragraph. The Wisconsin works agency may extend the 7−day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the agency. The Wisconsin works agency may disclose information obtained under this paragraph only in the administration of Wisconsin works. The Wisconsin works agency shall keep all information that it receives regarding victims of domestic abuse strictly confidential, except to the extent needed to administer Wisconsin works.

(b) The department may request from any Wisconsin works agency any information that the department determines appropriate and necessary for the overall administration of Wisconsin works. A Wisconsin works agency shall provide the department with the requested information in the manner prescribed by the department by rule.

(c) The department may inspect at any time any Wisconsin works agency's records as the department determines is appropriate and necessary for the overall administration of Wisconsin works.

(d) The legislative audit bureau may inspect at any time any Wisconsin works agency's records as the legislative audit bureau determines appropriate and necessary. If, in inspecting a Wisconsin works agency's records, the legislative audit bureau inspects

the records of individual participants, the legislative audit bureau shall protect the confidentiality of those records.

(6) GEOGRAPHICAL AREAS. The department shall determine the geographical area for which a Wisconsin Works agency will administer Wisconsin Works. Except for federally recognized American Indian reservations and in counties with a population of 750,000 or more, no geographical area may be smaller than one county. A geographical area may include more than one county. The department need not establish the geographical areas by rule.

History: 1995 a. 216, 289; 1997 a. 27, 36, 236, 318; 1999 a. 9, 32; 2001 a. 16; 2005 a. 25; 2007 a. 20; 2009 a. 28, 333; 2011 a. 32, 257; 2013 a. 20, 225; 2015 a. 55, 172.

Cross−reference: See also ch. DCF 103, Wis. adm. code.

49.145 Wisconsin works; eligibility for employment positions. (1) GENERAL ELIGIBILITY. In order to be eligible for Wisconsin works employment positions and job access loans for any month, an individual shall meet the eligibility requirements under subs. (2) and (3). The department may promulgate rules establishing additional eligibility criteria and specifying how eligibility criteria are to be administered. The department may promulgate rules establishing payment and reporting periods as needed to administer this subsection.

(2) NONFINANCIAL ELIGIBILITY REQUIREMENTS. An individual is eligible for a Wisconsin works employment position and a job access loan in a month only if all of the following nonfinancial eligibility requirements are met:

(a) The individual is a custodial parent.

(b) The individual has attained the age of 18.

(c) The individual is a U.S. citizen or a qualifying alien, as defined by the department by rule.

(d) The individual has residence in this state.

(f) 1. Subject to subd. 2., all of the following conditions are met:

a. Every parent in the individual's Wisconsin works group fully cooperates in good faith with efforts directed at establishing the paternity of any minor child of that parent regardless of whether the parent is the custodial or noncustodial parent of that child. Such cooperation shall be in accordance with federal law and regulations and rules promulgated by the department applicable to paternity establishment and may not be required if the parent has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

b. Every parent in the individual's Wisconsin works group fully cooperates in good faith with efforts directed at obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, regardless of whether the parent is the custodial or noncustodial parent of the minor child. Such cooperation shall be in accordance with federal law and regulations and rules promulgated by the department applicable to collection of support payments and may not be required if the parent has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

2. An individual who is a member of a Wisconsin works group that fails 3 times to meet the requirements under subd. 1. remains ineligible until all of the members of Wisconsin works group cooperate or for a period of 6 months, whichever is later.

(g) The individual furnishes the Wisconsin works agency with any relevant information that the Wisconsin works agency determines is necessary, consistent with rules promulgated by the department, within 7 working days after receiving a request for the information from the Wisconsin works agency. The Wisconsin works agency may extend the 7−day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the agency.

(h) The individual has made a good faith effort, as determined by the Wisconsin works agency on a case−by−case basis, to obtain employment and has not refused any bona fide offer of employment within the 180 days immediately preceding application.

(hm) If the individual has applied for Wisconsin works within the 180 days immediately preceding the current application, the individual has cooperated with the efforts of a Wisconsin works agency to assist the individual in obtaining employment.

(i) The individual is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77 and, if the individual is a dependent child, the custodial parent of the individual does not receive a payment on behalf of the individual under s. 49.775. The department may require an individual who receives benefits under s. 49.148 and who has applied for supplemental security income under 42 USC 1381 to 1383c to authorize the federal social security administration to reimburse the department for the benefits paid to the individual under s. 49.148 during the period that the individual was entitled to supplemental security income benefits to the extent that retroactive supplemental security income benefits are made available to the individual.

(j) On the last day of the month, the individual is not participating in a strike.

(k) The individual applies for or provides a social security account number as required by the department.

(L) The individual satisfies other eligibility criteria established by the department by rule.

(m) The individual reports any change in circumstances that may affect his or her eligibility to the Wisconsin works agency within 10 days after the change.

(n) 1. Except as provided in subd. 4., beginning on the date on which the individual has attained the age of 18, the total number of months in which the individual or any adult member of the individual's Wisconsin Works group has participated in, or has received benefits under, any of the following or any combination of the following does not exceed 48 months, whether or not consecutive:

a. The job opportunities and basic skills program under s. 49.193, 1997 stats. Active participation on or after October 1, 1996, in the job opportunities and basic skills program counts toward the 48−month limit.

b. A Wisconsin works employment position.

c. Any program in this state or in any other state funded by a federal block grant for temporary assistance for needy families under title I of P.L. 104−193, if the individual received benefits under that program that were attributable to funds provided by the federal government.

2. Except as provided in subd. 4., in calculating the number of months in which the individual participated under subd. 1., the Wisconsin works agency shall include any month in which any adult member of a Wisconsin works group participated in a Wisconsin works employment position, if the individual was a member of that Wisconsin works group during that month.

3. A Wisconsin Works agency may extend the time limit under this paragraph only if the Wisconsin Works agency determines, in accordance with rules promulgated by the department, that the individual is experiencing hardship or that the individual's family includes an individual who has been battered or subjected to extreme cruelty.

4. In calculating the number of months under subds. 1. and 2., a Wisconsin works agency shall exclude, to the extent permitted under federal law, any month during which any adult in the Wisconsin works group participated in any activity listed under subd. 1. a. to c. while living on a federally recognized American Indian reservation, in an Alaskan Native village or, in Indian country, as defined in 18 USC 1151, occupied by an Indian tribe, if, during that month, all of the following applied:

a. At least 1,000 individuals were living on the reservation or in the village or Indian country.

b. At least 50 percent of the adults living on the reservation or in the village or Indian country were unemployed.

(q) No other individual in the Wisconsin works group is a participant in a Wisconsin works employment position. This paragraph does not apply to an individual applying for a job access loan.

(r) The individual is not a fugitive felon under 42 USC 608 (a) (9) (A) (i).

(rm) The individual is not violating a condition of probation, extended supervision or parole imposed under federal or state law.

(s) The individual assigns to the state any right of the individual or of any dependent child of the individual to support or maintenance from any other person accruing during the time that any assistance, as defined in 45 CFR 260.31, under Wisconsin Works is paid to the individual. If a minor who is a beneficiary of any assistance under Wisconsin Works is also the beneficiary of support under a judgment or order that includes support for one or more children not receiving that assistance, any support payment made under the judgment or order is assigned to the state during the period that the minor is a beneficiary of that assistance in the amount that is the proportionate share of the minor receiving the assistance, except as otherwise ordered by the court on the motion of a party. Amounts assigned to the state under this paragraph remain assigned to the state until the amount due to the federal government has been recovered. No amount of support that begins to accrue after the individual ceases to receive assistance under Wisconsin Works may be considered assigned to this state. Except as provided in s. 49.1455, 75 percent of all money that is received by the department in a month under an assignment to the state under this paragraph for an individual applying for or participating in Wisconsin Works shall be paid to the individual applying for or participating in Wisconsin Works. The department shall pay the federal share of support assigned under this paragraph as required under federal law or waiver.

(v) The individual states in writing whether the individual has been convicted in any state or federal court of a felony that has as an element possession, use or distribution of a controlled substance, as defined in 21 USC 802 (6).

(3) FINANCIAL ELIGIBILITY REQUIREMENTS. An individual is eligible for a Wisconsin works employment position and a job access loan only if all of the following financial eligibility requirements are met:

(a) *Resource limitations*. The individual is a member of a Wisconsin works group whose assets do not exceed $2,500 in combined equity value. In determining the combined equity value of assets, the Wisconsin works agency shall exclude the equity value of vehicles up to a total equity value of $10,000, and one home that serves as the homestead for the Wisconsin works group.

(b) *Income limitations*. The individual is a member of a Wisconsin works group whose gross income is at or below 115 percent of the poverty line. In calculating gross income under this paragraph, the Wisconsin works agency shall include all of the following:

1. All earned and unearned income of the individual, except any amount received under section 32 of the Internal Revenue Code, as defined in s. 71.01 (6), any amount received under s. 71.07 (9e), any payment made by an employer under section 3507 of the Internal Revenue Code, as defined in s. 71.01 (6), any student financial aid received under any federal or state program, any scholarship used for tuition and books, and any assistance received under s. 49.148. In determining the earned and unearned income of the individual, the Wisconsin works agency may not include income earned by a dependent child of the individual.

3. The income of a nonmarital coparent or of the individual's spouse, if the spouse resides in the same home as the dependent child.

(4) REVIEW OF ELIGIBILITY. A Wisconsin works agency shall periodically review an individual's eligibility. The individual remains eligible under sub. (3) until the Wisconsin works group's assets or income is expected to exceed the asset or income limit under sub. (3) for at least 2 consecutive months.

History: 1995 a. 289; 1997 a. 27, 191, 237, 283; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2009 a. 28; 2015 a. 55.

Cross−reference: See also ss. DCF 101.09 and 101.24, Wis. adm. code.

49.1452 Payment of support arrears. If an individual who formerly participated in, but is no longer participating in, Wisconsin Works assigned to the state under s. 49.145 (2) (s) his or her right or the right of any dependent child of the individual to support or maintenance from any other person, the department shall pay to the individual all money in support or maintenance arrears that is collected by the department after the individual's participation ceased and that accrued while the individual was participating in Wisconsin Works.

History: 2009 a. 28.

49.1455 Child support demonstration project. The department may conduct a demonstration project, pursuant to the terms and conditions of a federal waiver, under which the department may pay to an individual whom the department has selected to be part of a control group a portion of the amount of child support received by the department under an assignment by the individual under s. 49.145 (2) (s).

History: 1997 a. 27.

49.146 Employer criteria. The department shall establish by rule criteria that an employer providing a Wisconsin works employment position must meet in order to employ a participant under s. 49.147 (3) to (5). An employer that does not meet the criteria established under this section is ineligible to receive any subsidy for any position provided to a participant.

History: 1995 a. 289.

Cross−reference: See also s. DCF 101.14, Wis. adm. code.

49.147 Wisconsin works; work programs and job access loans. (1) DEFINITION. In this section, "unsubsidized employment" means employment, including self−employment and entrepreneurial activities, for which the employer receives no wage subsidy.

(1m) EDUCATIONAL NEEDS ASSESSMENT. (a) A Wisconsin Works agency shall conduct an educational needs assessment of each individual who applies for a Wisconsin Works employment position. If the individual and the Wisconsin Works agency determine that the individual needs, or would benefit from, education or training activities, including a course of study meeting the standards established under s. 115.29 (4) (a) for the granting of a declaration of equivalency of high school graduation, and if the Wisconsin Works agency determines that the individual is eligible for a Wisconsin Works employment position, the Wisconsin Works agency shall include education or training activities in any employability plan developed for the individual.

(b) If the Wisconsin Works agency determines that the appropriate placement for an individual is in unsubsidized employment or a trial employment match program job and that the individual needs and wishes to pursue basic education, including a course of study meeting the standards established under s. 115.29 (4) (a) for the granting of a declaration of equivalency of high school graduation, the Wisconsin Works agency shall pay for the basic education services identified in the employability plan developed for the individual.

(2) UNSUBSIDIZED EMPLOYMENT. (a) *Job search, orientation and training activities*. 1. An individual who applies for a Wisconsin Works employment position may be required by the Wisconsin Works agency to search for unsubsidized employment during the period that his or her application is being processed as a condition of eligibility. A participant in a Wisconsin Works employment position or who is receiving case management services under par. (am) shall search for unsubsidized employment throughout his or her participation. The department shall define by rule satisfactory search efforts for unsubsidized employment.

2. A Wisconsin Works agency may require an applicant for a Wisconsin Works employment position to participate in job orientation during the period that his or her application is being processed as a condition of eligibility. A Wisconsin Works agency may require a participant in a Wisconsin Works employment position or who is receiving case management services under par. (am) to engage in training activities in accordance with rules promulgated by the department as part of the participant's participation requirements.

(am) *Case management services.* 1. In lieu of placing the individual in a Wisconsin Works employment position under subs. (3) to (5), a Wisconsin Works agency may provide case management services, which may include those services specified in s. 49.1475, to an individual who applies for a Wisconsin Works employment position if the Wisconsin Works agency determines all of the following:

a. The individual meets the eligibility requirements under s. 49.145 (2) and (3).

b. The individual is willing to work and has no barriers to employment that cannot be addressed with Wisconsin Works services.

c. The individual is job−ready, based on the individual's employment history or education.

d. The most appropriate placement for the individual is in unsubsidized employment.

2. A Wisconsin Works agency shall, every 30 days, review the provision of case management services to an individual under this paragraph, if the individual is not successful in obtaining unsubsidized employment after legitimate efforts to secure employment, to determine whether the individual should be placed in a trial employment match program job, community service job, or transitional placement. The department shall promulgate rules that specify the criteria for the review process under this subdivision.

(b) *Job search assistance.* A Wisconsin Works agency shall assist a participant in his or her search for unsubsidized employment. In determining an appropriate placement for a participant, a Wisconsin Works agency shall give priority to placement in unsubsidized employment and providing case management services under par. (am) over placements under subs. (3) to (5).

(3) TRIAL EMPLOYMENT MATCH PROGRAM. (a) *Administration.* A Wisconsin Works agency shall administer a trial employment match program as part of its administration of the Wisconsin Works program to improve the employability of individuals who otherwise are not able to obtain unsubsidized employment, as determined by the Wisconsin Works agency, by providing work experience and training to assist them to move promptly into unsubsidized employment. In determining an appropriate placement for a participant, a Wisconsin Works agency shall give priority to placement under this subsection over placements under subs. (4) and (5).

(ac) *Employer subsidies and reimbursements.* The Wisconsin Works agency shall pay to an employer that employs a participant under this subsection a wage subsidy in an amount that is negotiated between the Wisconsin Works agency and the employer but that is not more than the state or federal minimum wage that applies to the participant. The wage subsidy shall be paid for each hour that the participant actually works, up to a maximum of 40 hours per week. The employer shall pay the participant any difference between the wage subsidy amount and the participant's wage and must pay the participant at least minimum wage. In addition to paying the wage subsidy, the Wisconsin Works agency may, as negotiated between the Wisconsin Works agency and the employer, reimburse the employer for all or a portion of other costs that are attributable to the employment of the participant, including any of the following:

1. Federal social security and Medicare taxes.

2. State and federal unemployment contributions or taxes.

3. Worker's compensation insurance premiums.

(am) *Education or training activities.* A trial employment match program job includes education and training activities, as prescribed by the employer as an integral part of work performed in trial employment match program employment.

(b) *Worker's compensation.* The employer shall provide the participant with worker's compensation coverage.

(c) *Time−limited participation.* A participant under this subsection may participate in a trial employment match program job for a maximum of 6 months, with an opportunity for a 3−month extension under circumstances determined by the Wisconsin Works agency. A participant may participate in more than one trial employment match program job, but may not exceed a total of 24 months of participation under this subsection. The months need not be consecutive. The department or, with the approval of the department, the Wisconsin Works agency may grant an extension of the 24−month limit on a case−by−case basis if the participant has made all appropriate efforts to find unsubsidized employment and has been unable to find unsubsidized employment because local labor market conditions preclude a reasonable job opportunity for that participant, as determined by a Wisconsin Works agency and approved by the department.

(d) *Employer effort to retain, refer, or evaluate participant.* An employer that employs a participant under this subsection and receives a wage subsidy shall agree to make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy ends, although nothing in this subsection requires an employer to retain a participant as a permanent unsubsidized employee after the wage subsidy ends. An employer shall also agree that, if the employer does not retain a participant as a permanent unsubsidized employee, the employer will serve as an employment reference for the participant or provide to the Wisconsin Works agency a written performance evaluation of the participant, including recommendations for improvements.

(e) *Noncustodial parents.* Notwithstanding s. 49.145 (1) and (2) (a), an individual who would be eligible for a job under this subsection except that the individual is a noncustodial parent of a dependent child is eligible for placement under this subsection, subject to s. 49.159 (1) (b) 2., if the individual is eligible for services and benefits under s. 49.159 (1) (a).

(4) COMMUNITY SERVICE JOB. (a) *Administration.* A Wisconsin Works agency shall administer a community service job program as part of its administration of Wisconsin Works to improve the employability of an individual who is not otherwise able to obtain employment, as determined by the Wisconsin Works agency, by providing work experience and training, if necessary, to assist the individual to move promptly into unsubsidized public or private employment or a trial employment match program job. In determining an appropriate placement for a participant, a Wisconsin Works agency shall give placement under this subsection priority over placements under sub. (5). Community service jobs shall be limited to projects that the department determines would serve a useful public purpose or projects the cost of which is partially or wholly offset by revenue generated from such projects. After each 6 months of an individual's participation under this subsection and at the conclusion of each assignment under this subsection, a Wisconsin Works agency shall reassess the individual's employability.

(am) *Education or training activities.* A participant under this subsection may be required to participate in education and training activities assigned as part of an employability plan developed by the Wisconsin works agency. The department shall establish by rule permissible education and training under this paragraph, which shall include a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation, technical college courses, employer−sponsored training, and educational courses that provide an employment skill. Permissible education under this paragraph shall also include English as a 2nd language courses that the Wisconsin works agency determines would facilitate an individu-

al's efforts to obtain employment and adult basic education courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.

(as) *Required hours.* Except as provided in pars. (at) and (av) and sub. (5m), a Wisconsin Works agency shall require a participant placed in a community service job program to work in a community service job for the number of hours determined by the Wisconsin Works agency to be appropriate for the participant at the time of application or review and may require a participant to participate in education or training activities for not more than 10 hours per week, except that the Wisconsin Works agency may not require a participant under this subsection to spend more than 40 hours per week in combined activities under this subsection.

(at) *Motivational training.* A Wisconsin Works agency may require a participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program. The Wisconsin Works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (as).

(av) *Education for 18−year−old and 19−year−old students.* A Wisconsin Works agency shall permit a participant under this subsection who has not attained the age of 20 and who has not obtained a high school diploma or a declaration of equivalency of high school graduation to attend high school or, at the option of the participant, to enroll in a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation to satisfy, in whole or in part, the participation requirement under par. (as).

(b) *Time−limited participation.* An individual may participate in a community service job for a maximum of 6 months, with an opportunity for a 3−month extension under circumstances approved by the department. An individual may participate in more than one community service job, but may not exceed a total of 24 months of participation under this subsection. The months need not be consecutive. The department or, with the approval of the department, the Wisconsin Works agency may grant an extension to the 24−month limit on a case−by−case basis if the Wisconsin Works agency determines that the individual has made all appropriate efforts to find unsubsidized employment and has been unable to find unsubsidized employment because local labor market conditions preclude a reasonable employment opportunity in unsubsidized employment for that participant, as determined by a Wisconsin Works agency and approved by the department, and if the Wisconsin Works agency determines, and the department agrees, that no trial employment match program job opportunities are available in the specified local labor market.

(c) *Worker's compensation.* A participant under this subsection is an employee of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

(5) TRANSITIONAL PLACEMENT. (a) *Additional eligibility criteria.* An individual is eligible to participate in a transitional placement under this subsection if, in addition to meeting the eligibility requirements under s. 49.145, any of the following conditions is met with respect to the individual:

1. The Wisconsin works agency determines, on the basis of an independent assessment by the division of vocational rehabilitation or similar agency or business, that the individual has been incapacitated, or will be incapacitated, for a period of at least 60 days.

2. The Wisconsin works agency determines that the individual is needed in the home because of the illness or incapacity of another member of the Wisconsin works group.

3. The Wisconsin Works agency determines that the individual is incapable of performing a trial employment match program job or community service job.

(b) 1. The Wisconsin Works agency shall assign a participant under this subsection to work activities such as a community rehabilitation program, as defined by the department, a job similar to a community service job, or a volunteer activity. A Wisconsin Works agency may require a participant under this subsection to participate in any of the following:

a. An alcohol and other drug abuse evaluation, assessment, and treatment program.

b. Mental health activities, as defined by the department by rule.

c. Counseling or physical rehabilitation activities.

d. Other activities that the Wisconsin Works agency determines are consistent with the capabilities of the individual.

2. An individual may participate in a transitional placement for a maximum of 24 months. The months need not be consecutive. This period may be extended on a case−by−case basis by the department or by the Wisconsin Works agency with the approval of the department.

(bm) *Education or training activities.* A participant under this subsection may be required to participate in education and training activities assigned as part of an employability plan developed by the Wisconsin works agency. The department shall establish by rule permissible education and training under this paragraph, which shall include a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation, technical college courses, employer−sponsored training, and educational courses that provide an employment skill. Permissible education under this paragraph shall also include English as a 2nd language courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment and adult basic education courses that the Wisconsin works agency determines would facilitate an individual's efforts to obtain employment.

(bs) *Required hours.* Except as provided in par. (bt) and sub. (5m), a Wisconsin Works agency may require a participant placed in a transitional placement to participate in education or training activities for not more than 12 hours per week and to engage in activities under par. (b) 1., but may not require a participant under this subsection to spend more than 40 hours per week in combined activities under this subsection.

(bt) *Motivational training.* A Wisconsin Works agency may require a participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program. The Wisconsin Works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (bs).

(c) *Worker's compensation.* A participant under this subsection is an employee of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

(5m) POSTSECONDARY EDUCATION. (a) To the extent permitted under 42 USC 607, and except as provided in par. (bL), a participant under sub. (4) or (5) may participate in a technical college education program as part of a community service job placement or transitional placement if all of the following requirements are met:

1. The Wisconsin works agency, in consultation with the community steering committee established under s. 49.143 (2) (a) and the technical college district board, determines that the technical college education program is likely to lead to employment.

2. The participant maintains full−time status in the technical college education program, as determined by the technical college that the participant attends, and regularly attends all classes.

3. The participant maintains a grade point average of at least 2.0, or the equivalent as determined by the technical college.

4. The participant is employed or engages in work under a community service job or transitional placement for 25 hours per week in addition to participation under this subsection.

(bL) A participant may participate under this subsection for the duration of the technical college education program, except that the participant may not participate under this subsection for more than 2 years.

(c) The Wisconsin works agency shall work with the community steering committee established under s. 49.143 (2) (a) and the technical college district board to monitor the participant's progress in the technical college education program and the effectiveness of the program in leading to employment.

(6) JOB ACCESS LOAN. (a) *Additional eligibility criteria.* An individual is eligible to receive a job access loan if, in addition to meeting the eligibility requirements under s. 49.145, all of the following conditions are met with respect to the individual:

1. The individual needs the loan to address an immediate and discrete financial crisis. The crisis may not be the result of the individual's failure to accept a bona fide offer of employment or the individual's termination of a job without good cause.

2. The individual needs the loan to obtain or continue employment. Fulfillment of this requirement includes a loan that is needed to repair or purchase a vehicle that is needed to obtain or continue employment.

3. The individual is not in default with respect to the repayment of any previous job access loan or repayment of any grant or wage overpayments under this section.

4. The individual is not a migrant worker.

(b) *Terms.* The department shall promulgate rules establishing the terms of any job access loan, including all of the following:

1. The maximum and minimum loan amounts in any 12−month period.

3. The terms and conditions of repayment. The rules promulgated under this subdivision shall provide for repayment by performance of in−kind services. The rules shall establish criteria that the Wisconsin works agency shall use to approve in−kind repayment of loans.

(c) *Funding and administration.* From the appropriations under s. 20.437 (2) (jL) and (md), the department shall allocate funds for job access loans to Wisconsin Works agencies, which shall administer the loans in accordance with rules promulgated by the department.

(cm) *Collection of delinquent repayments.* 1. The department may, in the manner provided in s. 49.85, collect job access loan repayments that are delinquent under the terms of a repayment agreement. The department shall credit all delinquent repayments collected by the department of revenue as a setoff under s. 71.93 to the appropriation account under s. 20.437 (2) (jL). Use of the process under s. 49.85 does not preclude the department from collecting delinquent repayments through other legal means.

2. Subdivision 1. applies to delinquent repayments existing on or after July 26, 2003, regardless of when the loan was made or when the delinquency accrued.

(d) *Minor custodial parents.* An individual who would be eligible for a job access loan under par. (a), except that the individual has not attained the age of 18, is eligible under this paragraph if the individual meets the following requirements:

1. The individual is in an out−of−home placement or independent living arrangement supervised by an adult, as defined by the department.

2. The individual has graduated from high school or has met the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation under s. 115.29 (4).

3. The individual will be 18 years old within 2 months after applying for the job access loan.

(e) *Noncustodial parents.* Notwithstanding s. 49.145 (1) and (2) (a), an individual who would be eligible for a job access loan under par. (a) except that the individual is a noncustodial parent of a dependent child is eligible to receive a job access loan under this subsection.

History: 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28, 333; 2011 a. 32, 257; 2013 a. 20; 2015 a. 55.

Cross−reference: See also ss. DCF 101.16 and 101.17, Wis. adm. code.

Placement in unsubsidized employment, by its definition, requires that there be employment. Employment is not an ambiguous term. A placement requiring employment cannot be construed to be appropriate for individuals who are unemployed but ready for employment. Weston v. Department of Workforce Development, 2007 WI App 167, 304 Wis. 2d 418, 737 N.W.2d 74, 06−1276.

49.1473 Wisconsin works; domestic abuse screening and training. (1) (a) The department shall promulgate rules for screening victims of domestic abuse and for the training of Wisconsin works agency employees in domestic abuse issues. The rules shall allow an individual to voluntarily and confidentially disclose that he or she is or has been a victim of domestic abuse or is at risk of further domestic abuse. The rules shall also specify the evidence that is sufficient to establish that an individual is or has been a victim of domestic abuse or is at risk of further domestic abuse.

(b) Each Wisconsin works agency shall establish procedures, in accordance with the rules promulgated by the department under par. (a), for screening victims of domestic abuse.

(2) If a Wisconsin works agency employee identifies an individual as a past or present victim of domestic abuse or determines that the individual is at risk of domestic abuse or if the individual identifies himself or herself as a past or present victim of domestic abuse or as an individual who is at risk of further abuse, the Wisconsin works agency shall provide the individual with information on community−based domestic abuse services, including information on shelters or programs for battered individuals, sexual assault provider services, medical services, sexual assault nurse examiners services, domestic violence and sexual assault hotlines, legal and medical counseling and advocacy, mental health care, counseling, and support groups. The Wisconsin works agency shall provide the information to the individual orally and in writing in accordance with guidelines developed by the department. The Wisconsin works agency shall also provide referrals for community−based counseling and supportive service providers to the individual if the individual elects to receive the services.

History: 2001 a. 16.

49.1475 Follow−up services. Following any follow−up period required by the contract entered into under s. 49.143, a Wisconsin works agency may provide case management services for an individual who moves from a Wisconsin works employment position to unsubsidized employment to help the individual retain the unsubsidized employment. Case management services may include the provision of employment skills training; English as a 2nd language classes, if the Wisconsin works agency determines that the course will facilitate the individual's efforts to retain employment; a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation; or other remedial education courses. The Wisconsin works agency may provide case management services regardless of the individual's income and asset levels.

History: 1999 a. 9.

49.148 Wisconsin works; wages and benefits. (1) BENEFIT AND WAGE LEVELS FOR PARTICIPANTS IN EMPLOYMENT POSITIONS. A participant in a Wisconsin Works employment position shall receive the following wages or benefits:

(a) *Trial employment match program jobs.* For a participant in a trial employment match program job, the amount established in the contract between the Wisconsin Works agency and the trial employment match program job employer, but not less than minimum wage for every hour actually worked in the trial employment match program job, not to exceed 40 hours per week paid by the employer. Hours spent participating in education and training

activities under s. 49.147 (3) (am) shall be included in determining the number of hours actually worked.

(b) *Community service jobs.* 1. Except as provided in subd. 1m., for a participant in a community service job under s. 49.147 (4), a monthly grant of $653. For every hour that the participant misses work or education or training activities without good cause, the grant amount shall be reduced by $5. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse. If a participant in a community service job under s. 49.147 (4) is required to work fewer than 30 hours per week because the participant has unsubsidized employment, as defined in s. 49.147 (1), the grant amount under this paragraph shall equal the amount specified under subd. 1m. minus $5 for each hour that the participant misses work or education or training activities without good cause.

1m. Except as provided in subd. 1., the department or an entity contracting with the department shall pay a participant in a community service job the following:

a. For a participant placed in a community service job for not more than 10 hours per week, one−third of the amount specified in subd. 1m. d.

b. For a participant placed in a community service job for more than 10 hours but not more than 15 hours per week, one−half of the amount specified under subd. 1m. d.

c. For a participant placed in a community service job for more than 15 hours but not more than 20 hours per week, two−thirds of the amount specified under subd. 1m. d.

d. For a participant placed in a community service job for more than 20 hours per week, $653.

3. For a participant in a community service job who participates in technical college education under s. 49.147 (5m), a monthly grant of $653. For every hour that the participant misses work or other required activities without good cause, the grant amount shall be reduced by $5. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

(c) *Transitional placements.* For a participant in a transitional placement under s. 49.147 (5) or in a transitional placement and in technical college education under s. 49.147 (5m), a monthly grant of $608. For every hour that the participant fails to participate in any required activity without good cause, including any activity under s. 49.147 (5) (b) 1. a. to d., the grant amount shall be reduced by $5. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

(1m) CUSTODIAL PARENT OF INFANT; UNMARRIED, PREGNANT WOMAN. (a) Any of the following may receive a monthly grant of $673:

1. A custodial parent of a child 8 weeks old or less who meets the eligibility requirements under s. 49.145 (2) and (3), unless another adult member of the custodial parent's Wisconsin Works group is participating in, or is eligible to participate in, a Wisconsin Works employment position or is employed in unsubsidized employment, as defined in s. 49.147 (1).

2. An unmarried woman who would be eligible under s. 49.145 except that she is not a custodial parent of a dependent child and who is in the 3rd trimester of a pregnancy that is medically verified and that is shown by medical documentation to be at risk and to render the woman unable to participate in the workforce.

(bm) A Wisconsin Works agency may not require a participant under this subsection to participate in any employment positions.

(c) For purposes of the time limits under ss. 49.145 (2) (n) and 49.147 (3) (c), (4) (b), and (5) (b) 2., all of the following apply:

1. Receipt of a grant under this subsection by a participant under par. (a) 1. does not constitute participation in a Wisconsin Works employment position if the child is born to the participant not more than 10 months after the date that the participant was first determined to be eligible for assistance under s. 49.19 or for a Wisconsin Works employment position.

2. Receipt of a grant under this subsection by a participant under par. (a) 1. constitutes participation in a Wisconsin Works employment position if the child is born to the participant more than 10 months after the date that the participant was first determined to be eligible for assistance under s. 49.19 or for a Wisconsin Works employment position unless the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2), or (3) in which the mother did not indicate a freely given agreement to have sexual intercourse or in violation of s. 948.02 or 948.025 or as a result of incest in violation of s. 944.06 or 948.06 and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

3. Receipt of a grant under this subsection by a participant under par. (a) 2. does not constitute participation in a Wisconsin Works employment position.

(4) DRUG TESTING. (a) A Wisconsin works agency shall require a participant in a community service job or transitional placement who, after August 22, 1996, was convicted in any state or federal court of a felony that had as an element possession, use or distribution of a controlled substance to submit to a test for use of a controlled substance as a condition of continued eligibility. If the test results are positive, the Wisconsin works agency shall decrease the presanction benefit amount for that participant by not more than 15 percent for not fewer than 12 months, or for the remainder of the participant's period of participation in a community service job or transitional placement, if less than 12 months. If, at the end of 12 months, the individual is still a participant in a community service job or transitional placement and submits to another test for use of a controlled substance and if the results of the test are negative, the Wisconsin works agency shall discontinue the reduction under this paragraph.

(b) The Wisconsin Works agency may require an individual who tests positive for use of a controlled substance under par. (a) to participate in a drug abuse evaluation, assessment, and treatment program as part of the participation requirement under s. 49.147 (4) (as) or (5) (bs).

(c) Paragraph (a) does not apply if the participant was convicted more than 5 years prior to the date on which the participant applied for a Wisconsin works employment position.

History: 1995 a. 289; 1997 a. 27; 1999 a. 9; 2009 a. 28; 2011 a. 32, 257; 2013 a. 20, 165.

Cross−reference: See also ss. DCF 101.18 and 101.20, Wis. adm. code.

49.149 Wisconsin works; education and training. A Wisconsin works agency shall do all of the following:

(1) Establish a referral relationship with other employment and training programs for participants to make use of varied education and training opportunities available through integrated job centers, as defined by the department by rule.

(3) Encourage employers to make training sites available on the business site for participants.

History: 1995 a. 289; 2009 a. 2.

49.15 Wisconsin works; 2−parent families. (1) DEFINITION. In this section, "other parent" means a parent who is not a participant in a Wisconsin works employment position.

(2) REQUIREMENTS FOR NONPARTICIPANT PARENT. (a) If a participant in a Wisconsin works employment position resides with the other parent of a dependent child with respect to whom the participant is a custodial parent, the other parent shall participate in activities described under sub. (3) if the Wisconsin works group receives federally funded child care assistance on behalf of the dependent child. The other parent shall participate in activities described under sub. (3) for a number of hours per week that is at least equal to the difference between 55 hours and the sum of the

number of hours that the participant in the Wisconsin works employment position participates in the Wisconsin works employment position and the number of hours that the participant in the Wisconsin works employment position participates in any activity described in sub. (3) during that week.

(b) Paragraph (a) does not apply if the other parent is disabled, as defined by the department, or is caring for a severely disabled child, as defined by the department.

(3) PRESCRIBED WORK ACTIVITIES. An individual who is subject to the work requirement under sub. (2) may satisfy the requirement only by participating in any of the following activities:

(a) Unsubsidized employment, as defined in s. 49.147 (1).

(b) Subsidized employment, as defined by the department.

(c) If sufficient private sector employment is not available, work experience, as defined by the department.

(d) On−the−job training, as defined by the department.

(e) A community service program, as defined by the department.

History: 1997 a. 27; 1999 a. 32; 2011 a. 257.
Cross−reference: See also s. DCF 101.27, Wis. adm. code.

49.151 Wisconsin works; sanctions. (1c) DEFINITIONS. In this section:

(a) "Employer" means a subsidized or unsubsidized employer or a work experience provider.

(b) "Employment" means subsidized or unsubsidized employment or an assigned work experience activity.

(1m) REFUSAL TO PARTICIPATE. A participant who refuses to participate, as determined under guidelines promulgated under s. 49.1515, in any Wisconsin Works employment position component is ineligible to participate in the Wisconsin Works program for 3 months. A participant is also ineligible to participate in the Wisconsin Works program if an individual in the participant's Wisconsin Works group is subject to the work requirement under s. 49.15 (2) and refuses to participate as required. A participant or an individual who is subject to the work requirement under s. 49.15 (2) demonstrates a refusal to participate if any of the following applies:

(a) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), fails, without good cause, as determined by the Wisconsin Works agency, to do any of the following:

1. Appear for an interview with a prospective employer.

2. Appear for an assigned work activity, as defined in 42 USC 607 (d), or for an activity assigned by the Wisconsin Works agency.

(b) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), voluntarily leaves appropriate employment or training without good cause, as determined by the Wisconsin Works agency.

(c) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), voluntarily leaves a work experience site without good cause, as determined by the Wisconsin Works agency.

(d) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), is discharged from appropriate employment or training for cause.

(e) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), is discharged from a work experience site for cause.

(f) The participant, or an individual who is in the participant's Wisconsin Works group and who is subject to the work requirement under s. 49.15 (2), demonstrates through other behavior or action, as specified by the department by rule, that he or she refuses to participate in a Wisconsin Works employment position.

(2) INTENTIONAL PROGRAM VIOLATIONS. (a) If the department, a Wisconsin Works agency, or a county department or agency under contract under s. 49.155 (1m) determines that an individual applying for or receiving benefits under s. 49.138 or ss. 49.141 to 49.161, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has committed an intentional program violation related to any provision in s. 49.138 or ss. 49.141 to 49.161 or any rule promulgated under those sections, the Wisconsin Works agency, the county department or agency under contract under s. 49.155 (1m), or the department shall deny benefits under s. 49.138 or ss. 49.141 to 49.161 to the individual as follows:

1. For a first intentional program violation, for 6 months.

2. For a 2nd intentional program violation, for one year.

3. For a 3rd intentional program violation, permanently.

(b) An individual who is denied benefits under par. (a) may request a review of the denial following the procedure under s. 49.152 or, if the denial is based upon a violation of s. 49.155, may request a contested case hearing under ch. 227 by filing a request for a hearing with the department within 30 days after the date of the denial.

History: 1995 a. 289; 1997 a. 27; 2009 a. 28; 2011 a. 32, 202; 2015 a. 55.
Cross−reference: See also s. DCF 101.21, Wis. adm. code.

49.1515 Determining nonparticipation. (1) GUIDELINES BY RULE. The department shall by rule specify guidelines for determining when a participant, or individual in the participant's Wisconsin Works group, who engages in a behavior specified in s. 49.151 (1m) (a), (b), (c), (d), (e), or (f) is demonstrating a refusal to participate.

(4) EMERGENCY RULES PROHIBITED. Notwithstanding s. 227.24, the department may not promulgate any rules under this section as emergency rules using the procedure under s. 227.24.

History: 2009 a. 28; 2011 a. 32; 2015 a. 55.

49.152 Review of agency decisions. (1) PETITION FOR REVIEW. Any individual whose application for any component of Wisconsin Works is not acted upon by the Wisconsin Works agency with reasonable promptness after the filing of the application, as defined by the department by rule, or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly, that the employment position in which the individual was placed is inappropriate, or that providing case management services under s. 49.147 (2) (am) in lieu of placement in a Wisconsin Works employment position is inappropriate, may petition the Wisconsin Works agency for a review of such action. Review is unavailable if the action by the Wisconsin Works agency occurred more than 45 days prior to submission of the petition for review.

(2) REVIEW. (a) Upon a timely petition under sub. (1), the Wisconsin works agency shall give the applicant or participant reasonable notice and opportunity for a review. The Wisconsin works agency shall render its decision as soon as possible after the review and shall send by 1st class mail a certified copy of its decision to the last−known address of the applicant or participant. The Wisconsin works agency shall deny a petition for a review or shall refuse to grant relief if the petitioner does any of the following:

1. Withdraws the petition in writing.

2. Abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled review without good cause, as defined by the department by rule.

(b) The department may review a decision of a Wisconsin works agency under par. (a) if any of the following occurs:

1. Within 21 days after the date on which the certified copy of the decision of the Wisconsin works agency is mailed, the appli-

cant or participant petitions the department for a review of that decision.

2. The Wisconsin works agency requests the department to review the decision of the Wisconsin works agency.

(c) The department shall review a Wisconsin works agency's decision to deny an application based solely on a determination of financial ineligibility if any of the following occurs:

1. Within 21 days after the date on which the certified copy of the decision of the Wisconsin works agency is mailed, the applicant petitions the department for a review of the decision.

2. The Wisconsin works agency requests the department to review the decision of the Wisconsin works agency.

(d) If the department reviews a decision under par. (b) and upon receipt of a petition or request under par. (c) the department may make any additional investigation that it considers necessary. The department shall render its decision as soon as possible and shall send a certified copy of its decision to the applicant or participant, the county clerk, if appropriate, and the Wisconsin works agency. The decision of the department shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition or shall refuse to grant relief if the applicant or participant withdraws the petition in writing.

(3) REMEDIES. (a) If, following review under sub. (2), the Wisconsin Works agency or the department determines that an individual whose application for a Wisconsin Works employment position was denied based on eligibility was in fact eligible, or that the individual was placed in an inappropriate Wisconsin Works employment position or inappropriately provided case management services under s. 49.147 (2) (am) in lieu of placement in a Wisconsin Works employment position, the Wisconsin Works agency shall place the individual in the first available Wisconsin Works employment position that is appropriate for that individual, as determined by the Wisconsin Works agency or the department. An individual who is placed in a Wisconsin Works employment position under this paragraph is eligible for the benefit for that position under s. 49.148 beginning on the date on which the individual begins participation under s. 49.147.

(b) If, following review under sub. (2), the Wisconsin works agency or the department determines that a participant's benefit was improperly modified or canceled, or was calculated incorrectly, the Wisconsin works agency shall restore the benefit to the level determined to be appropriate by the Wisconsin works agency or by the department retroactive to the date on which the benefit was first improperly modified or canceled or incorrectly calculated.

History: 1995 a. 289; 1997 a. 27; 2011 a. 32.

Cross−reference: See also ss. DCF 101.07 and 101.22, Wis. adm. code.

49.153 Notice before taking certain actions. (1) WRITTEN AND ORAL NOTICE. Except as provided in sub. (1m), before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in Wisconsin Works, a Wisconsin Works agency shall do all of the following:

(a) Provide to the participant written notice of the proposed action and of the reasons for the proposed action.

(c) After providing the notice under par. (a), allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

(1m) NOTICE NOT REQUIRED. A Wisconsin Works agency is not required to comply with the requirements under sub. (1) if the action taken against a participant is a result of the participant no longer meeting the eligibility criteria under s. 49.145 (2) (a), (b), (c), (d), (g), (i), (j), (m), (q), (r), or (rm) or (3).

(2) RULES. The department shall promulgate rules that establish procedures for the notice under sub. (1) (a) and that define "reasonable time" for the purpose of sub. (1) (c).

History: 2005 a. 25; 2009 a. 28, 276; 2011 a. 32; 2015 a. 55.

49.155 Wisconsin Shares; child care subsidy. (1) DEFINITIONS. In this section, except as otherwise provided:

(ag) "Child care provider" means a provider licensed under s. 48.65, certified under s. 48.651 or established or contracted for under s. 120.13 (14).

(ah) "County department or agency" means a county department under s. 46.215, 46.22, or 46.23, the unit, as defined in s. 49.825 (1) (e), or a Wisconsin Works agency, child care resource and referral agency, or other agency.

(aL) "Disabled" means physically or mentally incapable of caring for oneself.

(am) "Level I certified family child care provider" means a child care provider certified under s. 48.651 (1) (a).

(b) "Level II certified family child care provider" means a child care provider certified under s. 48.651 (1) (b).

(c) Notwithstanding s. 49.141 (1) (j), "parent" means a custodial parent, guardian, foster parent, legal custodian, or a person acting in the place of a parent.

(d) "Tribal governing body" means an elected governing body of a federally recognized American Indian tribe.

(1d) CHILD CARE CERTIFICATION RULES. (a) The department shall promulgate rules establishing standards for the certification of child care providers under s. 48.651. The department shall consult with the child abuse and neglect prevention board before promulgating those rules. In establishing the requirements for certification under this paragraph of a child care provider, the department shall include a requirement that all providers and all employees and volunteers of a provider who provide care and supervision for children receive, before the date on which the provider is certified or the employment or volunteer work commences, whichever is applicable, all of the following:

1. Training in the most current medically accepted methods of preventing sudden infant death syndrome, if the provider, employee, or volunteer provides care and supervision for children under one year of age. The rules shall provide that any training in those methods that a provider, employee, or volunteer has obtained in connection with military service, as defined in s. 111.32 (12g), counts toward satisfying the training requirement under this subdivision, if the provider, employee, or volunteer demonstrates to the satisfaction of the department that the training obtained in that connection is substantially equivalent to the training required under this subdivision.

2. Training relating to shaken baby syndrome and impacted babies required under s. 253.15 (4) (b) or (c), if the provider, employee, or volunteer provides care and supervision for children under 5 years of age.

(am) In establishing the requirements for certification as a Level II certified family child care provider, the department may not include any requirement for training for those providers other than the training required under par. (a).

(b) The department shall promulgate rules to establish quality of care standards for child care providers that are higher than the quality of care standards required for licensure under s. 48.65 or for certification under s. 48.651. The standards established by rules promulgated under this paragraph shall consist of the standards provided for the accreditation of child care centers by the National Association for the Education of Young Children or any other comparable standards that the department may establish, including standards regarding the turnover of child care provider staff and the training and benefits provided for child care provider staff.

(1g) CHILD CARE ALLOCATIONS. Within the limits of the availability of the federal child care and development block grant funds received under 42 USC 9858, the department shall allocate funding in each fiscal year for all of the following:

(ac) A child care scholarship and bonus program, in the amount of at least $3,975,000 per fiscal year.

(bc) Grants under s. 49.134 (2) for child care resource and referral services, in the amount of at least $1,298,600 per fiscal year.

(c) Child care licensing activities.

(d) Grants under s. 49.137 (4m).

(e) Contracts under s. 49.137 (4) for training and technical assistance.

(f) The department's share of the costs for the Child Care Information Center operated by the division for libraries and technology in the department of public instruction.

(g) Contracts and grants to implement the child care quality rating system under s. 48.659.

(1j) UNANTICIPATED FEDERAL FUNDS. If the department receives unanticipated federal child care and development block grant funds under 42 USC 9858 and it proposes to allocate the unanticipated funds so that an allocation limit in sub. (1g) is exceeded, the department shall submit a plan for the proposed allocation to the secretary of administration. If the secretary of administration approves the plan, he or she shall submit it to the joint committee on finance. If the cochairpersons of the committee do not notify the secretary of administration within 14 working days after the date of his or her submittal that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan, notwithstanding any allocation limit under sub. (1g). If within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan, notwithstanding sub. (1g), only with the approval of the committee.

(1m) ELIGIBILITY. Except as provided in s. 49.155 (3g), the department shall determine, contract with a county department or agency to determine, or contract with a county department or agency to share determination of the eligibility of individuals residing in a particular geographic region or who are members of a particular Indian tribal unit for child care subsidies under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 or, if the child is disabled, who has not attained the age of 19, if the individual meets all of the following conditions:

(a) The individual is a parent of a child who meets the requirement under s. 49.145 (2) (c) and who is under the age of 13 or, if the child is disabled, is under the age of 19; or is a relative who, under s. 48.57 (3m) or (3n) or 48.62, is providing care and maintenance for a child who meets the requirement under s. 49.145 (2) (c) and who is under the age of 13 or, if the child is disabled, is under the age of 19; and child care services for that child are needed in order for the individual to do any of the following:

1. Meet the school attendance requirement under s. 49.26 (1) (ge).

1m. Obtain a high school diploma or participate in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation, if the individual is not subject to the school attendance requirement under s. 49.26 (1) (ge) and at least one of the following conditions is met:

a. The individual is 18 or 19 years of age.

b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. 48.57 (3m) or with a long−term kinship care relative under s. 48.57 (3n) or is in a foster home licensed under s. 48.62, a subsidized guardianship home under s. 48.623, a group home, or an independent living arrangement supervised by an adult.

2. Work in an unsubsidized job, including training provided by an employer during the regular hours of employment.

3. Work in a Wisconsin works employment position, including participation in job search, orientation and training activities under s. 49.147 (2) (a) and in education or training activities under s. 49.147 (3) (am), (4) (am) or (5) (bm).

3m. Participate in a job search or work experience component of the food stamp employment and training program under s. 49.79 (9).

3r. Participate in the Transform Milwaukee Jobs program, or the Transitional Jobs program, under s. 49.163.

4. Participate in basic education, including an English as a 2nd language course; literacy tutoring; or a course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation, if the department or the county department or agency determining eligibility determines that basic education would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the department or the county department or agency determining eligibility determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

(b) Except as provided in par. (bm), the individual meets the eligibility criteria under all of the following:

1. Section 49.145 (2) (f) and (g).

2. Section 49.145 (2) (s).

(bm) If the individual is providing care for a child under a court order and is receiving payments on behalf of the child under s. 48.57 (3m) or (3n) or 48.623, or if the individual is a foster parent, and child care is needed for that child, the child meets the requirement under s. 49.145 (2) (c).

(c) 1. Except as provided in subds. 1g., 1h., 1m., 2., and 3., the gross income of the individual's family is at or below 185 percent of the poverty line for a family the size of the individual's family or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual's family is at or below 200 percent of the poverty line for a family the size of the individual's family. In calculating the gross income of the family, the department or county department or agency determining eligibility shall include court−ordered child or family support payments received by the individual, if those support payments exceed $1,250 per month, and income described under s. 49.145 (3) (b) 1. and 3., except that, in calculating farm and self−employment income, the department or county department or agency determining eligibility shall include the sum of the following:

a. Net earnings reported to the Internal Revenue Service.

b. Depreciation expenses, personal business and entertainment expenses, personal transportation costs, purchases of capitol equipment and payments on the principal of loans.

1g. If the individual is a foster parent of the child or a subsidized guardian or interim caretaker of the child under s. 48.623, the child's biological or adoptive family has a gross income that is at or below 200 percent of the poverty line. In calculating the gross income of the child's biological or adoptive family, the department or county department or agency determining eligibility shall include court−ordered child or family support payments received by the individual, if those support payments exceed $1,250 per month, and income described under s. 49.145 (3) (b) 1. and 3.

1h. If the individual is a relative of the child, is providing care for the child under a court order, and is receiving payments under s. 48.57 (3m) or (3n) on behalf of the child, the child's biological or adoptive family has a gross income that is at or below 200 percent of the poverty line. In calculating the gross income of the child's biological or adoptive family, the department or county department or agency determining eligibility shall include court−ordered child or family support payments received by the individ-

ual, if those support payments exceed $1,250 per month, and income described under s. 49.145 (3) (b) 1. and 3.

1m. If the individual was eligible under s. 49.132 (4) (a), 1995 stats., for aid under s. 49.132, 1995 stats., and received aid under s. 49.132, 1995 stats., on September 30, 1997, but lost aid solely because of the application of s. 49.132 (6), 1995 stats., the gross income of the individual's family is at or below 200 percent of the poverty line for a family the size of the individual's family. This subdivision does not apply to an individual whose family's gross income at any time on or after September 30, 1997, is more than 200 percent of the poverty line for a family the size of the individual's family.

2. If the individual was eligible under s. 49.132 (4) (am), 1995 stats., for aid under s. 49.132, 1995 stats., and received aid under s. 49.132, 1995 stats., on or after May 10, 1996, but lost eligibility solely because of increased income, the gross income of the individual's family is at or below 200 percent of the poverty line for a family the size of the individual's family. This subdivision does not apply to an individual whose family's gross income increased to more than 200 percent of the poverty line for a family the size of the individual's family.

3. If the individual was eligible for a child care subsidy under s. 49.191 (2), 1997 stats., on or after May 10, 1996, and received a child care subsidy on or after May 10, 1996, but lost the subsidy solely because of increased income, the gross income of the individual's family is at or below 200 percent of the poverty line for a family the size of the individual's family. This subdivision does not apply to an individual whose family's gross income increased to more than 200 percent of the poverty line for a family the size of the individual's family.

(d) The individual satisfies other eligibility criteria established by the department by rule.

(3) CHILD CARE LOCAL ADMINISTRATION. Except as provided in sub. (3g), a county department or agency with which the department contracts under sub. (1m) to determine eligibility in a particular geographic region or for a particular Indian tribal unit shall administer child care assistance in that geographic region or for that tribal unit. For the administration of child care assistance under this section, the department may require the county department or agency to do all of the following:

(a) Determine an individual's liability for copayments under sub. (5).

(b) Determine and authorize the amount of child care for which an individual may receive a subsidy.

(d) Assist individuals who are eligible for child care subsidies under this section to identify available child care providers and select appropriate child care arrangements.

(e) At intervals, or as otherwise required by the department, review and redetermine the financial and nonfinancial eligibility of individuals receiving child care subsidies under this section.

(3g) CHILD CARE ADMINISTRATION IN CERTAIN COUNTIES. In a county having a population of 750,000 or more all of the following apply:

(a) The department may contract with the Milwaukee County enrollment services unit, as provided in s. 49.825 (2) (b), to do any of the following:

1. Determine the eligibility of individuals for a child care subsidy under this section.

2. Determine an individual's liability for copayments under sub. (5).

3. Determine and authorize the amount of child care for which an individual may receive a subsidy.

4. At intervals, or as otherwise required by the department, review and redetermine the financial and nonfinancial eligibility of individuals receiving child care subsidies under this section.

(b) The department may establish a child care provider services unit, as provided in s. 49.826, to perform the provider services functions specified in s. 49.826 (2) (a).

(3m) DISTRIBUTION OF CHILD CARE FUNDS. (a) The department shall issue benefits directly to individuals who are eligible for subsidies under this section or pay or reimburse child care providers, county departments or agencies, or tribal governing bodies for child care services under this section. The department may also contract with and provide grants to private nonprofit agencies that provide child care for children of migrant workers. The department may pay or reimburse a Wisconsin Works agency for child care that the Wisconsin Works agency provides to the children of Wisconsin Works participants and applicants or that the Wisconsin Works agency arranges to meet immediate, short−term child care needs of participants prior to authorization of a subsidy under sub. (1m).

(am) If the department contracts with a county department or agency under sub. (1m), the department shall allocate funds for the eligibility determination function under the contract. When allocating these funds, the department may consider trends in applications, a county department's or agency's past eligibility determination expenditures, the respective portions of the eligibility determination function to be performed by the department and the county department or agency, and any other factor determined by the department.

(b) 1. Subject to subds. 2. and 3., the department shall, to the extent practicable, allocate funds to a contract entered into under sub. (1m) for the administration of the program under sub. (3) in the same proportion as the geographic region's or Indian tribal unit's proportionate share of all funding allocated under par. (am) for eligibility determination functions during the contract period or, if the department elects, in the same proportion as the geographic region's or Indian tribal unit's proportionate share of all children for whom a subsidy was provided under this section in the most recent 12−month period for which applicable statistics are available before the start of the contract period.

2. The department shall allocate to each contract at least $20,000 per year for the administrative responsibilities for each geographic region or Indian tribal unit.

3. If the department renews a contract for a subsequent year, the department shall allocate to the contract not less than 95 percent of the amount allocated to the contract in the previous year, unless the geographic region or Indian tribal unit is not comparable or total funding available for all contracts is lower than the total amount available in the previous year.

4. Within any contract period, the department may redistribute unexpended contract balances for a county department or agency to another county department or agency that reports expenditures in excess of their original contract total for the period.

(d) 1. No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child.

2. If a child's parent is a child care provider, no funds distributed under par. (a) may be used for child care services that are provided for the child by another child care provider who is not the child's parent.

3. Subdivision 1. or 2. does not apply if the child's parent has applied for, and been granted, a waiver of the prohibition under subd. 1. or 2. by the county department or agency or by the department.

4. The department shall by rule specify the circumstances, or standards for determining the circumstances, under which the department will grant a waiver under subd. 3.

(e) 1. In this paragraph, "qualifying child" means a child who satisfies both of the following:

a. He or she is not a child of an employee of the child care provider.

b. He or she does not reside with an employee of the child care provider.

2. No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider

who employs either the parent of the child or a person who resides with the child, unless the child care provider is licensed under s. 48.65 and at all times at least 60 percent of the children for whom the child care provider is providing care are qualifying children.

3. Notwithstanding subd. 2., if a child care provider described in subd. 2. satisfies the requirements for payment under subd. 2. but the percentage of qualifying children for whom the provider is providing care falls below 60 percent, the provider shall have 6 weeks to raise the percentage of qualifying children for whom the provider is providing care to at least 60 percent before payments to the provider are discontinued for child care services provided for a child who is not a qualifying child.

(4) CHOICE OF PROVIDER. (a) An eligible individual shall choose whether the child care will be provided by a child care center licensed under s. 48.65, a Level I certified family child care provider, a Level II certified family child care provider, or a child care program provided or contracted for by a school board under s. 120.13 (14).

(b) 1. Except as provided in subd. 2., no eligible individual may benefit personally from any marketing or promotional offerings made by a child care provider to attract clients or increase business.

2. Subdivision 1. does not apply to marketing or promotional offerings that directly benefit an eligible individual's child for whom the child care provider is providing child care services.

(c) 1. Notwithstanding par. (a) and subject to subd. 2., an eligible individual may receive a child care subsidy under this section for child care that is provided by an out−of−state provider of child care. Notwithstanding sub. (6), payments for child care services provided by an out−of−state provider under this subdivision shall be based on the maximum rate applicable in the county in which the eligible individual resides or on the out−of−state provider's actual rate, whichever is lower.

2. As a condition of payment under this section for child care services provided to a child of an individual who is eligible for a subsidy under this section, an out−of−state provider is subject to, and shall comply with, the provisions of this section, and rules promulgated under this section, that apply to a child care provider, as determined by the department.

(5) LIABILITY FOR PAYMENT. (a) An individual receiving a subsidy under this section is liable for the difference, if any, between the cost of the child care provided by the child care provider or providers selected by the individual and the subsidy amount. The department shall specify minimum or estimated copayment amounts based on family size, income level, and other factors, a schedule of which will be available in electronic form on the department's Internet site and in paper form.

(b) An individual who is under the age of 20 and attending high school or participating in a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care.

Cross−reference: See also s. DCF 201.08, Wis. adm. code.

(6) CHILD CARE RATES AND QUALITY STANDARDS. (a) The department shall establish maximum payment rates for licensed child care services provided under this section. The department shall set the rates so that at least 75 percent of the number of places for children within the licensed capacity of all child care providers can be purchased by eligible individuals under this section.

(b) The department shall set maximum payment rates for Level I certified family child care providers for services provided to eligible individuals under this section. The maximum rates set under this paragraph may not exceed 75 percent of the rates established under par. (a).

(c) The department shall set maximum payment rates for Level II certified family child care providers for services provided to eligible individuals under this section. The maximum rates set under this paragraph may not exceed 50 percent of the rates established under par. (a).

(cm) The department shall modify child care provider payment rates established under pars. (a) to (c) so that payment rates are lower for providers of after−school child care.

(d) The department may promulgate rules to establish a system of rates or a program of grants for child care providers that meet the higher quality of care standards established by rules promulgated under sub. (1d) (b). If a system of rates is established under this paragraph, the rates under that system shall be higher than the rates established under pars. (a) to (c).

(e) 1. In this paragraph, "quality rating plan" means the plan for implementing the child care quality rating system under s. 48.659 submitted by the department under 2009 Wisconsin Act 28, section 9108 (7f).

2. Except as provided in subd. 3., the department may not increase the maximum payment rates for child care providers before June 30, 2013.

3. The department may modify a child care provider's payment rate under subd. 2. on the basis of the provider's quality rating, as described in the quality rating plan, in the following manner:

a. For a child care provider who receives a 1−star rating, the department shall deny payment.

b. For a child care provider who receives a 2−star rating, the department may reduce the maximum payment rate by up to 5 percent.

c. For a child care provider who receives a 3−star rating, the department may pay up to the maximum payment rate.

d. For a child care provider who receives a 4−star rating, the department may increase the maximum payment rate by up to 10 percent.

e. For a child care provider who receives a 5−star rating, the department may increase the maximum payment rate for such a child care provider by up to 25 percent.

4. The department may use a severity−index tool, as described in the quality rating plan, to disqualify child care providers who receive a low quality rating, as described in the quality rating plan, from receiving payment under this section.

5. For purposes of modifying payment rates under subd. 3., the department shall assign a child care provider that is accredited from the Council on Accreditation a 4−star rating or 5−star rating, whichever the department determines is appropriate.

Cross−reference: See also s. DCF 201.06, Wis. adm. code.

(6d) COST−SAVING MEASURES. (a) To reduce costs under the program under this section, the department may do any of the following:

1. Notwithstanding sub. (1m), implement a waiting list for receipt of a child care subsidy under this section, except that a Wisconsin Works program participant may not be placed on any waiting list implemented under this subdivision.

2. Subject to sub. (5) (b), increase the copayment amount that an individual must pay toward the cost of child care received under this section.

3. Notwithstanding sub. (6), adjust the amount of payment to child care providers providing child care services under this section.

4. Notwithstanding sub. (1m), adjust the gross income levels for eligibility for receipt of a child care subsidy under this section.

(b) If the department intends to take any of the actions under par. (a), the department shall submit to the joint committee on finance a report that sets out its plan for implementing the cost−saving measures.

(6g) AUTHORIZED CHILD CARE HOURS. (a) 1. In this paragraph, "department" means the department or the county department or agency determining and authorizing the amount of child care for which an individual may receive a subsidy under this section.

2. Except as provided in subd. 3., the department shall authorize no more than 12 hours of child care per day per child.

3. The department may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day.

4. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or less because the child's parent does not provide the written documentation required under subd. 3., the department shall provide to the child's parent who is receiving the subsidy under this section and to the child's child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

(am) If payment to a child care provider is based on authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

1. The department shall track a child's hourly usage of child care authorizations over a 6−week period.

2. If the child's hourly usage tracked under subd. 1. is less than 60 percent of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90 percent of the maximum number of hours of child care that the child attended during that 6−week period.

3. The department shall provide written notice of the proposed adjustment under subd. 2. to the child's parent who is receiving the subsidy under this section, the child's child care provider, and the applicable county department or agency.

4. The department shall provide a grace period after the number of authorized hours are reduced under subd. 2., during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

(b) The department shall exclude from a child's hourly usage calculation under par. (am) 2., all of the following:

1. One week per year of vacation time for the child's child care provider.

2. One week per year of sick time for the child's child care provider.

3. Two weeks per year of vacation time for the child's parent who is receiving the subsidy under this section with the child.

(c) The department shall promulgate rules that specify how the requirements under this subsection will be implemented.

(6m) CHILD CARE PROVIDER RECORD KEEPING. With respect to attendance records, a child care provider shall do all of the following:

(a) Maintain a written record of the daily hours of attendance of each child for whom the provider is providing care under this section, including the actual arrival and departure times for each child.

(b) Retain the written daily attendance records under par. (a) for each child for at least 3 years after the child's last day of attendance, regardless of whether the child care provider is still receiving or eligible to receive payments under this section.

(7) REFUSAL OF PAYMENT TO CHILD CARE PROVIDERS. (a) 1. If a child care provider is convicted of a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, the department or the county department under s. 46.215, 46.22, or 46.23 shall refuse to allow payment to the child care provider for any child care provided under this section beginning on the date of the conviction or delinquency adjudication.

2. If a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, the department or the county department under s. 46.215, 46.22, or 46.23 shall immediately suspend payment to the child care provider for any child care provided under this section until the department obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment.

(b) The department or the county department under s. 46.215, 46.22, or 46.23 may refuse to allow payment to a child care provider for child care provided under this section if any of the following applies to the child care provider or to a caregiver specified in s. 48.685 (1) (ag) 1. a. or nonclient resident, as defined in s. 48.685 (1) (bm), of the child care provider:

1. The person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for committing an offense that is not a serious crime, as defined in s. 48.685 (1) (c) 3m., but the department, county department, agency contracted with under s. 48.651 (2), or school board determines under s. 48.685 (5m) that the offense substantially relates to the care of children or the department or county department determines that the offense substantially relates to the operation of a business.

2. The person is a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), and is the subject of a pending criminal charge that the department, county department, agency contracted with under s. 48.651 (2), or school board determines substantially relates to the care of children.

3. The person has been determined under s. 48.981 to have abused or neglected a child.

4. The department or county department reasonably suspects that the person has violated any provision under the program under this section or any rule promulgated under this section.

(7m) PENALTIES. (a) The department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program under this section and fails to provide to the satisfaction of the department an explanation for the noncompliance:

1. Recoup payments made to the child care provider.

2. Withhold payments to be made to the child care provider.

3. Impose a forfeiture on the child care provider.

(b) The penalties under par. (a) may be imposed on any child care provider subject to this section. Any officer, director, or employee of a child care provider that is a corporation, and any member, manager, or employee of a child care provider that is a limited liability company, who holds at least 20 percent of the ownership interest of the corporation or limited liability company and who has control or supervision of or responsibility for operating the child care business, including reporting for and receipt of payments under this section, may be found personally liable for such amounts, including overpayments made under this section, if the business, corporation, or limited liability company is unable to pay such amounts to the department. Ownership interest of a corporation or limited liability company includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation or limited liability company of which the corporation or limited liability company unable to pay such amounts is a wholly owned subsidiary. The personal liability of the officers, directors, and employees of a corporation and of the members, managers, and employees of a limited liability company as provided in this paragraph is an independent obligation and survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed

extension or composition, or any analogous situation of the corporation or limited liability company.

History: 1995 a. 289; 1997 a. 27, s. 1766 to 1775, 1838 to 1857; 1997 a. 41, 105, 237, 252; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 165; 2007 a. 20; 2009 a. 28, 76, 77, 185; 2011 a. 32, 120, 158, 202; 2013 a. 20, 113, 170; 2015 a. 55, 172; s. 35.17 correction in (6m) (title).

Cross−reference: See also ch. DCF 201 and s. DCF 101.26, Wis. adm. code.

It was reasonable for the department to construe sub. (1m) (a) 2. as limiting eligible employment to only "qualified" employers, meaning legitimate employers with a verified legal status. It is reasonable to expect that eligibility for child−care benefits requires legitimate, documented employment with an employer who complies with legal employment requirements. Mata v. Department of Children and Families, 2014 WI App 69, 354 Wis. 2d 486, 849 N.W.2d 908, 13−2013.

49.157 Wisconsin works; transportation assistance. A Wisconsin works agency may provide transportation assistance in the manner prescribed by the department. The Wisconsin works agency shall limit any financial assistance granted under this subsection to financial assistance for public transportation if a form of public transportation that meets the needs of the participant is available.

History: 1995 a. 289.

49.159 Wisconsin works; noncustodial and minor and other custodial parents. (1) NONCUSTODIAL PARENTS. (a) An individual who would be eligible under s. 49.145 except that the individual is the noncustodial parent of a dependent child is eligible for services and benefits under par. (b) if the individual is subject to a child support order, the individual satisfies all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual, and any of the following applies to the custodial parent of the dependent child:

1. The custodial parent is receiving case management services under s. 49.147 (2) (am).

2. The custodial parent is participating in a Wisconsin Works employment position.

3. The custodial parent is receiving a grant under s. 49.148 (1m).

4. The custodial parent is receiving a subsidy for child care for the dependent child under s. 49.155.

(b) A Wisconsin Works agency may provide to an individual who is eligible under par. (a) any of the following services or benefits:

1. Job search assistance and case management designed to enable the individual to obtain and retain employment.

2. Placement in one job under s. 49.147 (3).

3. A stipend in an amount determined by the Wisconsin Works agency for not more than 4 months. A stipend under this subdivision terminates if the individual is placed in a job under s. 49.147 (3) or obtains unsubsidized employment, as defined in s. 49.147 (1).

(2) MINOR CUSTODIAL PARENTS; FINANCIAL AND EMPLOYMENT COUNSELING. A custodial parent who is under the age of 18 is eligible, regardless of that individual's or that individual's parent's income or assets, to meet with a financial and employment planner. The financial and employment planner may provide the individual with information regarding Wisconsin works eligibility, available child care services, employment and financial planning, family planning services, as defined in s. 253.07 (1) (b), community resources, eligibility for food stamps and other food and nutrition programs.

(3) OTHER CUSTODIAL PARENTS. A custodial parent in a Wisconsin Works group in which the other custodial parent is a participant in a Wisconsin Works employment position or is receiving case management services under s. 49.147 (2) (am) is eligible for employment training and job search assistance services provided by the Wisconsin Works agency.

(4) PREGNANT WOMEN. A pregnant woman whose pregnancy is medically verified, who would be eligible under s. 49.145 except that she is not a custodial parent of a dependent child, and who does not satisfy the requirements under s. 49.148 (1m) (a) 2. is eligible for employment training and job search assistance services provided by the Wisconsin Works agency.

History: 1995 a. 289; 1997 a. 27; 2009 a. 28; 2011 a. 32; 2013 a. 20; 2015 a. 55; s. 35.17 correction in (1) (title).

49.161 Wisconsin works; overpayments. (1) TRIAL EMPLOYMENT MATCH PROGRAM JOBS OVERPAYMENTS. Notwithstanding s. 49.96, the department shall recover an overpayment of benefits paid under s. 49.148 (1) (a) from an individual who receives benefits paid under s. 49.148 (1) (a). The value of the benefit liable for recovery under this subsection may not exceed the amount that the department paid in wage subsidies with respect to that participant while the participant was ineligible to participate. The department shall promulgate rules establishing policies and procedures for administrating this subsection.

(2) COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an overpayment of benefits paid under s. 49.148 (1) (b) or (c) from an individual who continues to receive benefits under s. 49.148 (1) (b)and (c) by reducing the amount of the individual's benefit payment by no more than 10 percent.

(3) OVERPAYMENTS CAUSED BY INTENTIONAL PROGRAM VIOLATIONS. If an overpayment under sub. (1) or (2) is the result of an intentional violation of ss. 49.141 to 49.161 or of rules promulgated by the department under those sections, the department shall recover the overpayment by deducting an amount from the benefits received under s. 49.148 (1) (a), (b) or (c), until the overpayment is recovered. The amount to be deducted each month may not exceed the following:

(a) For intentional program violations resulting in an overpayment that is less than $300, 10 percent of the amount of the monthly benefit payment.

(b) For intentional program violations resulting in an overpayment that is at least $300 but less than $1,000, $75.

(c) For intentional program violations resulting in an overpayment that is at least $1,000 but less than $2,500, $100.

(d) For intentional program violations resulting in an overpayment that is $2,500 or more, $200.

History: 1995 a. 289; 1997 a. 27; 1999 a. 9; 2013 a. 20.

Cross−reference: See also s. DCF 101.23, Wis. adm. code.

49.162 Substance abuse screening and testing for certain work experience programs. (1) In this section:

(a) "Administering agency" means the department or an agency with which the department contracts to administer a program.

(b) "Controlled substance" has the meaning given in s. 961.01 (4).

(c) "Program" means any of the following:

1. Services and benefits under s. 49.159 (1) (b).

2. The Transform Milwaukee Jobs program or the Transitional Jobs program under s. 49.163.

3. A work experience and job training program under s. 49.36.

(2) Beginning on the effective date of the rules promulgated under sub. (7), or on the effective date of the emergency rules promulgated under 2015 Wisconsin Act 55, section 9106 (2c), whichever is earlier, in order to participate in a program, an individual who applies to participate in a program or who registers for a program under sub. (1) (c) 3., shall complete a controlled substance abuse screening questionnaire. If, on the basis of answers to the questionnaire, the administering agency determines that there is a reasonable suspicion that an individual who is otherwise eligible for a program is abusing a controlled substance, the administering agency shall require the individual to undergo a test for the use of a controlled substance. If the individual refuses to submit to a test, the individual is not eligible to participate in a program until the individual complies with the requirement to undergo a test for the use of a controlled substance.

(3) If an individual who undergoes a test under sub. (2) tests negative for the use of a controlled substance, or tests positive for

the use of a controlled substance but presents evidence satisfactory to the administering agency that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this section.

(4) (a) If an individual who undergoes a test under sub. (2) tests positive for the use of a controlled substance without presenting evidence of a valid prescription as described in sub. (3), the administering agency shall require the individual to participate in substance abuse treatment to remain eligible to participate in a program. If the individual refuses to participate in substance abuse treatment, the individual is not eligible to participate in a program until the individual complies with the requirement to participate in substance abuse treatment.

(b) During the time that an individual is receiving substance abuse treatment under par. (a), the administering agency shall require the individual to undergo random testing for the use of a controlled substance. For the individual to remain eligible for a program, the individual must cooperate with the testing and the results of the tests must be negative or, if any results are positive, the individual must present evidence of a valid prescription as described in sub. (3). If the results of any test during treatment are positive for the use of a controlled substance and the individual does not present evidence of a valid prescription for the controlled substance, the individual shall have the opportunity to begin the treatment again one time, as determined by the administering agency. If the individual begins the substance abuse treatment again, he or she shall remain eligible for a program as long as the results of all tests for the use of a controlled substance during the subsequent treatment are negative for the use of a controlled substance or, if any results are positive, the individual presents evidence of a valid prescription for the controlled substance.

(c) If an individual receiving treatment under par. (b) completes treatment and, at the conclusion of the treatment, tests negative for the use of a controlled substance or presents evidence of a valid prescription for any controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this section.

(5) The department shall manage the costs and reinvest the savings under this section, and shall work with the administering agency, if different from the department, to manage the costs and reinvest the savings.

(6) From the appropriation under s. 20.437 (2) (em), the department shall pay substance abuse treatment costs under this section that are not otherwise covered by medical assistance under subch. IV, private insurance, or another type of coverage. If treatment costs payable by the department exceed the moneys available under s. 20.437 (2) (em), the department shall request the joint committee on finance to take action under s. 13.101. The requirement of a finding of emergency under s. 13.101 (3) (a) 1. does not apply to such a request.

(7) The department shall promulgate rules to implement the substance abuse screening, testing, and treatment requirements under this section.

History: 2015 a. 55.

Cross−reference: See also ch. DCF 154, Wis. adm. code.

49.163 Transform Milwaukee Jobs program and Transitional Jobs program. (1) DEFINITIONS. In this section:

(am) "Program" means the Transform Milwaukee Jobs program, or the Transitional Jobs program, under this section.

(aw) "Wisconsin Works" has the meaning given in s. 49.141 (1) (p).

(b) "Wisconsin Works employment position" has the meaning given in s. 49.141 (1) (r).

(2) ELIGIBILITY FOR PROGRAM. (a) The department shall establish a Transform Milwaukee Jobs program in Milwaukee County and, if funding is available, may establish a Transitional Jobs program outside of Milwaukee County. To the extent of available funds, the department shall conduct the Transitional Jobs program, if established, in one or more geographic areas in the state that are not in Milwaukee County. In selecting the geographic area or areas in which to conduct the Transitional Jobs program, the department shall give priority to those areas with relatively high rates of unemployment and childhood poverty and to other areas with special needs that the department determines should be given priority.

(am) To be eligible to participate in the program, an individual must satisfy all of the following criteria:

1. Be at least 18 years of age.

2. If over 24 years of age, be a biological or adoptive parent of a child under 18 years of age whose parental rights to the child have not been terminated or be a relative and primary caregiver of a child under 18 years of age.

3. Have an annual household income that is below 150 percent of the poverty line.

4. Be unemployed for at least 4 weeks.

5. Be ineligible to receive unemployment insurance benefits.

6. Not be participating in a Wisconsin Works employment position.

7. Satisfy all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual.

(b) For purposes of par. (am) 3., the household income of an individual transitioning from foster care to independent living shall be based on the individual's own income over a period determined by the department and shall not include the household income of the individual's foster parents.

(c) The department may establish additional eligibility criteria consistent with its mission and the funding available.

(3) PROGRAM DESCRIPTION. (a) The program under this section shall include all of the following features and requirements:

1. An individual may participate in the program for a maximum of 1,040 hours actually worked.

2. The department shall determine and specify in a contract whether a contractor under sub. (4) or an employer is the individual's employer of record. The employer of record shall pay the individual for hours actually worked at not less than the federal or state minimum wage that applies to the individual.

3. The department may reimburse an employer, or a contractor under sub. (4), that employs an individual participating in the program for a minimum of 20 hours per week at a location in this state for any of the following costs that are attributable to the employment of the individual under the program:

a. A wage subsidy that is equal to an amount negotiated between the department and the employer or contractor, that is paid for each hour the individual actually worked, not to exceed 40 hours per week, and that is not more than the federal or state minimum wage that applies to the individual.

b. Federal social security and Medicare taxes.

c. State and federal unemployment insurance contributions or taxes, if any.

d. Worker's compensation insurance premiums, if any.

4. An employer, or, subject to the approval of the department, a contractor under sub. (4), that employs an individual participating in the program may pay the individual an amount that exceeds any wage subsidy paid to the employer or contractor by the department under subd. 3. a., except that the employer or contractor must pay the individual at least minimum wage.

5. The employment of an individual under this section may not do any of the following:

a. Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring an individual under this section.

b. Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit.

c. Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

(b) The department may set priorities for the program consistent with its mission and available funding.

(4) CONTRACT FOR ADMINISTRATION. The department may contract with any person to administer the program under this section, including a Wisconsin Works agency; county department under s. 46.215, 46.22, or 46.23; local workforce development board established under 29 USC 2832; or community action agency under s. 49.265. The department, or the agency or agencies with which the department contracts under this subsection, shall do all of the following:

(a) Determine the eligibility of applicants for the program.

(b) Provide, or identify employers to provide, jobs for individuals transitioning to unsubsidized employment from unemployment, underemployment, limited work history, foster care, or other circumstances identified by the department.

(c) Conduct job orientation activities.

(d) Provide employment services, as specified by the department, for program participants.

(e) Maintain and update participant demographic, eligibility, and employment records in the manner required by the department.

(5) RECOVERY OF OVERPAYMENTS. (a) The department may recover from any individual participating, or who has participated, in the program under this section any overpayment resulting from a misrepresentation by the individual as to any criterion for eligibility under sub. (2) (am).

(b) The department shall recover from a contractor under sub. (4) any overpayment resulting from the failure of the contractor to comply with the terms of the contract or to meet performance standards established by the department.

(6) RULES NOT REQUIRED. Notwithstanding s. 227.10 (1), the department need not promulgate regulations, standards, or policies related to implementing or administering the program under this section as rules under ch. 227.

History: 2013 a. 20, 113; 2013 a. 151 s. 27; 2015 a. 55.

49.1635 Wisconsin Trust Account Foundation. (1) To the extent permitted under federal law and subject to sub. (2), from the appropriation under s. 20.437 (2) (md) the department may distribute funds to the Wisconsin Trust Account Foundation in an amount up to the amount received by the foundation from private donations, but not to exceed $100,000 in a fiscal year. Except as provided in sub. (4), funds distributed under this subsection may be used only for the provision of legal services to individuals who are eligible for temporary assistance for needy families under 42 USC 601 et seq. and whose incomes are at or below 200 percent of the poverty line.

(2) The department may not distribute funds under sub. (1) until the Wisconsin Trust Account Foundation reports to the department the amount received by the Wisconsin Trust Account Foundation in private donations.

(3) If the Wisconsin Trust Account Foundation receives funds under sub. (1), it shall do all of the following:

(a) Develop a separate account for the funds distributed under sub. (1).

(b) Require each organization to which the Wisconsin Trust Account Foundation distributes funds received under sub. (1) to match 100 percent of the amount distributed to that organization that is attributable to the funds received by the Wisconsin Trust Account Foundation under sub. (1).

(c) Annually, prepare a report for distribution to the joint committee on finance that specifies the organizations that received funding under this section.

(4) Not more than 10 percent of the total funds received by the Wisconsin Trust Account Foundation may be used for administration.

History: 1999 a. 9; 2003 a. 33; 2007 a. 20.

49.165 Domestic abuse grants. (1) DEFINITIONS. In this section:

(a) "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or adult household members, by a minor family or minor household member against an adult family or adult household member, by an adult against his or her adult former spouse or by an adult against an adult with whom the person has a child in common.

(b) "Family member" means a spouse, a parent, a child or a person related by blood or adoption to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(d) "Organization" means a nonprofit corporation or a public agency that provides or proposes to provide any of the following domestic abuse services:

1. Shelter facilities or private home shelter care.
2. Advocacy and counseling for victims.
3. A 24−hour telephone service.
4. Community education.

(2) DISTRIBUTION OF FUNDS. (a) The secretary shall make grants from the appropriation accounts under s. 20.437 (1) (cd) and (hh) to organizations for the provision of any of the services specified in sub. (1) (d). Grants may be made to organizations which have provided those domestic abuse services in the past or to organizations which propose to provide those services in the future. No grant may be made to fund services for child or unborn child abuse or abuse of elderly persons.

(b) In reviewing applications for grants, the department shall consider:

1. The need for domestic abuse services in the specific community in which the applicant provides services or proposes to provide services.

2. Coordination of the organization's services with other resources in the community and the state.

3. The need for domestic abuse services in the areas of the state served by each health systems agency, as defined in s. 140.83 (1), 1985 stats.

4. The needs of both urban and rural communities.

5. Maintenance of effort, by a city, village, town or county.

(c) No grant may be made to an organization which provides or will provide shelter facilities unless the department of safety and professional services determines that the physical plant of the facility will not be dangerous to the health or safety of the residents when the facility is in operation. No grant may be given to an organization which provides or will provide shelter facilities or private home shelter care unless the organization ensures that the following services will be provided either by that organization or by another organization, person or agency:

1. A 24−hour telephone service.
2. Temporary housing and food.
3. Advocacy and counseling for victims.
4. Referral and follow−up services.
5. Arrangements for education of school−age children.
6. Emergency transportation to the shelter.
7. Community education.

(d) An organization that receives a grant under this section shall provide matching funds or in−kind contributions that are equal to 25 percent of the amount of the grant. The department shall establish guidelines regarding which contributions qualify as in−kind contributions.

(e) In funding new domestic abuse services, the department shall give preference to services in areas of the state where these services are not otherwise available.

(f) From the appropriations under s. 20.437 (1) (cd) and (hh), the department shall do all of the following:

1. Award $545,000 in grants in fiscal year 1997−98 and $995,000 in grants in each fiscal year thereafter to organizations for domestic abuse services that are targeted to children. In awarding the grants, the department shall use a competitive request−for−proposals process and, to the extent possible, shall ensure that the grants are equally distributed on a statewide basis.

5. Expend $20,700 each fiscal year to contract with a nonstate agency to do all of the following:

a. Act as liaison among local, state, federal and private housing agencies.

b. Identify capital resources for housing initiatives.

c. Coordinate and disseminate information on job training programs.

d. Circulate information on successful transitional living programs.

6. Expend $69,700 each fiscal year to provide ongoing training and technical assistance to do all of the following:

a. Educate organizations and advocates for victims of domestic abuse about the judicial system.

b. Organize pro bono legal services on a regional basis.

7. Award grants in each fiscal year to organizations to enhance support services. Funding may be used for such purposes as case management; children's programming; assisting victims of domestic abuse to find employment; and training in and activities promoting self−sufficiency.

8. Award grants in each fiscal year to organizations for domestic abuse services for individuals who are members of underserved populations, including racial minority group members and individuals with mental illness or developmental disabilities.

9. Award a grant in each fiscal year to the Wisconsin Coalition Against Domestic Violence toward the cost of a staff person to provide assistance in obtaining legal services to domestic abuse victims.

10. Award a grant of $563,500 in each fiscal year to the Refugee Family Strengthening Project for providing domestic abuse services to the refugee population. Funding may be used to hire bilingual staff persons, especially those who speak Hmong.

(2m) REPORTING REQUIREMENTS. Any organization that receives a grant under this section shall report all of the following information to the department by February 15 annually:

(a) The total expenditures that the organization made on domestic abuse services in the period for which the grant was provided.

(b) The expenditures specified in par. (a) by general category of domestic abuse services provided.

(c) The number of persons served in the period for which the grant was provided by general type of domestic abuse service.

(d) The number of persons who were in need of domestic abuse services in the period for which the grant was provided but who did not receive the domestic abuse services that they needed.

(3) COUNCIL ON DOMESTIC ABUSE. The council on domestic abuse shall:

(a) Review applications for grants under this section and advise the secretary as to whether the applications should be approved or denied. The council shall consider the criteria under sub. (2) (b) when reviewing the applications.

(b) Advise the secretary and the legislature on matters of domestic abuse policy.

(c) Develop with the judicial conference and provide without cost simplified forms for filing petitions for domestic abuse restraining orders and injunctions under s. 813.12.

(4) LIST OF ELIGIBLE ORGANIZATIONS. (a) The department shall certify to the elections commission, on a continuous basis, a list containing the name and address of each organization that is eligible to receive grants under sub. (2).

(b) The department shall make available to law enforcement agencies a current list containing the name and address of each organization that is eligible to receive grants under sub. (2).

History: 1979 c. 111; 1979 c. 355 s. 241; 1981 c. 20 ss. 792c, 792m, 2202 (20) (s); 1983 a. 27 ss. 997m, 998, 2202 (20); 1983 a. 204; 1985 a. 29; 1987 a. 332, 399; 1989 a. 31; 1991 a. 39, 96; 1993 a. 16, 227, 246, 319, 491; 1995 a. 27 ss. 2337 to 2345, 9116 (5); 1997 a. 27, 292; 1999 a. 9, 162; 2005 a. 25, 278; 2007 a. 1; 2007 a. 20 ss. 1181 to 1200; Stats. 2007 s. 49.165; 2011 a. 32; 2013 a. 20, 323; 2015 a. 118.

49.167 Alcohol and other drug abuse treatment grant program. (1) The department may award grants to counties, tribal governing bodies, and private entities to provide community−based alcohol and other drug abuse treatment programs that are targeted at individuals who have a family income of not more than 200 percent of the poverty line and who are eligible for temporary assistance for needy families under 42 USC 601 et seq. and that do all of the following:

(a) Meet the special needs of low−income persons with problems resulting from alcohol or other drug abuse.

(b) Emphasize parent education, vocational and housing assistance and coordination with other community programs and with treatment under intensive care.

(2) The department shall do all of the following with respect to any grants awarded under par. (a):

(a) Award the grants in accordance with the department's request−for−proposal procedures.

(b) Ensure that the grants are distributed in both urban and rural communities.

(c) Evaluate the programs under the grants by use of client−outcome measurements that the department develops.

(3) The department shall coordinate the grant program under this section with any similar grant program administered by the department of health services.

History: 1999 a. 9; 2003 a. 33; 2007 a. 20 s. 9121 (6) (a).

49.169 Literacy grants. (2) The department may award grants to qualified applicants for the provision of literacy training to individuals who are eligible for temporary assistance for needy families under 42 USC 601 et seq.

(4) The department, in consultation with the technical college system board, the department of public instruction, and the governor's office, shall develop written criteria to be used to evaluate any grant proposals and to allocate any grants under this section among successful grant applicants.

(5) The department shall require grant recipients to coordinate with the appropriate Wisconsin works agencies to ensure that those participants in Wisconsin works who are served by those Wisconsin works agencies and who need literacy training receive adequate literacy training.

History: 1999 a. 9; 2003 a. 33.

49.175 Public assistance and local assistance allocations. (1) ALLOCATION OF FUNDS. Except as provided in subs. (2) and (3), within the limits of the appropriations under s. 20.437 (2) (a), (cm), (dz), (k), (kx), (L), (mc), (md), (me), and (s) and (3) (kp), the department shall allocate the following amounts for the following purposes:

(a) *Wisconsin Works benefits.* For Wisconsin Works benefits, $83,000,000 in fiscal year 2015−16 and $83,000,000 in fiscal year 2016−17.

(b) *Wisconsin Works agency contracts; job access loans.* For contracts with Wisconsin Works agencies under s. 49.143 and for

job access loans under s. 49.147 (6), $58,336,500 in each fiscal year.

(g) *State administration of public assistance programs and overpayment collections.* For state administration of public assistance programs and the collection of public assistance overpayments, $15,080,200 in fiscal year 2015−16 and $15,295,800 in fiscal year 2016−17.

(h) *Public assistance program fraud and error reduction.* For activities to reduce fraud under s. 49.197 (1m) and activities to reduce payment errors under s. 49.197 (3), $605,500 in each fiscal year.

(i) *Emergency assistance.* For emergency assistance under s. 49.138 and for transfer to the department of administration for low−income energy or weatherization assistance programs, $8,500,000 in fiscal year 2015−16 and $8,400,000 in fiscal year 2016−17.

(j) *Grants for providing civil legal services.* For the grants under 2015 Wisconsin Act 55, section 9106 (2q), to Wisconsin Trust Account Foundation, Inc., for distribution to programs that provide civil legal services to low−income families, $500,000 in each fiscal year.

(k) *Transform Milwaukee and Transitional Jobs programs.* For contract costs under the Transform Milwaukee Jobs program and the Transitional Jobs program under s. 49.163, $6,000,000 in fiscal year 2015−16 and $7,000,000 in fiscal year 2016−17.

(L) *Adult literacy grants.* For grants to qualified applicants under s. 49.169 to provide literacy training to adults who are eligible for temporary assistance for needy families under 42 USC 601 et seq., $41,600 in each fiscal year.

(m) *Children first.* For services under the work experience program for noncustodial parents under s. 49.36, $1,140,000 in each fiscal year.

(n) *Fostering futures: connections count.* For funding community connectors to interact with vulnerable families with young children and to connect families with formal and informal community support, $360,300 in fiscal year 2016−17.

(p) *Direct child care services.* For direct child care services under s. 49.155, $262,064,700 in fiscal year 2015−16 and $280,719,700 in fiscal year 2016−17.

(q) *Child care state administration and licensing activities.* For state administration of child care programs under s. 49.155 and for child care licensing activities, $35,244,600 in fiscal year 2015−16 and $33,248,300 in fiscal year 2016−17.

(qm) *Quality care for quality kids.* For the child care quality improvement activities specified in s. 49.155 (1g), $15,492,700 in each fiscal year.

(r) *Children of recipients of supplemental security income.* For payments made under s. 49.775 for the support of the dependent children of recipients of supplemental security income, $31,338,200 in each fiscal year.

(s) *Kinship care and long−term kinship care assistance.* For kinship care and long−term kinship care payments under s. 48.57 (3m) (am) and (3n) (am), for assessments to determine eligibility for those payments, and for agreements under s. 48.57 (3t) with the governing bodies of Indian tribes for the administration of the kinship care and long−term kinship care programs within the boundaries of the reservations of those tribes, $21,222,700 in fiscal year 2015−16 and $21,435,000 in fiscal year 2016−17.

(t) *Safety and out−of−home placement services.* For services provided to ensure the safety of children who the department or a county determines may remain at home if appropriate services are provided, and for services provided to families with children placed in out−of−home care, $3,647,200 in fiscal year 2015−16 and $5,392,700 in fiscal year 2016−17.

(u) *Prevention services.* For services to prevent child abuse or neglect in counties having a population of 750,000 or more, $1,389,600 in each fiscal year.

NOTE: Par. (u) is shown as affected by 2015 Wis. Acts 55 and 172 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(v) *General education development.* For general education development testing and preparation for individuals who are eligible for temporary assistance for needy families under 42 USC 601 et seq., $127,000 in fiscal year 2015−16 and $115,000 in fiscal year 2016−17.

(w) *Wisconsin Community Services.* For a grant to Wisconsin Community Services for the community building workshop facilitator training to provide services that are targeted to individuals in the city of Milwaukee who are eligible for funds under the federal Temporary Assistance for Needy Families block grant program under 42 USC 601 et seq., $400,000 in each fiscal year.

(z) *Grants to the Boys and Girls Clubs of America.* For grants to the Wisconsin Chapter of the Boys and Girls Clubs of America to fund programs that improve social, academic, and employment skills of youth who are eligible to receive temporary assistance for needy families under 42 USC 601 et seq., focusing on study habits, intensive tutoring in math and English, and exposure to career options and role models, $1,175,000 in each fiscal year. Grants provided under this paragraph may not be used by the grant recipient to replace funding for programs that are being funded, when the grant proceeds are received, with moneys other than those from the appropriations specified in sub. (1) (intro.). The total amount of the grants includes funds for the Green Bay Boys and Girls Clubs for the BE GREAT: Graduate program in the amount of matching funds that the program provides, up to $75,000 in each fiscal year, to be used only for activities for which federal Temporary Assistance for Needy Families block grant moneys may be used.

(zh) *Earned income tax credit supplement.* For the transfer of moneys from the appropriation account under s. 20.437 (2) (md) to the appropriation account under s. 20.835 (2) (kf) for the earned income tax credit, $67,600,000 in fiscal year 2015−16 and $69,700,000 in fiscal year 2016−17.

(2) REALLOCATION OF FUNDS. (a) The department may reallocate funds that are allocated under a paragraph under sub. (1) for any purpose specified in a paragraph under sub. (1) if the secretary of administration approves the reallocation.

(c) If the amounts of federal block grant moneys that are required to be credited to the appropriation accounts under s. 20.437 (2) (mc) and (md) are less than the amounts appropriated under s. 20.437 (2) (mc) and (md), the department shall submit a plan to the secretary of administration for reducing the amounts of moneys allocated under sub. (1). If the secretary of administration approves the plan, the amounts of moneys required to be allocated under sub. (1) may be reduced as proposed by the department and the department shall allocate the moneys as specified in the plan.

(3) LIMIT ON CERTAIN FUNDS. Moneys from the appropriation account under s. 20.437 (3) (kp) for the allocations specified in sub. (1) shall be limited to $4,730,300 and may be expended only for obligations incurred between October 1, 2015, and September 30, 2016.

History: 1997 a. 27, 105, 236, 237, 252, 318; 1999 a. 9; 2001 a. 16, 104, 109; 2003 a. 33, 321, 327; 2005 a. 25, 254; 2007 a. 5, 20, 226; 2009 a. 2, 28; 2011 a. 10, 13, 32; 2013 a. 20, 113; 2015 a. 55, 172; s. 13.92 (2) (i).

49.19 Aid to families with dependent children. (1) (a) In this section, "dependent child" means a child under the age of 18 or, if the child is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19, is under the age of 19, who:

1. Has been deprived of parental support or care by reason of the death, continued absence from the home other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States, unemployment or incapacity of a parent; and

2. a. Is living with a parent; a blood relative, including those of half−blood, and including first cousins, nephews or nieces and persons of preceding generations as denoted by prefixes of grand, great or great−great; a stepfather, stepmother, stepbrother or stepsister; a person who legally adopts the child or is the adoptive parent of the child's parent, a natural or legally adopted child of such person or a relative of an adoptive parent; or a spouse of any person named in this subparagraph even if the marriage is terminated by death or divorce; and is living in a residence maintained by one or more of these relatives as the child's or their own home, or living in a residence maintained by one or more of these relatives as the child's or their own home because the parents of the child have been found unfit to have care and custody of the child; or

b. Is living in a foster home licensed under s. 48.62 if a license is required under that section, in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation, in a group home licensed under s. 48.625, or in a residential care center for children and youth licensed under s. 48.60, and has been placed in the foster home, group home, or center by a county department under s. 46.215, 46.22, or 46.23, by the department, by the department of corrections, or by a federally recognized American Indian tribal governing body in this state under an agreement with a county department.

(b) Any individual may apply for aid to families with dependent children and shall have opportunity to do so. Application for aid shall be made on forms prescribed by the department. Any person having knowledge that any child is dependent upon the public for proper support or that the interest of the public requires that such child be granted aid may bring the facts to the notice of an agency administering such aid in the county in which the child resides.

(c) 1. "Aid to families with dependent children" means money payments with respect to, or vendor payments as prescribed by the department, or medical care in behalf of or any type of remedial care recognized under subs. (1) to (10) or s. 49.46 or necessary burial expenses as defined in sub. (5) in behalf of a dependent child or dependent children.

2. "Aid to families with dependent children" also includes such aid to meet the needs of the relative with whom any dependent child is living and the spouse of the relative if:

a. The spouse is living with the relative, the relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent; or

b. The spouse is a convicted offender permitted to live at home but precluded from earning a wage because the spouse is required by a court imposed sentence to perform unpaid public work or unpaid community service.

3. "Aid to families with dependent children" also includes payments made to another individual not a relative enumerated under par. (a), pursuant to federal regulations, if:

a. The individual has been appointed by a court of competent jurisdiction as a legal representative of the dependent child; or

b. The individual who may be a caseworker has been designated by the county department under s. 46.215 or 46.22 to receive payment of the aid or cash payments to recipients who are engaged in an approved work relief or training project.

(d) The rate of payment for skilled nursing care provided under this section shall be determined by the county under guidelines established by the department pursuant to s. 49.45 (6m). Payment for limited care shall not exceed 90 percent of the applicable Title XIX skilled care rate. Payment for personal care shall not exceed 80 percent of the applicable Title XIX skilled care rate.

(e) In this section, "strike" has the meaning provided in 29 USC 142 (2).

(2) (a) A home visit may be made at the option of the county to investigate the circumstances of the child before granting aid. The department may, however, require a county to make a home visit for this purpose if the department finds that a need exists. A report upon a home visit shall be made in writing and become a part of the record in the case. Every applicant shall be promptly notified in writing of the disposition of his or her application. Aid shall be furnished with reasonable promptness to any eligible individual.

(am) A county department under s. 46.215, 46.22 or 46.23 may not accept a rent receipt to verify the residence of an applicant for or recipient of aid under this section unless the receipt shows the name, address and home and business telephone numbers of the landlord or the landlord's designee.

(b) Recipients of aid under this section shall, as a condition for continued receipt of the aid, provide accurate monthly reports of any circumstances which may affect their eligibility or the amount of assistance. The department shall promulgate rules selecting categories of recipients who may report less frequently in order to reduce administrative expense and shall specify monthly dates by which reports shall be submitted.

(c) An alien shall provide the department with reports the department requires to determine eligibility and the amount of aid, including reports about the alien's sponsor.

(d) Eligibility for aid to families with dependent children for any month shall be based on estimated income, resources, family size and other similar relevant circumstances during that month. The amount of aid for any month shall be based on income and other relevant circumstances in the first or, at the option of the department, the 2nd month preceding such a month, except that the amount of aid in the first month or, at the option of the department, the first and 2nd months of a period of consecutive months for which aid is payable is based on estimated income and other relevant circumstances in such first month or first and 2nd months. The department may promulgate rules establishing payment and reporting months as needed to administer this paragraph.

(p) Any person who has conveyed, transferred or disposed of any asset that would be included in determining the value of assets under sub. (4) (bm) within 2 years prior to the date of making application, or of redetermination of eligibility, for benefits under this section at less than fair market value shall, unless shown to the contrary, be presumed to have made the transfer, conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive the benefits thereafter until the uncompensated value of the asset is expended by or on behalf of the person for his or her maintenance needs, including needs for medical care. The department shall promulgate rules for the administration of this paragraph. This paragraph shall apply to the extent permitted under federal law.

(3) (a) After the investigation and report and a finding of eligibility, aid as defined in sub. (1) shall be granted by the county department under s. 46.215 or 46.22 as the best interest of the child requires. No such aid shall be furnished any person for any period during which that person is receiving supplemental security income or for any month if, on the last day of the month, that person is participating in a strike or to any person who fails to apply for or provide such social security account numbers as required by federal law.

(b) If the county department under s. 46.215 or 46.22 finds a person eligible for aid under this section, that county department shall, on a form to be prescribed by the department, direct the payment of such aid by order upon the secretary of administration. Payment of aid shall be made monthly, based on a calendar month or fiscal month as defined by the department; except that the director of the county department may, in his or her discretion for the purpose of protecting the public, direct that the monthly allowance be paid in accordance with sub. (5) (c).

(4) The aid shall be granted only upon the following conditions:

(a) There must be a dependent child who is living with the person charged with its care and custody and dependent upon the public for proper support. Aid may also be granted for minors other than to those specified, but not for a dependent child 18 years of

age or older who is living in a home or institution specified under sub. (1) (a) 2. b.

(b) The person applying for aid has allowed the county department under s. 46.215 or 46.22 15 to 30 days to process his or her application and, if not already a resident of the county, has notified the county department under s. 46.215 or 46.22 of his or her intent to establish residence in the county. The effective date of eligibility for aid to eligible individuals is the date the applicant submits a signed and completed application to the county department under s. 46.215 or 46.22, or the first date on which the applicant meets all of the eligibility criteria, whichever is later.

(bm) The person applying for aid shall document, to the department's satisfaction, actual income as claimed in the application, and shall reveal all assets. Except as specified in par. (br), aid is available only if the combined equity value of assets does not exceed $1,000. One automobile with an equity value not exceeding $1,500, one home, as specified in par. (e), and, for each person, one burial plot and one burial agreement under s. 445.125 (1) (a) 2. and 3. with a value of not more than $1,500 may not be included when determining the combined equity value of assets. Any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), may not be included in determining the combined equity value of assets in the month of receipt and the following month.

(br) Aid may be paid for up to 9 months to an otherwise eligible owner of real property other than that specified under par. (bm) and that real property may be excluded as an asset for up to 9 months if all of the following conditions are met:

1. The owner enters into a signed, written agreement with the county department under s. 46.215 or 46.22 that he or she shall make a good faith effort to sell the real property and repay the amount of aid granted during the asset exclusion period up to the amount of net proceeds of the sale of the real property.

2. The net proceeds of the sale of the real property plus the combined equity value of all other countable assets exceed $1,000 on the date of the agreement made under subd. 1.

(bu) 1. The department shall request a waiver from the secretary of the federal department of health and human services to allow a recipient of aid under this section to accumulate funds in an education and employability account, as described in subd. 2., the first $10,000 in which is not considered against the amount of assets that a recipient is allowed to own under par. (bm). If the waiver is granted, the department shall promulgate rules to implement the waiver and shall implement the waiver beginning no sooner than January 1, 1995. Subdivision 2. does not apply unless the waiver is in effect.

2. The department may authorize a person to establish an education and employability account at a financial institution, as defined in s. 705.01 (3), after the person is determined to be eligible for aid under this section. The first $10,000 in the account is not considered against the asset limit if the person provides to the county department under s. 46.215, 46.22 or 46.23, at the time of establishing the account and at other times required by the department, a signed statement identifying the financial institution, the account number of the account and the amount in the account. Interest earned on the account and retained in the account is not considered income under this section. Money withdrawn from the education and employability account will be considered income in the month that it is withdrawn unless it is used for one of the following purposes:

a. The recipient's own education or training or the education or training of his or her child.

b. Improving the employability of a member of the family.

d. Not more than $200 every 12 months for emergency needs, as determined by the county department under s. 46.215, 46.22 or 46.23.

(by) No later than September 1, 1992, the department shall request a waiver from the secretary of the federal department of health and human services under which the equity value of automobiles with a total equity value of not more than $2,500 would not be included when determining the combined equity value of assets under par. (bm). If the waiver is granted, the equity value of automobiles with a total equity value of not more than $2,500 shall not be included when determining the combined equity value of assets under par. (bm), rather than one automobile with an equity value not exceeding $1,500.

(c) The person having the care and custody of the dependent child must be fit and proper to have the child. Aid shall not be denied by the county department under s. 46.215 or 46.22 on the grounds that a person is not fit and proper to have the care and custody of the child until the county department obtains a finding substantiating that fact from a court assigned to exercise jurisdiction under chs. 48 and 938 or other court of competent jurisdiction; but in appropriate cases it is the responsibility of the county department to petition under ch. 48 or refer the case to a proper child protection agency.

(d) Aid may be granted to the mother or stepmother of a dependent child if she is without a husband or if she:

1. Is the wife of a husband who is incapacitated for gainful work by mental or physical disability; or

2. Is the wife of a husband who is incarcerated or who is a convicted offender permitted to live at home but precluded from earning a wage because the husband is required by a court imposed sentence to perform unpaid public work or unpaid community service; or

3. Is the wife of a husband who has been committed to the department pursuant to ch. 975, irrespective of the probable period of such commitment; or

4. Is the wife of a husband who has continuously abandoned or failed to support her, if proceedings have been commenced against the husband under ch. 769; or

5. Has been divorced and is without a husband or legally separated from her husband and is unable through use of the provisions of law to compel her former husband to adequately support the child for whom aid is sought; or

6. Has commenced an action for divorce or legal separation and obtained a temporary order for support under s. 767.225 which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

7. Has obtained an order under s. 767.501 from the court to compel support, which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

8. Is incapacitated and the county department under s. 46.215 or 46.22 believes she is the proper payee.

(dm) Aid may be paid to parents of a dependent child if the parents are unable to supply the needs of the child because of the unemployment of the parent, in a home in which both parents live, who earned the most income during the 24−month period immediately preceding the month for which aid is granted and who meets the federal requirements as to past employment and current unemployment. The department shall count up to 4 calendar quarters of full−time attendance at an elementary school, a secondary school, or a vocational or technical training course that satisfies the requirements under 42 USC 607 (d) (1) (B) toward the federal requirement as to past employment. Aid to dependent children of unemployed parents may be granted only if federal aid for this purpose is available to the state. No aid may be granted if the unemployed parent:

4. Qualifies for unemployment insurance but refuses to apply for or accept unemployment insurance; or

5. Fails to meet any applicable federal or state work, work registration or training requirement. The department shall promul-

gate rules listing the applicable requirements under this subdivision.

(e) The ownership of a home and the lands used or operated in connection therewith or, in lieu thereof, a house trailer, if such home or house trailer is used as the person's abode, by a person having the care and custody of any dependent child shall not prevent the granting of aid if the cost of maintenance of said home or house trailer does not exceed the rental which the family would be obliged to pay for living quarters.

(es) In determining eligibility for aid to families with dependent children, all earned and unearned income of the applicant shall be considered, except any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), and aid received under this section. Eligibility does not exist if the total income considered exceeds 185 percent of the standard of need or if the total income considered after disregards are applied exceeds the standard of need.

(et) In determining eligibility for aid, the income of a dependent child's stepparent who lives in the same home as the child shall be considered as required under 42 USC 602 (a) (31).

(ez) If an alien applies for aid, the income and resources of any person or public or private agency which executed an affidavit of support for the alien are deemed unearned income and resources of the alien for a 3−year period after the alien enters the United States, unless the department determines that the public or private agency no longer exists or has become unable to meet the alien's needs. The income and resources of the spouse of the executor, if the executor is an individual, are also deemed unearned income and resources of the alien for a 3−year period after the alien enters the United States, if the spouse is living with the executor. The department may, by rule, specify the method of computing income and resources under this paragraph and may reduce the level of income and resources that are deemed unearned income and resources of the alien, to the extent required by P.L. 97−35, section 2320 (b). This paragraph does not apply if the alien is a dependent child and if the executor or the executor's spouse is the parent of the alien.

(f) Whenever better provisions, public or private, can be made for the care of such dependent child, aid under this section shall cease. Prompt notice shall be given to the appropriate law enforcement officials of the county of the furnishing of aid under this section in respect of a child who has been deserted or abandoned by a parent.

(g) 1. If the pregnancy is medically verified, a pregnant woman receiving aid under this section who notifies the county department under s. 46.215 or 46.22 before the 8th month of pregnancy begins shall receive a monthly payment determined under sub. (11) (a) 4. from the first day of the month in which the 8th month of pregnancy begins, in addition to the payment determined according to family size under sub. (11) (a). If the recipient provides notification after the 8th month of pregnancy begins, the woman shall receive the additional monthly payment determined under sub. (11) (a) 4. beginning with the first day of the month following notification.

2. Aid to a pregnant woman who is otherwise eligible but has no children is available from the first day of the month in which the 8th month of pregnancy begins or the date the woman submits a signed and completed application for aid to the county department under s. 46.215 or 46.22, whichever is later, if the pregnancy is medically verified. The pregnant woman has a family size of one for grant determination purposes under sub. (11) (a) and is additionally eligible for a monthly payment determined under sub. (11) (a) 4.

3. Eligibility for the additional monthly payment under this paragraph continues through the month of the child's birth.

(h) 1. a. As a condition of eligibility for assistance under this section, the person charged with the care and custody of the dependent child or children shall fully cooperate in efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which that person and the dependent child or children may have rights. Such cooperation shall be in accordance with federal law, rules and regulations applicable to paternity establishment and collection of support payments.

b. Except as provided under sub. (5) (a) 1m., when any person applies for or receives aid under this section, any right of the parent or any dependent child to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time aid is paid under this section, is assigned to the state. If a minor who is a beneficiary of aid under this section is also the beneficiary of support under a judgment or order that includes support for one or more children not receiving aid under this section, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the minor receiving aid under this section, except as otherwise ordered by the court on the motion of a party. Amounts assigned to the state under this subd. 1. b. remain assigned to the state until that amount of aid paid that represents the amount due as support or maintenance has been recovered. No amount of support that begins to accrue after aid under this section is discontinued for the recipient may be considered assigned to this state.

c. Notice of the requirements of this subdivision shall be provided applicants for aid under this section at the time of application.

2. If the person charged with the care and custody of the dependent child or children does not comply with the requirements of subd. 1. a., that person shall be ineligible for assistance under this section. In such instances, aid payments made on behalf of the dependent child or children shall be made in the form of protective payments. If the county department under s. 46.215 or 46.22 has been unsuccessful in finding a person other than the person charged with the care of the dependent child to receive the protective payment on behalf of the child, after performance of a reasonable effort to do so, the county department may make the payment on behalf of the child to the person charged with the care of the dependent child.

Cross−reference: See also ch. DCF 102, Wis. adm. code.

(k) The total income of the AFDC group, including any nonrecurring lump sum payment of earned or unearned income and any other income not disregarded, may not exceed the applicable standard of need under sub. (11). If the total income exceeds the standard of need, all members of the AFDC group remain ineligible for the number of months that equals the total income divided by the standard of need.

(4e) (a) If a person applying for aid is under 18 years of age, has never married, and is pregnant or has a dependent child in his or her care, the person is not eligible for aid unless he or she lives in a place maintained by his or her parent, legal guardian, or other adult relative as the parent's, guardian's or other adult relative's own home or lives in a foster home, maternity home, or other supportive living arrangement supervised by an adult.

(b) Paragraph (a) does not apply in any of the following situations:

1. The person applying for aid has no parent or legal guardian whose whereabouts are known.

2. No parent or legal guardian of the person applying for aid allows the person to live in the home of that parent or legal guardian.

3. The department determines that the physical or emotional health or safety of the person applying for aid or the dependent child would be jeopardized if the person and the dependent child lived with the person's parent or guardian.

4. The person applying for aid lived apart from his or her parent or legal guardian for at least one year before the birth of any dependent child or before the person applied for aid.

5. The county department under s. 46.215, 46.22 or 46.23 otherwise determines that there is good cause not to apply par. (a).

(c) The department shall request a waiver from the secretary of the federal department of health and human services to require, without exception, that a person applying for aid who is under 18 years of age, has never married and is pregnant or has a dependent child in his or her care meet the requirements of par. (a). If a waiver is granted and in effect, par. (b) does not apply.

(4h) Student loans and grants, including work study funds, are not considered income in determining eligibility for aid under this section or the amount of monthly payments under this section.

(4m) Aid under this section is unavailable to a family for any month in which the caretaker relative of the dependent child is participating in a strike on the last day of the month. Aid under this section is unavailable to any person for a month in which the person is participating in a strike on the last day of the month.

(5) (a) The aid shall be sufficient to enable the person having the care and custody of dependent children to care properly for them. The amount granted shall be determined by a budget for the family in which all income shall be considered, except:

1. All earned income of each dependent child included in the grant who is: a full−time student; or a part−time student who is not a full−time employee. For purposes of this subdivision a student is an individual attending a school, college, university or a course of vocational or technical training designed to fit him or her for gainful employment.

1e. Any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), to a family receiving aid.

1m. The first $50 of any money received by the department in a month under an assignment to the state under sub. (4) (h) for a person applying for or receiving aid to families with dependent children that shall be paid to the family applying for or receiving aid.

2. The first $90 shall be disregarded from the earned income of:

a. Any dependent child or relative applying for or receiving aid.

b. Any other person living in the same home as the dependent child whose needs are considered in determining the budget.

4. Except as provided under par. (am), after disregarding the amounts specified under subd. 2., $30 of earned income and an amount equal to one−third of the remaining earned income not disregarded, from the earned income of any person specified in subd. 2. These disregards do not apply to:

a. The earned income of a person who has received the disregards for 4 consecutive months, until the person ceases to receive aid for 12 consecutive months.

b. Earned income derived from a training or retraining project.

c. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

4m. Except as provided under par. (am), after the person has received the benefit of the disregards under subd. 4. for 4 consecutive months, a disregard of $30 of earned income shall be available for 8 additional consecutive months. This disregard does not apply to:

a. Earned income derived from a training or retraining project.

b. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

4s. After disregarding the amounts under subd. 2. and either subd. 4. or par. (am), an amount equal to expenditures and not to exceed $175 per month for each dependent child or incapacitated person, or $200 per month for each child under the age of 2, shall be disregarded from the earned income of any person listed in subd. 2. if:

a. The amount is used to provide care for a dependent child or for an incapacitated person who is living in the same home as the dependent child;

b. The person receiving care is also receiving aid under this section; and

c. The person requires care during the month that aid is received.

5. The disregards specified in subds. 2. to 4s. and par. (am) do not apply to the earned income of any person who violates 45 CFR 233.20 (a) (11) (iii).

(am) 1. Except as provided under subd. 1m., instead of the disregards under par. (a) 4. and 4m., after disregarding the amounts specified under par. (a) 2., $30 of earned income and an amount equal to one−sixth of the remaining earned income not disregarded shall be disregarded from the earned income of a person specified in par. (a) 2. These disregards do not apply to:

a. The earned income of a person who has received the disregards for 12 consecutive months, until the person ceases to receive aid for 12 consecutive months.

b. Earned income derived from a training or retraining project.

c. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

1m. If a waiver under subd. 2. is granted, the department may select individuals to whom the disregards under par. (a) 4. and 4m. apply, rather than the disregard under subd. 1., as a control group for all or part of the period during which the waiver is in effect.

2. The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of the earned income disregards in subd. 1. Subdivision 1. does not apply unless a federal waiver is in effect. If a waiver is received, the department shall implement subd. 1. no later than the first day of the 6th month beginning after the waiver is approved.

(as) The department shall request, but may not implement, a waiver from the secretary of the federal department of health and human services to establish an earned income disregard that is equal to the first $200 of earned income plus 50 percent of the remaining earned income, instead of the amount under par. (a) or (am), and that is not reduced after a specified period. The department shall request the waiver no later than September 1, 1992.

(b) Such family budget shall be based on a standard budget, including the parents or other person who may be found eligible to receive aid under this section.

(c) The aid allowed under this subsection may be given in the form of supplies or commodities or vouchers for the same, in lieu of money, as a type of remedial care authorized under sub. (1) (c), whenever the giving of aid in such form is deemed advisable by the director of the county department under s. 46.215, 46.22 or 46.23 dispensing such aid as a means either of attempting to rehabilitate a particular person having the care and custody of any such children or of preventing the misuse or mismanagement by such person of aid in the form of money payments.

(ce) At the request of a recipient of aid under this section, the department shall provide the portion of the grant equal to the amount of the recipient's rent to the recipient's landlord in the form of a rent voucher or by an alternative payment method.

(cm) 1. In this paragraph, "direct payment" means a check which is drawn in favor of the landlord of a recipient of aid under this section.

2. A direct payment shall be made whenever a recipient of aid under this section has failed to pay rent to the landlord for 2 months or more, unless the failure to pay rent is authorized by law.

3. If a landlord reports to a county department under s. 46.215, 46.22 or 46.23 that a recipient has failed to pay rent for 2 or more months, the county department shall do all of the following:

a. Inform the recipient of the report.

b. Investigate the report.

c. If it determines that the conditions for issuing a direct payment under subd. 2. are met, inform the recipient of the right to a fair hearing on the issue of whether direct payment of rent should be made and inform the department of health services of its determination.

d. If it determines that direct payments should not be made, inform the recipient and the landlord of that determination.

4. When it has been determined that a direct payment of rent should be made, the department of health services shall issue the recipient's monthly grant in 2 checks, a direct payment for the amount of the rent and a check drawn in favor of the recipient for the balance of the grant amount.

5. The county department shall review each case in which a direct payment is being made at least once every 12 months and whenever a recipient reports that a condition under subd. 6. for the cessation of direct payments exists.

6. The county department shall inform the department of health services, and the department of health services shall cease making a direct payment, when the county department determines that any of the following conditions exists:

a. A direct payment has been made for 24 consecutive months.

b. The recipient has reimbursed the landlord for all back rent owed.

c. The recipient has moved and has a different landlord.

7. The department shall promulgate rules for the administration of this paragraph.

(e) No aid may continue longer than 6 months without reinvestigation, except that the department may provide that in certain cases or groups of cases aid may continue up to 12 months without reinvestigation. The county department under s. 46.215, 46.22 or 46.23 may conduct a reinvestigation of a case whenever there is reason to believe circumstances have changed. The county department shall submit information concerning reinvestigations, at such times and in such form as the department requires.

(f) This subsection does not prohibit such public assistance as may legitimately accrue directly to persons other than the beneficiaries of this section who may reside in the same household.

(6) The county department under s. 46.215, 46.22 or 46.23 may require the child's parent to do such remunerative work as in its judgment can be done without detriment to the parent's health or the neglect of the children or the home; and may prescribe the hours during which the parent may be required to work outside of the home.

(7) The county board shall annually appropriate a sum of money sufficient to carry out the provisions of this section. The county treasurer shall pay out the amounts ordered paid under this section.

(9) If the head of a family is a veteran, as defined in s. 45.01 (12), or a person under s. 45.51 (2) (a) 2., and is hospitalized or institutionalized because of disabilities in a county other than that of his or her residence or settlement at time of admission, aid shall be granted to the dependent children of the veteran by the county wherein the head of the family had his or her residence or settlement at the time of admission so long as he or she remains hospitalized or institutionalized.

(10) (a) Aid under this section may also be granted to a nonrelative who cares for a child dependent upon the public for proper support in a foster home having a license under s. 48.62, in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation, or in a group home licensed under s. 48.625, regardless of the cause or prospective period of dependency. The state shall reimburse counties pursuant to the procedure under s. 48.569 (2) and the percentage rate of participation set forth in s. 48.569 (1) (d) for aid granted under this subsection except that if the child does not have legal settlement in the granting county, state reimbursement shall be at 100 percent. The county department under s. 46.215 or 46.22 shall determine the legal settlement of the child. A child under one year of age shall be eligible for aid under this subsection irrespective of any other residence requirement for eligibility within this section.

(b) Aid under this section may also be granted on behalf of a child in the legal custody of a county department under s. 46.215, 46.22 or 46.23 or on behalf of a child who was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason when such child is placed in a licensed residential care center for children and youth by the county department. Reimbursement shall be made by the state pursuant to par. (a).

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home, group home, or residential care center for children and youth by a licensed child welfare agency or by a federally recognized American Indian tribal governing body in this state or by its designee, if the child is in the legal custody of the county department under s. 46.215, 46.22, or 46.23 or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made under an agreement with the county department.

(d) Aid may also be paid under this section to a licensed foster home, group home, or residential care center for children and youth by the state when the child is in the custody or guardianship of the state, when the child is a ward of an American Indian tribal court in this state and the placement is made under an agreement between the department and the tribal governing body, or when the child was part of the state's direct service case load and was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department or the department of corrections.

(e) Notwithstanding pars. (a), (c), and (d), aid under this section may not be granted for placement of a child in a foster home licensed by a federally recognized American Indian tribal governing body, for placement of a child in a foster home or residential care center for children and youth by a tribal governing body or its designee, for the placement of a child who is a ward of a tribal court if the tribal governing body is receiving or is eligible to receive funds from the federal government for that type of placement, or for placement of a child in a group home licensed under s. 48.625.

(11) (a) 1. a. Except as provided in subs. (11m) and (11s), monthly payments made under s. 20.437 (2) (dz) and (md) to persons or to families with dependent children shall be based on family size and shall be at 80 percent of the total of the allowances under subds. 2. and 4. plus the following standards of assistance beginning on September 1, 1987:

Figure 49.19 (11) (a) 1. a.:

FAMILY SIZE	AREA I	AREA II
1	$ 311	$ 301

2	550	533
3	647	626
4	772	749
5	886	861
6	958	929
7	1,037	1,007
8	1,099	1,068
9	1,151	1,117
10	1,179	1,143

c. Grants shall vary in 2 areas which shall be groups of counties designated by the department based on variation in shelter cost.

2. A monthly allowance of $25 per person for each additional member in the family above 10 shall be added to the standard of assistance specified under subd. 1. a.

3. In determining family size only those who are eligible for assistance shall be included.

4. In accordance with s. 49.19 (4) (g), a monthly allowance of $71 for each person in the family who qualifies for a payment under s. 49.19 (4) (g) shall be added to the standard of assistance specified under subd. 1. a.

6. All payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar.

7. The department may not make a payment for a month if the amount of the payment would be less than $10.

(11g) When the department submits a copy of the reevaluation of the need standard and payment standard under sub. (11) (a), as required by 42 USC 602 (h), the department shall submit a copy of that reevaluation to the chief clerk of each house of the legislature for distribution to the legislature in the manner provided under s. 13.172 (3).

(11m) (a) The department shall apply to the secretary of the federal department of health and human services for approval of a demonstration project under which the department provides a person eligible for aid under this section who is described in par. (am) with monthly payments, for the first 6 months that he or she lives in this state, calculated on the basis of the aid to families with dependent children benefit level in the state in which the family most recently resided for one month or longer. The department shall promulgate a rule establishing the methods and identifying the factors that the department will use to determine the aid to families with dependent children benefit that will be paid under the demonstration project according to family size and state of former residence. The rule shall also establish the initial benefit table to be used in determining benefits under the demonstration project. The department shall publish annual changes to this benefit table in the Wisconsin administrative register. The department shall base the benefit for a family on the aid to families with dependent children benefit available to a typical family of the same size in the other state, taking into account all factors that may affect the amount of the benefit. If a family moves from a state that allows a family to keep a different amount of income without reducing benefits than a family would be allowed to keep in this state, the department shall allow the family to keep a similar amount of income without reducing benefits.

(am) Under the demonstration project, a person is subject to receiving the payments under par. (a) if he or she has not previously resided in this state for at least 6 consecutive months and either:

1. Applies for benefits more than 90 days but fewer than 180 days after moving to this state and is unable to demonstrate to the satisfaction of the county department of social services or human services that he or she was employed for at least 13 weeks after moving to this state; or

2. Applies for benefits within 90 days after moving to this state.

(b) If approval under par. (a) is granted and if the supreme court determines, within 9 months after the department notifies the attorney general that the approval has been granted, that the demonstration project does not violate either the state constitution or the U.S. constitution or the supreme court does not make a decision on the constitutionality of the demonstration project within that time, the department shall implement the demonstration project. The department may conduct the demonstration project for a period not to exceed 36 months. The department may not start the demonstration project before a computerized system for determining the amount of benefits payable to recipients under the demonstration project is complete.

(c) Subject to pars. (b) and (d), the department shall conduct the demonstration project in Kenosha County, Milwaukee County, Racine County and up to 3 other counties. If the department does not initially select Rock County as one of the other counties and if one of the counties specified in this paragraph or initially selected by the department enacts an ordinance or adopts a resolution under par. (d), the department shall give Rock County priority for consideration as a replacement county.

(d) The department may not conduct the demonstration project in a county if the county enacts an ordinance or adopts a resolution objecting to participating in the demonstration project.

(11s) (a) The department shall conduct a demonstration project under this subsection pursuant to a waiver from the secretary of the federal department of health and human services beginning on January 1, 1996. To the extent permitted in the waiver, the department may apply pars. (b) to (d) to all recipients of aid under this section or to a test group of recipients of aid under this section determined by the department. Paragraphs (b) to (d) do not apply to persons who are subject to s. 49.25, 1997 stats., and shall apply only while a waiver under this paragraph is in effect and only with respect to recipients covered by the waiver.

(b) In determining the payment amount under sub. (11) (a), a child born into a family more than 10 months after the date that the family was first determined to be eligible for assistance under this section shall not be considered in determining family size unless at least one of the following conditions is met:

1. The family did not receive benefits under this section for a period of at least 6 months, other than as a result of sanctions, and the child was born during that period or not more than 10 months after the family resumed receiving benefits under this section after that period.

2. The child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the mother did not indicate a freely given agreement to have sexual intercourse or of incest in violation of s. 944.06 or 948.06 and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

3. The child's mother is a dependent child at the time of the child's birth and the child is born as a result of the mother's first pregnancy that resulted in a live birth.

4. The child does not reside with his or her biological mother or father.

5. The family or child meets the criteria for an exemption from the application of this paragraph under a rule promulgated by the department.

(c) The department shall inform all applicants for aid under this section of the limitation under par. (b) at the time of application.

(d) From the appropriation under s. 20.437 (2) (a), the department may award grants to county departments under ss. 46.215, 46.22 and 46.23 for providing education services relating to family planning, as defined in s. 253.07 (1) (a), to persons who are subject to par. (b).

(13) When a county department under s. 46.215, 46.22 or 46.23 proposes to terminate, discontinue, suspend or reduce assistance to a recipient under this section such county department

shall provide at least the minimum notice required under 42 USC 601 to 613.

(14) (a) If any check or draft drawn and issued for payment of aid under this section is lost, stolen or destroyed, the department shall request a replacement as provided under s. 20.912 (5).

(b) If the secretary of administration is unable to issue a replacement check or draft requested under par. (a) because the original has been paid, the department shall promptly authorize the issuance of a replacement check or draft. If the secretary of administration recovers the amount of the original check or draft that amount shall be returned to the department. If the secretary of administration is unable to obtain recovery, the department may pursue recovery.

(15) By January 1, 1990, the department shall apply for approval of a demonstration project under 42 USC 1315 (d) (1) (A) which would test and evaluate the elimination, on a statewide basis, of the limit on the number of hours a parent may work and still be considered unemployed for purposes of eligibility for aid under this section. If the application is approved, the department shall inform the joint committee on finance. The department may implement the demonstration project only if the joint committee on finance approves the demonstration project.

(16) The department shall provide written notice of the penalties under s. 49.29 to each applicant for aid under this section at the time of application and to each person who receives aid under this section on June 18, 1992, at the time of the next redetermination of the person's eligibility.

(17) The department may recover an overpayment of aid under this section from an overpaid family who continues to receive aid by reducing the amount of the family's monthly aid payment by no more than 10 percent of the maximum monthly payment allowance under sub. (11) for a family of that size.

(19) The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to determine eligibility and payment amounts under this section for a woman entrepreneur who receives a start−up or capital expansion loan through the revolving loan program operated by the women's business initiative corporation without consideration of that loan or of any business income during the start−up period of the woman's business. If the waiver is approved, the department shall implement the waiver.

(19m) Notwithstanding subs. (1) to (19), no aid may be paid under this section for a child on whose behalf a payment is made under s. 49.775.

(20) (a) Beginning on January 1, 1999, or beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d), 1997 stats., whichever is sooner, no person is eligible to receive benefits under this section and no aid may be granted under this section. No additional notice, other than the enactment of this paragraph, is required to be given under sub. (13) to recipients of aid under this section to terminate their benefits under this paragraph.

(b) Notwithstanding par. (a):

1. If a nonlegally responsible relative is receiving aid under this section on behalf of a dependent child on October 14, 1997, no aid under this section may be paid to the nonlegally responsible relative after December 31, 1997, or the first reinvestigation under sub. (5) (e) occurring after October 14, 1997, whichever is earlier.

2. If a nonlegally responsible relative is not receiving aid under this section on behalf of a dependent child on October 14, 1997, no aid may be paid to the nonlegally responsible relative on or after October 14, 1997.

History: 1971 c. 125, 215, 217; 1973 c. 90, 147, 186, 328, 333; 1975 c. 39, 82, 94, 224, 307, 422; 1977 c. 29, 203, 271, 418, 449; 1979 c. 32 s. 92 (4); 1979 c. 34, 206, 221, 352; 1981 c. 1, 20, 93, 314, 317, 391; 1983 a. 27, 161, 192, 245, 310, 430, 447; 1985 a. 29, 120, 176, 281, 332; 1987 a. 27, 307, 399; 1989 a. 31, 107, 122, 359; 1991 a. 39, 178, 269, 313, 315, 316, 322; 1993 a. 16, 99, 326, 395, 437, 446, 481; 1995 a. 12; 1995 a. 27 ss. 2852 to 2871, 9126 (19); 1995 a. 77, 198, 225, 289, 295; 1997 a. 27, 35, 39, 252; 1999 a. 9; 2001 a. 59; 2003 a. 33; 2005 a. 22; 2005 a. 443 s. 265; 2007 a. 20 ss. 1459 to 1463, 9121 (6) (a); 2009 a. 28; 2013 a. 8, 20.

An AFDC budget must be computed on the basis of actual income. 60 Atty. Gen. 431.

Sub. (6) has not been affected by amendments to the work incentive program, nor does it violate equal protection provisions of the Fourteenth Amendment. 62 Atty. Gen. 120.

"Dependent child" under AFDC does not include unborn children. Burns v. Alcala, 420 U.S. 575.

Various provisions of sub. (4) (d) are invalid as inconsistent with the Social Security Act. Doe v. Schmidt, 330 F. Supp. 159.

Unconstitutional conditions on welfare eligibility. Redlich, 1970 WLR 450.

Procedural due process and the welfare recipient: A statistical study of AFDC fair hearings in Wisconsin. Hammer and Hartley, 1978 WLR 145.

49.195 Recovery of aid to families with dependent children, Wisconsin Works benefits, and overpayments of emergency assistance. (1) If any parent at the time of receiving aid under s. 49.19 or a benefit under s. 49.148, 49.155 or 49.157 or at any time thereafter acquires property by gift, inheritance, sale of assets, court judgment or settlement of any damage claim, or by winning a lottery or prize, the county granting such aid, or the Wisconsin works agency granting such a benefit, may sue the parent on behalf of the department to recover the value of that portion of the aid or of the benefit which does not exceed the amount of the property so acquired. The value of the aid or benefit liable for recovery under this section may not include the value of work performed by a member of the family in a community work experience program under s. 46.215 (1) (o), 1991 stats., s. 46.22 (1) (b) 11., 1991 stats., or s. 49.50 (7j) (d), 1991 stats., or in a community work experience component under s. 49.193 (6), 1997 stats. During the life of the parent, the 10−year statute of limitations may be pleaded in defense against any suit for recovery under this section; and if such property is his or her homestead it shall be exempt from execution on the judgment of recovery until his or her death or sale of the property, whichever occurs first. Notwithstanding the foregoing restrictions and limitations, where the aid or benefit recipient is deceased a claim may be filed against any property in his or her estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse or child is dependent on the property for support, and the court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records of aid or benefits paid kept by the county, by the department or by the Wisconsin works agency are prima facie evidence of the value of the aid or benefits furnished. Liability under this section shall extend to any parent or stepparent whose family receives aid under s. 49.19 or benefits under s. 49.148, 49.155 or 49.157 during the period that he or she is a member of the same household, but his or her liability is limited to such period. This section does not apply to medical and health assistance payments for which recovery is prohibited or restricted by federal law or regulation.

(2) Amounts may be recovered pursuant to this section for aid granted both prior to and after August 31, 1969; and any amounts so recovered shall be paid to the United States, this state and its political subdivisions in the proportion in which they contributed to the payment of the aid granted, in the same manner as amounts recovered for old−age assistance are paid.

(3) A county, tribal governing body, Wisconsin Works agency, or the department shall determine whether an overpayment has been made under s. 49.138, 49.148, 49.155, 49.157, or 49.19 and, if so, the amount of the overpayment. The county, tribal governing body, Wisconsin Works agency, or department shall provide notice of the overpayment to the liable person. The department shall give that person an opportunity for a review following the procedure specified under s. 49.152, if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.138, 49.148, 49.155, 49.157, or 49.19 that have not already been received under s. 49.138 (5), 49.161, or 49.19 (17) or received as

a setoff under s. 71.93 and shall promulgate rules establishing policies and procedures to administer this subsection. The rules shall include notification procedures similar to those established for child support collections.

(3m) (a) 1. If any person fails to pay to the department any amount determined under sub. (3), no review or appeal of that determination is pending and the time for requesting a review or taking an appeal has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the person mentioned in the warrant, the amount for which the warrant is issued and the date on which the clerk entered that information.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the person's right, title and interest in all real and personal property located in the county in which the warrant is entered.

4. After issuing a warrant, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to levy upon and sell sufficient real and personal property of the person to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 90 days after receipt of the warrant. The execution may not command the sheriff to levy upon or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

(b) The clerk of circuit court shall accept, file, and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under par. (d), (e), (g), or (h) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The department shall pay the fees, but shall add the fees provided by s. 814.61 (5) for entering the warrants to the amount of the warrant and shall collect the fees from the person named in the warrant when satisfaction or release is presented for entry.

(c) If a warrant that is not satisfied in full is returned, the department may enforce the amount due as if the department had recovered judgment against the person named in the warrant for the same amount.

(d) When the amount set forth in a warrant and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person named in the warrant.

(e) If the department finds that the interests of the state will not be jeopardized, the department may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. Upon presentation to the clerk and payment of the fee for filing the release, the clerk shall enter the release of record. The release is conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(f) Notwithstanding s. 49.96, at any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of such an action may be either in Dane County or the county where the debtor resides and may not be changed from the county in which that action is commenced, except upon consent of the parties.

(g) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any resulting liens.

(h) If the department arranges a payment schedule with the debtor and the debtor complies with the payment schedule, the department may issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. If the department issues a notice of withdrawal of the warrant, the clerk shall void the warrant and the resulting liens.

(3n) (a) In this subsection:

1. "Debt" means the amount of liability determined under sub. (3).

2. "Debtor" means an individual who is liable under sub. (3).

3. "Disposable earnings" means that part of the earnings of any debtor after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under this subsection.

4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1).

5. "Levy" means all powers of distraint and seizure.

6. "Property" includes all tangible and intangible personal property and rights to such property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, periodic payments received pursuant to a pension or retirement program, rents, proceeds of insurance and contract payments.

(b) If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

(c) Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(d) 1. Any debtor who fails or refuses to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

2. Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this subdivision for more than 25 percent of the debt. The department shall serve the levy as provided under par. (m) on any 3rd party who fails to surrender property under this subdivision. Proceedings may not be initiated by the department until 5 days after service of the demand.

3. When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

(e) 1. If the department has levied upon property, any person, other than the debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been

surrendered to the department. The court may grant only the relief under subd. 2.

2. In an action under subd. 1., if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

3. For purposes of an adjudication under this paragraph, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(f) The department shall determine its costs and expenses to be paid in all cases of levy.

(g) 1. The department shall apply all money obtained under this subsection first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the debtor.

2. The department may refund or credit any amount left after the applications under subd. 1., upon submission of a claim for that amount and satisfactory proof of the claim, to the person entitled to that amount.

(h) The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(j) If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(k) Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this subsection with intent to evade or defeat the assessment or collection of any debt is guilty of a Class H felony and shall be assessed the costs of prosecution.

(L) If no appeal or other proceeding for review permitted by law is pending and the time for taking an appeal or petitioning for review has expired, the department shall make a demand to the debtor for payment of the debt that is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

(m) 1. The department shall serve the levy upon the debtor and 3rd party by personal service or by any type of mail service that requires a signature of acceptance.

2. Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the debtor or 3rd party personally; by leaving a copy of the levy at the debtor's dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment with an officer or employee of the establishment; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

3. The department representative who serves the levy shall certify service of process on the notice of levy form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

4. The debtor's or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

(n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

(p) A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied or until the levy is released, whichever occurs first.

(q) 1. The debtor is entitled to an exemption from levy of the greater of the following:

a. A subsistence allowance of 75 percent of the debtor's disposable earnings then due and owing.

b. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period; or, in the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that amount using a multiple of the federal minimum hourly wage prescribed by the department by rule.

2. The first $1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment.

(r) No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employee by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this subsection. Any person who violates this paragraph is guilty of a Class I felony.

(s) Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal in any case where property is secured through the levy.

(t) Any 3rd party is entitled to a levy fee of $5 for each levy in any case in which property is secured through the levy. If the 3rd party retains the fee, the 3rd party shall increase the levy amount by the amount of the fee and deduct the fee from the proceeds of the levy.

(3p) The availability of the remedies under subs. (3m) and (3n) does not abridge the right of the department to pursue other remedies.

(3r) The department may contract with or employ a collection agency or other person to enforce a repayment obligation of a person who is found liable under sub. (3) who is delinquent in making repayments.

(3s) The department shall specify by rule when requests for reviews, hearings and appeals under this section may be made and the process to be used for the reviews, hearings and appeals. In promulgating the rules, the department shall provide for a hearing or review after a warrant under sub. (3m) has been issued and before the warrant has been executed, before property is levied under sub. (3m) or (3n) and after levied property is seized and before it is sold. The department shall specify by rule the time limit for a request for review or hearing. The department shall also specify by rule a minimum amount that must be due before collection proceedings under this section may be commenced.

(4) (a) Except as provided in par. (b), any county or governing body of a federally recognized American Indian tribe may retain 15 percent of benefits distributed under s. 49.19 that are recovered due to the efforts of an employee or officer of the county or tribe.

(b) This subsection does not apply to any of the following:

1. The recovery of benefits that were provided as a result of state, county, or tribal governing body error.

2. The recovery of benefits due to the efforts of an employee or officer of a county having a population of 750,000 or more under the supervision of the department.

History: 1977 c. 29; 1981 c. 93, 317; 1983 a. 27; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 307; 1989 a. 31, 96, 173; 1993 a. 16; 1995 a. 27, 289; 1997 a. 27; 1999 a. 9, 185; 2001 a. 109; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2015 a. 55, 172.

Cross−reference: See also ch. DCF 201, Wis. adm. code.

The words "both prior to and" in sub. (2) constitute an unconstitutional enactment and are stricken from the statute. Estate of Peterson, 66 Wis. 2d 535, 225 N.W.2d 644 (1975).

Recovery may be had only from a parent who immediately received aid. Richland County Department of Social Services, v. McHone, 95 Wis. 2d 108, 288 N.W.2d 879 (Ct. App. 1980).

This section does not authorize recovery against a child with a guardianship account if the child never applied for, directly received or made representations to obtain aid. There may be common−law authority for a claim against a guardianship estate. Matter of Guardianship of Kordecki, 95 Wis. 2d 275, 290 N.W.2d 693 (1980).

49.197 Fraud investigation and reduction and error reduction. (1m) FRAUD INVESTIGATION. From the appropriations under s. 20.437 (2) (dz), (kx), (L), (mc), (md), (me), and (nL), the department shall establish a program to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19, on the part of participants in the Wisconsin Works program under ss. 49.141 to 49.161, and, if the department of health services contracts with the department under sub. (5), on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665. The department's activities under this subsection may include, but are not limited to, comparisons of information provided to the department by an applicant and information provided by the applicant to other federal, state, and local agencies, development of an advisory welfare investigation prosecution standard, and provision of funds to county departments under ss. 46.215, 46.22, and 46.23 or multicounty consortia, as defined in s. 49.78 (1) (br), and to Wisconsin Works agencies to encourage activities to detect fraud. The department shall cooperate with district attorneys regarding fraud prosecutions.

(2) INCENTIVE PROGRAM FOR LOCAL FRAUD DETECTION. (a) In this subsection:

1. "County department" means a county department under s. 46.22 or 46.23.

2. "Subsidy program" means the child care subsidy program under s. 49.155.

3. "Tribal governing body" means an elected governing body of a federally recognized American Indian tribe.

(b) 1. Subject to subd. 2., the department shall by rule establish an incentive program that, using moneys from the allocation under s. 49.175 (1) (p), rewards county departments, Wisconsin Works agencies, and tribal governing bodies that administer the subsidy program for identifying fraud in the subsidy program. The rules shall specify that a county department, Wisconsin Works agency, or tribal governing body shall receive, for identifying fraudulent activity under the subsidy program on the part of a child care provider, an amount equal to the average monthly subsidy payment per child during the prior fiscal year, multiplied by the number of children participating in the subsidy program for whom the provider provides care, multiplied by 1.5 months. A county department, Wisconsin Works agency, or tribal governing body may use payments received under this subsection for any purpose for which moneys under the Temporary Assistance for Needy Families block grant program may be used under federal law.

2. No later than January 1, 2012, the department shall submit its plan for the incentive program to the cochairpersons of the joint committee on finance for review by the committee. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan within 14 working days after the date of the department's submittal, the department shall promulgate the rules for the incentive program in accordance with its proposed plan. If, within 14 working days after the date of the department's submittal, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the department may not promulgate the rules for the incentive program unless the committee approves the proposed plan. If the committee modifies and approves the proposed plan, the department may promulgate the rules for the incentive program only as modified by the committee.

(3) STATE ERROR REDUCTION ACTIVITIES. The department shall conduct activities to reduce payment errors in Wisconsin Works under ss. 49.141 to 49.161 and, if the department of health services contracts with the department under sub. (5), the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665.

(4) COUNTY AND TRIBAL ERROR REDUCTION. If the department of health services contracts with the department under sub. (5), the department shall provide funds from the appropriation under s. 20.437 (2) (kx) to counties, multicounty consortia, as defined in s. 49.78 (1) (br), and governing bodies of federally recognized American Indian tribes administering Medical Assistance under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665 to offset administrative costs of reducing payment errors in those programs.

(5) CONTRACTS FOR MEDICAL ASSISTANCE, FOOD STAMPS, SUPPLEMENTAL SECURITY INCOME, AND CARETAKER SUPPLEMENT. Notwithstanding s. 49.845 (1) and (2), the department of health services may contract with the department to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665 and to conduct activities to reduce payment errors in the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665, as provided in this section.

(6) REPORTING OF SUSPECTED FRAUDULENT ACTIVITY. (a) 1. If any employee of the department, a county, or a tribal governing body reasonably suspects that fraudulent activity as described in sub. (1m) or (2) (b) has occurred or is occurring, the employee shall immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor.

2. An immediate supervisor who receives a report under subd. 1. shall immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the immediate supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the immediate supervisor shall immediately report the facts and circumstances contributing to that suspicion to the unit of the department that is responsible for investigating suspected fraudulent activity under sub. (1m). If the immediate supervisor is an employee of the department or of a county having a population of 145,000 or more, the immediate supervisor shall also immediately report those facts and circumstances to the sheriff.

3. Except as provided in subd. 2., an immediate supervisor who receives a report under subd. 1. shall keep the identity of the

reporter confidential. A sheriff or unit of the department that receives a report under subd. 2. shall keep the identity of the employee reporting under subd. 1. and the immediate supervisor reporting under subd. 2. confidential until the sheriff or unit determines that the report merits further investigation. If the sheriff or unit conducts a full investigation, the sheriff or unit shall keep the identity of that employee and immediate supervisor confidential if it is reasonably possible to do so. Any person who fails to report as required in subd. 1. or 2. may be required to forfeit not more than $1,000.

(b) Any person participating in good faith in the making of a report under par. (a) 1. or 2. or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity as described in sub. (1m) or (2) (b) is alleged shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under par. (a) 1. or 2. shall be presumed.

(c) The department, a county, a tribal governing body, or an employee of the department, a county, or a tribal governing body may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity described in sub. (1m) or (2) (b) was alleged or because the department, county, tribal governing body, or employee believes that the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, such an action or proceeding.

(d) Any person who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of par. (c) may file a complaint with the department of workforce development under s. 106.54 (9). If that department finds that a violation of par. (c) has been committed, that department may take such action under s. 111.39 as will effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under this paragraph.

History: 1985 a. 29, 176; 1987 a. 27, 413; 1989 a. 31; 1991 a. 39; 1995 a. 27, 289; 1997 a. 27, 35; 2001 a. 16; 2005 a. 25; 2007 a. 20 ss. 1465 to 1466, 9121 (6) (a); 2009 a. 28, 76; 2011 a. 32.

49.22 Child and spousal support; establishment of paternity; medical liability. (1) There is created a child and spousal support and establishment of paternity and medical support liability program in the department. The purpose of this program is to establish paternity when possible, to establish or modify support obligations, to enforce support obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside in this state or owed in other states if the support order was issued in this state or owed in other states if the parent, spouse, or former spouse resides in this state, to locate persons who are alleged to have taken their child in violation of s. 948.31 or of similar laws in other states, and to locate and value property of any person having a support duty. To accomplish the objectives of this program and of other assistance programs under this chapter, county and state agencies will cooperate with one another to implement a child and spousal support and paternity establishment and medical support liability program in accordance with state and federal laws, regulations, and rules and to assure proper distribution of benefits of all assistance programs authorized under this chapter.

(2) The department shall constitute the state location service which shall assist in locating parents who have deserted their children and other persons liable for support of dependents or persons who are alleged to have taken their child in violation of s. 948.31 or of similar laws in another state, and in locating and valuing property of any person having a support duty.

(2m) (a) The department may request from any person in this state information it determines appropriate and necessary for the administration of this section, ss. 49.141 to 49.161, 49.19, 49.46, 49.468, 49.47, and 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029. Unless access to the information is prohibited or restricted by law, or unless the person has good cause, as determined by the department in accordance with federal law and regulations, for refusing to cooperate, the person shall make a good faith effort to provide this information within 7 days after receiving a request under this paragraph. Except as provided in subs. (2p) and (2r) and subject to sub. (12), the department or the county child support agency under s. 59.53 (5) may disclose information obtained under this paragraph only in the administration of this section, ss. 49.141 to 49.161, 49.19, 49.46, 49.47, and 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029. Employees of the department or a county child support agency under s. 59.53 (5) are subject to s. 49.83.

(am) In conjunction with any request for information under par. (a), including a request made by subpoena under par. (b), the department or county child support agency under s. 59.53 (5) shall advise the person of the time by which the information must be provided and of any consequences to the person under par. (d) that may result from a failure to respond or comply with the request.

(b) The department or county child support agency under s. 59.53 (5) may issue a subpoena, in substantially the form authorized under s. 885.02, to compel the production of financial information and other documentary evidence in the administration of this section, ss. 49.145, 49.19, 49.46, 49.47, and 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029.

(bc) A person in this state shall comply with an administrative subpoena that is issued from another state to compel the production of financial information or other documentary evidence for purposes comparable to those specified in par. (b).

(c) A person is not liable to any person for any of the following:

1. Allowing access to financial or other records by the department or a county child support agency under s. 59.53 (5) in response to a request under par. (a) or a subpoena described in par. (bc).

2. Disclosing information from financial or other records to the department or a county child support agency under s. 59.53 (5) in response to a request under par. (a) or a subpoena described in par. (bc).

3. Any other action taken in good faith to comply with this section or a subpoena described in par. (bc) or to comply with a request for information or access to records from the department or a county child support agency under s. 59.53 (5) in the administration of this section, ss. 49.145, 49.19, 49.46, 49.47, and 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029.

(d) Any person who fails to respond to or comply with a subpoena described in par. (bc) or a request under par. (a) by the department or a county child support agency under s. 59.53 (5) may be required to pay a forfeiture in an amount determined by the department by rule.

(2p) Except as provided in sub. (12), the department or a county child support agency under s. 59.53 (5) may disclose to a parent with legal custody of a child, upon the parent's request, the last−known address, and the name and address of the last−known employer, of the child's other parent if that other parent owes a support obligation to the child and is in arrears in the payment of the support.

(2r) The department or a county child support agency under s. 59.53 (5) may, to the extent permitted under federal law, disclose information obtained under sub. (2m) to the department of revenue for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax−related prosecutions.

(3) The department, acting as a state location service, shall furnish all services under sub. (2) to any similarly appointed

agency of another state which by its laws is authorized to furnish such services to this state or its agencies.

(3m) The department, acting as a state location service, shall furnish services under sub. (2) upon request to the department of health services, a county department under s. 46.215, 46.22 or 46.23 or a child welfare agency that is administering a program operated under 42 USC 620 to 628b or 42 USC 670 to 679a.

(4) Except as provided in this section, no person may use or disclose information obtained by the state location service. Any person violating this subsection may be fined not less than $25 nor more than $500 or imprisoned for not more than one year in the county jail or both.

(6) The department shall establish, pursuant to federal and state laws, rules and regulations, a uniform system of fees for services provided under this section to individuals not receiving aid under s. 48.645, 49.19, 49.47, or 49.471; benefits under s. 49.148, 49.155, or 49.79; foster care maintenance payments under 42 USC 670 to 679a; or kinship care payments under s. 48.57 (3m) or long−term kinship care payments under s. 48.57 (3n). The system of fees may take into account an individual's ability to pay. Any fee paid and collected under this subsection may be retained by the county providing the service except for the fee specified in 42 USC 653 (e) (2) for federal parent locator services.

(7) The department may represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation. The department may delegate its authority to represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation under this section to an attorney responsible for support enforcement under s. 59.53 (6) (a) pursuant to a contract entered into under s. 59.53 (5). The department shall ensure that any such contract is for an amount reasonable and necessary to assure quality service. The department may, by such a contract, authorize a county to contract with any attorney, collection agency or other person to collect unpaid child support or maintenance. If a county fails to fully implement the programs under s. 59.53 (5), the department may implement them and may contract with any appropriate person to obtain necessary services. The department shall establish a formula for disbursing funds appropriated under s. 20.437 (2) (md) to carry out a contract under this subsection.

(7g) The department shall provide all of the following:

(a) Training to hospital staff members concerning the form that is prescribed by the state registrar under s. 69.15 (3) (b) 3. and concerning the significance and benefits of, and alternatives to, of establishing paternity.

(b) The written information that is required to be provided to parents under s. 69.14 (1) (cm).

(7m) The department may contract with or employ a collection agency or other person to enforce a support obligation of a parent who is delinquent in making support payments and may contract with or employ an attorney to appear in an action in state or federal court to enforce such an obligation. To pay for the department's administrative costs of implementing this subsection, the department may charge a fee to counties, use federal matching funds or funds retained by the department under s. 49.24 (2) (c), or use up to 30 percent of this state's share of a collection made under this subsection on behalf of a recipient of aid to families with dependent children or a recipient of kinship care payments under s. 48.57 (3m) or long−term kinship care payments under s. 48.57 (3n).

(8) The department may charge other states and counties seeking collection of child and spousal support for any administrative costs it incurs in providing services related to interstate child support collections, the federal parent locator service under 42 USC 653, the interception of unemployment compensation under 42 USC 654 or the withholding of state and federal income tax refunds under s. 49.855 and 42 USC 664.

(9) The department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

(11) (a) The department shall disclose to a consumer reporting agency, as defined under 45 CFR 303.105 (a), the amount of overdue child support owed by a parent. At least 20 business days before disclosing the information to the consumer reporting agency, the department shall notify the parent and inform the parent of the methods available for contesting the accuracy of the information.

(b) The department shall notify a consumer reporting agency within 30 days if any amounts reported to the consumer reporting agency under par. (a) were erroneous. Within 30 days of notification under this paragraph, the consumer reporting agency shall correct the erroneous amount in its records.

(c) The department shall notify a consumer reporting agency within 30 days if any amounts reported to the consumer reporting agency under par. (a) are paid in full. Within 30 days of notification under this paragraph, the consumer reporting agency shall indicate the payment in full in its records.

(12) The department or a county child support agency under s. 59.53 (5) may not release information to a person about the whereabouts of another person if any of the following applies:

(a) The person seeking the information is subject to a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125 or 813.127 with respect to the person about whom the information is sought; and the department or county child support agency under s. 59.53 (5) has notice of the temporary restraining order or injunction.

(b) The department or county child support agency under s. 59.53 (5) has reason to believe that releasing the information may result in physical or emotional harm to the person about whom the information is sought.

(13) (a) Subject to par. (b), the department may terminate child and spousal support enforcement services if there is no longer a current support or maintenance order and either of the following applies:

1. Any support or maintenance arrearages total less than $500.

2. Any support or maintenance arrearages are considered unenforceable by a county child support agency under s. 59.53 (5) because no support or maintenance payments have been collected for 3 years and all administrative and legal remedies for collection of arrearages have been attempted or are determined to be ineffective because the payer is unable to pay, the payer has no known income or assets, and there is no reasonable prospect that the payer will be able to pay in the foreseeable future.

(b) The department shall, not less than 60 days prior to terminating child or spousal support services, notify the individual who receives the services, or the initiating state in an interstate enforcement action, of its intent to terminate services. If the individual or the state provides information to the department in response to the notification that could result in an effective enforcement action, the department may not terminate services.

(c) An individual or the initiating state in an interstate enforcement action may request the department to resume child or spousal support enforcement services terminated under this subsection if there is a change of circumstances that could result in an effective enforcement action and the individual or the state completes

a new application for services and pays any applicable fee to the department for its services.

History: 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 20, 93; 1983 a. 27; 1985 a. 29 ss. 861m to 866, 2390 to 2399; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 399, 403, 413; 1989 a. 31; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 ss. 2128m to 2134, 9126 (19), 9130 (4); 1995 a. 77, 187, 201, 225, 289; 1995 a. 404 ss. 39 to 43, 45, 46, 48, 173, 174; Stats. 1995 s. 49.22; 1997 a. 27, 105, 191, 237; 1999 a. 32; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1467 to 1472, 9121 (6) (a); 2015 a. 55.

Cross−reference: See also chs. DCF 150 and 152, Wis. adm. code.

The state may request patient billing records under s. 46.25 (2m) [now 49.22 (2m)], which may be admitted into evidence under the exception to confidentiality under s. 146.82 (2) (a) 3. State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (1996), 95−0792.

Information contained in a county paternity case file may be released for purposes of fraud investigation of the public assistance programs specified in s. 49.53 [now s. 49.83]. 80 Atty. Gen. 226.

49.225 Ordering genetic tests. (1) In this section, "genetic test" has the meaning given in s. 767.001 (1m).

(2) (a) A county child support agency under s. 59.53 (5) may require, by subpoena in substantially the form authorized under s. 885.02 or by other means, a child, the child's mother and a male alleged, or alleging himself, to be the child's father to submit to genetic tests if there is probable cause to believe that the male had sexual intercourse with the child's mother during a possible time of the child's conception. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient affidavit of the child's mother or the male alleged, or alleging himself, to be the child's father.

(b) If there is only one male alleged, or alleging himself, to be the father and one or more persons required to submit to genetic tests under par. (a) fail to appear for the scheduled tests, the county child support agency under s. 59.53 (5) may bring an action under s. 767.80 for determining the paternity of the child.

(3) The fees and costs for genetic tests performed on any person required to submit to the tests under sub.(2) (a) shall be paid for by the county except as follows:

(a) The county may seek reimbursement from either the mother or male alleged, or alleging himself, to be the father, or from both, if the test results show that the male is not excluded as the father and that the statistical probability of the male's parentage is 99.0 percent or higher.

(b) If 2 or more identical series of genetic tests are performed upon the same person, the county child support agency under s. 59.53 (5) shall require the person requesting the 2nd or subsequent series of tests to pay for the tests in advance. If the person requesting the 2nd or subsequent series of tests is indigent, the county shall pay for the tests and may seek reimbursement from the person.

History: 1997 a. 191; 2005 a. 443 s. 265.

49.227 Program for publication of delinquent child support obligors. The department shall establish a program to increase public awareness about the importance of the payment of child support. The program shall include publication of information, such as names and photographs, that identifies child support obligors who are significantly delinquent in the payment of child support. The department may use posters, media presentations or other means that the department determines are appropriate for publication of the information. The publications shall include information about the child support owed by each obligor identified and, if appropriate, shall solicit information from the public to assist the department in locating a delinquent obligor.

History: 1995 a. 12; 1997 a. 191 s. 39; Stats. 1997 s. 49.227; 1999 a. 32 s. 131.

49.24 Child support incentive payments. (1) The department shall provide child support incentive payments to counties from one of the following appropriations:

(a) Unless par. (b) applies, from the appropriation under s. 20.437 (2) (bc).

(b) If federal legislation provides for the matching of federal funds for federal child support incentive payments at a rate of 66 percent or more, from the appropriation under s. 20.437 (2) (k) while the federal legislation is in effect. Total payments under this paragraph may not exceed $5,690,000 per year.

(2) (a) The department shall, in consultation with representatives of counties, promulgate a rule that specifies the formula according to which the payments under sub. (1) and federal child support incentive payments will be distributed to counties. The rule shall provide that the total of state and federal incentive payments per year to a county may not exceed the costs per year of the county's child support program under s. 49.22.

(b) Subject to the incentive payments limit specified in par. (a), the department shall distribute to counties, in accordance with the formula established under par. (a), all of the following:

2. Of the amount of federal child support incentive payments awarded to the state for each federal fiscal year, the amount awarded if that amount is less than $12,340,000, or $12,340,000 plus 30 percent of the amount awarded that exceeds $12,340,000.

3. All federal matching funds associated with the amounts distributed under subd. 2.

(c) The department may retain 70 percent of the amount of federal child support incentive payments awarded to the state for each federal fiscal year that exceeds $12,340,000, to be used to pay the costs of the department's activities under ss. 49.22 and 49.227 and costs related to receiving and disbursing support and support−related payments.

(dm) If the amount of federal child support incentive payments awarded to the state for a federal fiscal year is less than $12,340,000 and the department is providing child support incentive payments to counties for that federal fiscal year under sub. (1) (b), the total of payments distributed to counties under par. (b) and sub. (1) for that federal fiscal year may not exceed $12,340,000.

(3) A county that receives any state child support incentive payment under sub. (1) or any federal child support incentive payment under sub. (2) may use the funds only to pay costs under its child support program under s. 49.22.

History: 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 28.

Cross−reference: See also ch. DCF 153, Wis. adm. code.

49.25 Incentive payments for identifying children with health insurance. From the appropriation under s. 20.437 (2) (e), the department may provide incentive payments to county child support agencies under s. 59.53 (5) for identifying children who are receiving medical assistance benefits and who have health insurance coverage or access to health insurance coverage. The department of children and families may disclose to the department of health services information that it possesses or obtains that would assist in identifying children with medical assistance coverage who have health insurance coverage or access to health insurance coverage.

History: 2009 a. 28.

49.26 Learnfare program. (1) (a) In this subsection:

1. "Habitual truant" has the meaning given in s. 118.16 (1) (a).

2. "School" means any one of the following:

a. A public school, as described in s. 115.01 (1).

b. A private school, as defined in s. 115.001 (3r).

bm. A tribal school, as defined in s. 115.001 (15m).

c. A technical college pursuant to a contract under s. 118.15 (2).

d. A course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation.

(c) A county department or Wisconsin works agency may provide services under this subsection directly or may contract with a nonprofit agency or a school district to provide the services.

(d) A county department or Wisconsin Works agency that provides services under this subsection directly shall develop a plan, in coordination with the school districts located in whole or in part in the county, describing the assistance that the county department

or Wisconsin Works agency and school districts will provide to individuals receiving services under this subsection, the number of individuals that will be served and the estimated cost of the services. The county department or Wisconsin Works agency shall submit the plan to the department and the department of public instruction by January 15, annually.

(e) For an individual who is a recipient of aid under s. 49.19, or whose custodial parent is a participant under s. 49.147 (3) to (5), who is the parent with whom a dependent child lives and who is subject to the school attendance requirement under par. (ge), the department shall make a monthly payment to the individual or the child care provider for the month's child care costs in an amount based on need with the maximum amount per child equal to the lesser of the actual cost of the care or the rate established under s. 49.155 (6) if the individual demonstrates the need to purchase child care services in order to attend school and those services are available from a child care provider.

(g) An individual who is a dependent child in a Wisconsin Works group that includes a participant under s. 49.147 (3), (4), or (5) or who is a recipient of aid under s. 49.19 is subject to the school attendance requirement under par. (ge) if all of the following apply:

1. Before the first day of the fall 1994 school term, as defined in s. 115.001 (12), the individual is 13 to 17 years of age. Beginning on the first day of the fall 1997 school term, as defined in s. 115.001 (12), the individual is 6 to 17 years of age.

2. The individual has not graduated from a public, private, or tribal high school or obtained a declaration of equivalency of high school graduation under s. 115.29 (4).

3. The individual is not excused from attending school under s. 118.15 (3).

4. The individual is a parent or is residing with his or her natural or adoptive parent.

5. If the individual is the caretaker of a child, the child is at least 45 days old and child care is available for the child at the school or the school provides an instruction program for the caretaker at home.

6. If child care services are necessary in order for the individual to attend school, child care from a child care provider is available for the child and transportation to and from child care is also available.

7. The individual is not prohibited from attending school while an expulsion under s. 119.25 or 120.13 (1) is pending.

8. If the individual was expelled from a school under s. 119.25 or 120.13 (1), there is another school available which the individual can attend.

10. The individual does not have good cause for failing to attend school, as defined by the department by rule.

11. If the individual is the mother of a child, a physician has not determined that the individual should delay her return to school after giving birth.

12. If the individual is on a waiting list for a children−at−risk program under s. 118.153, a children−at−risk program that is appropriate for the individual is not available.

(ge) An individual fails to meet the school attendance requirement if the individual is not enrolled in school or was not enrolled in the immediately preceding semester. The Wisconsin works agency or county department shall verify enrollment.

(gm) 1. The following individuals who are subject to the school attendance requirement under the learnfare program are required to participate in case management under sub. (2) (b):

a. Minor parents.

b. Habitual truants.

c. Dropouts, as defined in s. 118.153 (1) (b), including individuals who were dropouts and reenrolled in school in the same or immediately succeeding semester in which they dropped out of school.

d. A child whose Wisconsin Works group includes a participant under s. 49.147 (3), (4), or (5) who has been unable to participate in activities required under s. 49.147 (3), (4), or (5) due to the child's school−related problems.

2. The department may, in accordance with rules promulgated by the department, sanction any individual specified under subd. 1. who fails to cooperate with case management efforts.

(h) 1. An individual who fails to cooperate with case management efforts under par. (gm) is subject to sanctions as provided under subd. 1s. only if all of the following apply:

as. The individual has failed to request a hearing or has failed to show good cause for not cooperating with case management efforts in a hearing. The hearing shall be requested and held under s. 49.152. The department shall determine by rule the criteria for good cause.

b. The individual's family fails to cooperate with the case manager or fails to engage in the activities identified by the case manager as being necessary to improve the individual's school attendance.

c. The individual continues to fail to meet the school attendance requirement under par. (ge).

1s. a. Except as provided under subd. 1s. b., an individual who fails to meet the school attendance requirement under par. (ge) is subject to sanctions determined by the department by rule.

b. An individual who is a dependent child in a Wisconsin Works group that includes a participant under s. 49.147 (3), (4), or (5) and who fails to meet the school attendance requirement under par. (ge) is subject to a monthly sanction.

2. If, as a result of the application of sanctions under this paragraph, no child in a family receives payment under s. 49.19, the department shall make a payment to meet only the needs of the parent or parents who would otherwise be eligible for aid under s. 49.19.

(hm) The department may require consent to the release of school attendance records, under s. 118.125 (2) (e), as a condition of eligibility for benefits under s. 49.147 (3) to (5) or aid under s. 49.19.

(hr) If an individual subject to the school attendance requirement under par. (ge) is enrolled in a public school, communications between the school district and the department, a county department under s. 46.215, 46.22, or 46.23 or a Wisconsin works agency concerning the individual's school attendance may only be made by a school attendance officer, as defined under s. 118.16 (1) (b).

(2) SERVICES FOR LEARNFARE PUPILS. (a) In this subsection, "county department" means a county department under s. 46.215, 46.22 or 46.23.

(b) County departments or Wisconsin works agencies shall provide case management services to individuals who are subject to the school attendance requirement under the learnfare program under sub. (1) and their families to improve the school attendance and achievement of those individuals.

History: 1995 a. 27 ss. 2319 to 2324, 2898g to 2898r, 3101 to 3120b, 9130 (4), 9145 (1); 1995 a. 289; 1997 a. 3, 27, 239; 1999 a. 9; 2007 a. 20; 2009 a. 276, 302; 2013 a. 20; 2015 a. 55.

49.265 Community action agencies. (1) DEFINITIONS. In this section:

(a) "Limited−purpose agency" means a private, nonprofit organization that is a statewide organization whose project has statewide impact.

(b) "Poor person" means a resident of a community served by a community action agency whose income is at or below 125 percent of the poverty line.

(c) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(2) CREATION. (a) 1. A community action agency is any of the entities specified in par. (b) that meets the following conditions:

a. Is capable of performing the functions specified in sub. (3).

b. Receives the approval of the secretary.

c. Receives the approval of the county board of supervisors, if the community action agency serves an entire county, or, if the agency serves a city, village or town, receives the approval of the city's, village's or town's legislative body.

2. Each private, nonprofit community action agency shall be governed by a board consisting of 15 to 51 members, chosen from the following groups:

a. One−third of the members shall be elected public officials or their representatives. If the number of elected public officials who are reasonably available and willing to serve on a governing board is insufficient to meet this requirement, appointed public officials may be substituted. The chief executive or the legislative body of the county, city, village or town that approved the creation of a community action agency under subd. 1. c. shall appoint these members.

b. At least one−third of the members shall represent poor persons in the community to be served by the community action agency, being chosen in accordance with democratic selection procedures adequate to ensure that they are selected by and that they represent poor persons.

c. The remaining members shall represent specific groups or areas within the community to be served by the community action agency. The members selected under subd. 2. a. and b. shall determine which groups or areas are to be represented and shall delegate to the group, or to residents of the area, the task of selecting the representative. Representatives of an area of the community shall reside within that area.

3. Each community relations−social development commission created under s. 66.0125 that acts as a community action agency shall modify the composition of its commission so that the commission is composed of 15 to 51 members, chosen from the groups specified in subd. 2. a. to c.

(b) The following entities may organize as community action agencies:

1. Any private, nonprofit community organization, including any migrant or seasonal farm worker organization.

2. Any community relations−social development commission created under s. 66.0125.

3. Any entity designated by the community services administration as a community action agency under 42 USC 2790 to 2797, in effect on August 1, 1981, for federal fiscal year 1981, unless the agency lost its designation. Any such entity is deemed to meet the conditions under par. (a) 1.

(c) The approval of a community action agency may be rescinded but only if there is good cause and if the decision to rescind is made by both the legislative body of the county, city, village or town that granted the approval and the secretary. At least 90 days before rescinding approval, the legislative body or secretary shall notify the community action agency of its reasons for the action and hold a public hearing in the community concerning the action.

(3) POWERS AND DUTIES. (a) A community action agency shall do all of the following:

1. Administer funds received under sub. (4) and funds from other sources provided to support a community action program.

2. Set personnel, program and fiscal policies. Each community action agency shall set policies and procedures governing employee compensation and employment qualifications for itself and its agents. These policies and procedures shall ensure that employment practices are impartial and are designed to employ only competent persons, and shall guard against personal or financial conflicts of interest. Each community action agency shall also define the duties of its employees regarding advocacy on behalf of poor persons.

3. Involve, to the greatest extent practicable, poor persons in developing and implementing programs in order to ensure that these programs:

a. Will stimulate the capabilities of these persons for self−advancement.

b. Will be meaningful to and widely utilized by these persons.

4. Allow poor persons to influence the character of programs operated by the community action agency.

5. Involve members of the community in planning, conducting and evaluating its programs.

6. Conduct its program in a manner free of discrimination based on political affiliation and of personal or familial favoritism. Each community action agency shall establish policies and procedures to carry out this requirement and to hold staff members accountable for complying with matters governed by this section and by other state or federal laws, rules or regulations.

7. Release any record of the community action agency for examination or copying upon request, unless disclosure would constitute an unwarranted invasion of an individual's privacy. Each community action agency shall require its agents to make their records similarly available. Each community action agency shall hold public hearings on request to provide information and to receive comments about its activities.

8. Appoint a representative or representatives to the citizen advisory committee under s. 49.325 (3) (a), in order to participate in developing and implementing programs designed to serve the poor.

(b) A community action agency may:

1. Approve program plans and priorities.

2. Resolve internal personnel or fiscal matters.

3. Create a community action program. If the community action agency creates a program, it shall plan, coordinate, administer and evaluate the program. A community action program may include provisions that will help poor persons:

a. Secure and retain employment.

b. Improve their education.

c. Make better use of available income.

d. Obtain and maintain adequate housing and a suitable living environment.

e. Secure needed transportation.

f. Obtain emergency assistance. Through its program, the community action agency may provide emergency supplies or services to meet basic needs.

g. Participate in community affairs.

h. Use more effectively other available programs.

4. Create methods by which poor persons can work with private groups to solve common problems.

5. Research the causes of and problems created by poverty in the community.

6. Determine if programs to reduce poverty are working effectively.

7. Initiate and sponsor projects to aid poor persons that provide otherwise unavailable services.

8. Transmit information between public and private organizations and otherwise coordinate the provision of public and private social services programs to eliminate overlap and ensure effective delivery of the programs.

9. Contract with other persons to perform the community action agency's functions. The community action agency may delegate responsibility for funding or administering its programs or for making policy determinations concerning a particular geographic area of the community it serves only if poor persons represent at least one−third of the members of the governing body of the agent being delegated this responsibility.

10. Apply for funds from various sources to support a community action program.

11. Provide, to individuals who work at least 20 hours per week and whose earned income is at or below 150 percent of the poverty line, a program of skills enhancement that shall include access to transportation, child care, career counseling, job placement assistance, and financial support for education and training.

(4) FUNDING. (a) The department shall distribute the federal community services block grant funds received under 42 USC 9903 and credited to the appropriation account under s. 20.437 (2) (mg).

(b) The department shall allocate at least 90 percent of the funds received under 42 USC 9903 to community action agencies and organizations.

(c) The department may not allocate more than 5 percent of the funds received under 42 USC 9903 for state administrative expenses.

(cm) From the appropriation under s. 20.437 (2) (fr), the department of children and families shall distribute grants to community action agencies to provide the skills enhancement services specified under sub. (3) (b) 11.

(d) Before January 1 of each year the department shall contract with each agency and organization being funded, specifying the amount of money the organization will receive under this section and the activities to be carried out by the organization.

(5) CITY, VILLAGE OR TOWN ASSISTANCE. A city, village or town may appropriate funds for promoting and assisting a community action agency.

(6) REPORTS. At least annually, the secretary shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), concerning activities of community action agencies under this section and their effectiveness in promoting social and economic opportunities for poor persons.

History: 1983 a. 27, 538; 1985 a. 29; 1989 a. 31; 1991 a. 39; 1995 a. 27; 1997 a. 27; 1999 a. 150 ss. 451, 672; 2007 a. 20 ss. 796, 1076 to 1095; Stats. 2007 s. 49.265; 2009 a. 11, 265; 2011 a. 32.

49.27 Legal actions. The department may sue and be sued.

History: 2007 a. 20.

49.273 Research, investigations. The secretary shall plan for and establish within the department a program of research designed to determine the effectiveness of the treatment, curative, and rehabilitative programs of the various divisions of the department. The secretary may inquire into any matter affecting children and families, hold hearings, subpoena witnesses and make recommendations on those matters to the appropriate public or private agencies.

History: 2007 a. 20.

49.275 Cooperation with federal government. The department may cooperate with the federal government in carrying out federal acts concerning public assistance under this subchapter, child welfare under ch. 48, and community−based juvenile delinquency−related services under ch. 938 and in other matters of mutual concern pertaining to public welfare, child welfare, and juvenile delinquency under this subchapter and chs. 48 and 938.

History: 1995 a. 27; 2007 a. 20; 2015 a. 55.

49.29 Loss of eligibility. If a court finds or it is determined after an administrative hearing that meets the requirements in regulations of the federal department of health and human services under 42 USC 616 (b) that an individual who is a member of a family applying for or receiving aid under s. 49.19, for the purpose of establishing or maintaining eligibility for aid under s. 49.19 or of increasing the amount of aid received under s. 49.19, intentionally made a false or misleading statement, intentionally misrepresented or withheld facts or committed an act intended to mislead or to misrepresent or withhold facts, the department shall consider the income and assets of the person but shall remove the needs of the person in determining the amount of any payment made to the person's family under s. 49.19 as follows:

(1) Upon the first occurrence, for 6 months.

(2) Upon the 2nd occurrence, for one year.

(3) Upon the 3rd occurrence, permanently.

History: 1985 a. 29; 1991 a. 313; 1993 a. 16; 1995 a. 27 ss. 2787, 2919.

49.32 Department; powers and duties. (1) UNIFORM FEE SCHEDULE, LIABILITY AND COLLECTIONS. (a) Except as provided in s. 49.345 (14) (b) and (c), the department shall establish a uniform system of fees for services under this subchapter and ch. 48, and community−based juvenile delinquency−related services under ch. 938, purchased or provided by the department or by a county department under s. 46.215, 46.22, or 46.23, except as provided in s. 49.22 (6) and except when, as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22, or 46.23 shall apply the fees that it collects under this program to cover the cost of those services.

NOTE: Par. (a) is shown as affected by 2015 Wis. Acts 55 and 381 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(am) Paragraph (a) does not prevent the department from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7).

(ap) Paragraph (a) does not prevent a county department under s. 46.215, 46.22, or 46.23 from charging and collecting the cost of an examination ordered under s. 938.295 (2) (a) as authorized under s. 938.295 (2) (c).

(b) Except as provided in s. 49.345 (14) (b) and (c), any person receiving services purchased or provided under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a).

(c) The department shall make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring an action in the name of the department to enforce the liability established under par. (b). This paragraph does not apply to the recovery of fees for the care and services specified under s. 49.345.

(d) The department may compromise or waive all or part of the liability for services received. The sworn statement of the secretary shall be evidence of the services provided and the fees charged for the services.

(e) The department may delegate to county departments under s. 46.215, 46.22 or 46.23 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as it considers necessary to efficiently administer this subsection, subject to such conditions as the department considers appropriate.

(g) The department shall return to county departments under s. 46.215, 46.22 or 46.23 50 percent of collections made by the department for delinquent accounts previously delegated under par. (e) and then referred back to the department for collections.

(2) PAYMENT OF BENEFITS. (a) The department may make payments directly to recipients of public assistance or to such persons authorized to receive such payments in accordance with law and rules of the department on behalf of the counties. The department may charge the counties for the cost of operating public assistance systems which make such payments.

(b) The department may make social services payments and payments for community−based juvenile delinquency−related

services directly to recipients, vendors, or providers in accordance with law and rules of the department on behalf of the counties that have contracts to have those payments made on their behalf.

(c) A county department under s. 46.215, 46.22 or 46.23 shall provide the department with information which the department shall use to determine each person's eligibility and amount of payment. A county department under s. 46.215, 46.22 or 46.23 shall provide the department all necessary information in the manner prescribed by the department.

(d) The department shall disburse from state or federal funds or both the entire amount and charge the county for its share under s. 48.569.

(3) UNIFORM MANUAL. The department shall adopt policies and procedures and a uniform county policy and procedure manual to minimize unnecessary variations between counties in the administration of the aid to families with dependent children program. The department shall also require each county to use the manual in the administration of the program.

(4) EMPLOYMENT OF AID RECIPIENTS. The department shall assist state agencies in efforts under s. 230.147 to employ recipients of aid under s. 49.19.

(5) EMPLOYMENT AND TRAINING AND EDUCATION MANUAL. The department shall produce a manual describing employment and training and education programs for which recipients of public assistance benefits under this subchapter may qualify. The department shall distribute the manual, free of charge, to each county department under s. 46.215, 46.22 or 46.23.

(6) WELFARE REFORM STUDIES. The department shall request proposals from persons in this state for studies of the effectiveness of various program changes, referred to as welfare reform, to the aid to families with dependent children program, including the requirement that certain recipients of aid to families with dependent children with children under age 6 participate in training programs, the learnfare school attendance requirement under s. 49.26 (1) (g) and the modification of the earned income disregard under s. 49.19 (5) (am). The studies shall evaluate the effectiveness of the various efforts, including their cost−effectiveness, in helping individuals gain independence through the securing of jobs and providing financial incentives and in identifying barriers to independence.

(6m) MILWAUKEE PARENTAL CHOICE PROGRAM RESEARCH. (a) In this subsection, "qualified independent researcher" means a faculty member of a university who satisfies all of the following:

1. The faculty member has an approved protocol from an institutional review board for human subjects research to work with data containing personal information for the purposes of evaluating the program under s. 119.23.

2. The faculty member has received from the state and properly managed data containing personal information for the purposes of evaluating the program under s. 119.23 before July 14, 2015.

(b) The department shall permit a qualified independent researcher to have access to any database maintained by the department for the purpose of cross−matching information contained in any such database with a database that both is in the possession of the qualified independent researcher and contains information regarding pupils participating in the program under s. 119.23. The department may charge a fee to the qualified independent researcher for the information that does not exceed the cost incurred by the department to provide the information.

(7) PERIODIC RECORDS MATCHES. (a) The department shall conduct a program to periodically verify the eligibility of recipients of aid to families with dependent children under s. 49.19 and of participants in Wisconsin works under ss. 49.141 to 49.161 through a check of school enrollment records of local school boards as provided in s. 118.125 (2) (i).

(b) The department shall conduct a program to periodically match the records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 with the records of recipients under those programs in other states. If an agreement with the other states can be obtained, matches with records of states contiguous to this state shall be conducted at least annually.

(c) The department shall conduct a program to periodically match the address records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 to verify residency and to identify recipients receiving duplicate or fraudulent payments.

(d) The department, with assistance from the department of corrections, shall conduct a program to periodically match the records of persons confined in state correctional facilities with the records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 to identify recipients who may be ineligible for benefits.

(8) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make a periodic check of the amounts earned by recipients of aid to families with dependent children under s. 49.19 and by participants under Wisconsin works under ss. 49.141 to 49.161 through a check of the amounts credited to the recipient's social security number. The department shall make an investigation into any discrepancy between the amounts credited to a social security number and amounts reported as income on the declaration application and take appropriate action under s. 946.93 when warranted. The department shall use the state wage reporting system under 1985 Wisconsin Act 17, section 65 (1), when the system is implemented, to make periodic earnings checks.

(9) MONTHLY REPORTS OF RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN. (a) Each county department under s. 46.215, 46.22, or 46.23 administering aid to families with dependent children shall maintain a monthly report at its office showing the names of all persons receiving aid to families with dependent children together with the amount paid during the preceding month. Each Wisconsin Works agency administering Wisconsin Works under ss. 49.141 to 49.161 shall maintain a monthly report at its office showing the names of all persons receiving benefits under s. 49.148 together with the amount paid during the preceding month. Nothing in this paragraph shall be construed to authorize or require the disclosure in the report of any information (names, amounts of aid or otherwise) pertaining to adoptions, or aid furnished for the care of children in foster homes under s. 48.645 or 49.19 (10).

(b) The report under par. (a) shall be open to public inspection at all times during regular office hours and may be destroyed after the next succeeding report becomes available. Any person except any public officer, seeking permission to inspect such report shall be required to prove his or her identity and to sign a statement setting forth his or her address and the reasons for making the request and indicating that he or she understands the provisions of par. (c) with respect to the use of the information obtained. The use of a fictitious name is a violation of this section. Within 7 days after the record is inspected, or on the next regularly scheduled communication with that person, whichever is sooner, the county department or Wisconsin works agency shall notify each person whose name and amount of aid was inspected that the record was inspected and of the name and address of the person making such inspection. County departments under ss. 46.215, 46.22 and 46.23 administering aid to families with dependent children and Wisconsin works agencies administering Wisconsin works under ss. 49.141 to 49.161 may withhold the right to inspect the name of and amount paid to recipients from private individuals who are

not inspecting this information for purposes related to public, educational, organizational, governmental or research purposes until the person whose record is to be inspected is notified by the county department or Wisconsin works agency, but in no case may the county department or Wisconsin works agency withhold this information for more than 5 working days. The county department or Wisconsin works agency shall keep a record of such requests. The record shall indicate the name, address, employer and telephone number of the person making the request. If the person refuses to provide his or her name, address, employer and telephone number, the request to inspect this information may be denied.

(c) It is unlawful to use any information obtained through access to such report for political or commercial purposes. The violation of this provision is punishable upon conviction as provided in s. 49.83.

(10) RELEASE OF INFORMATION TO LAW ENFORCEMENT OFFICERS. (a) Each county department under s. 46.215, 46.22, or 46.23 may release the current address of a recipient of food stamps or of aid under s. 49.19, and each Wisconsin works agency may release the current address of a participant in Wisconsin works under ss. 49.141 to 49.161, to a law enforcement officer if the officer meets all of the following conditions:

1. The officer provides, in writing, the name of the recipient or participant.

2. The officer satisfactorily demonstrates, in writing, all of the following:

a. That the recipient or participant is a fugitive felon under 42 USC 608 (a) (9), is violating a condition of probation, extended supervision or parole imposed under state or federal law or has information that is necessary for the officer to conduct the official duties of the officer.

b. That the location or apprehension of the recipient or participant under subd. 2. a. is within the official duties of the officer.

c. That the officer is making the request in the proper exercise of his or her duties under subd. 2. b.

(b) If a law enforcement officer believes, on reasonable grounds, that a warrant has been issued and is outstanding for the arrest of a Wisconsin works participant, the law enforcement officer may request that a law enforcement officer be notified when the participant appears to obtain his or her benefits under the Wisconsin works program. At the request of a law enforcement officer under this paragraph, an employee of a Wisconsin works agency who disburses benefits may notify a law enforcement officer when the participant appears to obtain Wisconsin works benefits.

(10m) RELEASE OF ADDRESSES OF RECIPIENTS INVOLVED IN LEGAL PROCEEDINGS. (a) A county department, relief agency under s. 49.01 (3m) or Wisconsin works agency shall, upon request, and after providing the notice to the recipient required by this paragraph, release the current address of a recipient of relief under s. 49.01 (3), aid to families with dependent children or benefits under s. 49.148 to a person, the person's attorney or an employee or agent of that attorney, if the person is a party to a legal action or proceeding in which the recipient is a party or a witness, unless the person is a respondent in an action commenced by the recipient under s. 813.12, 813.122, 813.123, 813.125 or 813.127. If the person is a respondent in an action commenced by the recipient under s. 813.12, 813.122, 813.123, 813.125 or 813.127, the county department, relief agency or Wisconsin works agency may not release the current address of the recipient. No county department, relief agency or Wisconsin works agency may release an address under this paragraph until 21 days after the address has been requested. A person requesting an address under this paragraph shall be required to prove his or her identity and his or her participation as a party in a legal action or proceeding in which the recipient is a party or a witness by presenting a copy of the pleading or a copy of the subpoena for the witness. The person shall also be required to sign a statement setting forth his or her name, address and the reasons for making the request and indicating that he or she understands the provisions of par. (b) with respect to the use of the information obtained. The statement shall be made on a form prescribed by the department and shall be sworn and notarized. Within 7 days after an address has been requested under this paragraph, the county department, relief agency or Wisconsin works agency shall mail to each recipient whose address has been requested a notification of that fact on a form prescribed by the department. The form shall also include the date on which the address was requested, the name and address of the person who requested the disclosure of the address, the reason that the address was requested and a statement that the address will be released to the person who requested the address no sooner than 21 days after the date on which the request for the address was made. County departments, relief agencies and Wisconsin works agencies shall keep a record of each request for an address under this paragraph.

(b) No person may use an address obtained under this subsection for a purpose that is not connected with the legal action or proceeding to which the person requesting the address is a party. No person may use an address obtained under this subsection for political or commercial purposes. No person may request an address under par. (a) using a fictitious name. Any person who violates this paragraph is subject to the penalties under s. 49.83.

(11m) CONSOLIDATION OF ALLOCATED TRIBAL FUNDS. The department may consolidate funds appropriated under s. 20.437 that are authorized or required to be allocated to federally recognized American Indian tribes or bands into a single distribution for each tribe or band in each fiscal year.

(12) ADMINISTRATIVE HEARINGS AND APPEALS. Any hearing under s. 227.42 granted by the department under this subchapter or ch. 48 may be conducted before the division of hearings and appeals in the department of administration.

History: 1995 a. 27 ss. 2035 to 2037, 2276d, 2805 to 2809, 2927 to 2930, 3146 to 3149; 1995 a. 289, 361, 370, 404; 1997 a. 27, 35, 237, 252, 283; 2001 a. 16; 2003 a. 33; 2007 a. 20 ss. 1483 to 1491, 9121 (6) (a); 2009 a. 28; 2013 a. 226; 2015 a. 55 ss. 1765 to 1767m, 4234; 2015 a. 381; s. 13.92 (2) (i).

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In Matter of Guardianship of Klisurich, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

Section 46.03 (18) and s. 46.10 (3) permit the department to promulgate rules that consider non−liable family members' incomes in determining a liable family member's ability to pay. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Section 46.03 (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery. Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In Matter of S.E. Trust, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under s. 46.03 (18) and s. 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. Interest of Kevin C. 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

NOTE: The above−cited cases relate to uniform fee schedules for services provided by predecessor agencies to the department of children and families under s. 46.03 (18).

49.325 County department budgets and contracts.

(1) BUDGET. (a) Each county department under s. 46.215, 46.22, or 46.23 shall submit its final budget for services purchased or directly provided under this subchapter or ch. 48 and for community−based juvenile delinquency−related services purchased or directly provided under ch. 938 to the department by December 31 annually.

(b) The department shall submit a model of the contract under sub. (2g) (a) to each county department under s. 46.215, 46.22 or 46.23 by May 1 annually.

(2) ASSESSMENT OF NEEDS. Before developing and submitting a proposed budget for services purchased or directly provided under this subchapter or ch. 48 and for community−based juvenile delinquency−related services purchased or directly provided under ch. 938 to the county executive or county administrator or the county board, the county departments listed in sub. (1) shall assess needs and inventory resources and services, using an open public participation process.

(2g) CONTRACT. (a) The department shall annually submit to the county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with

a multicounty department a proposed written contract containing the allocation of funds for services purchased or directly provided under this subchapter or ch. 48, for community−based juvenile delinquency−related services purchased or directly provided under ch. 938, and for such administrative requirements as necessary. The contract as approved may contain conditions of participation consistent with federal and state law. The contract may also include provisions necessary to ensure uniform cost accounting of services. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department shall approve the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department may designate an agent to approve addenda to any contract after the contract has been approved.

(b) The department may not approve contracts for amounts in excess of available revenues. The county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department may appropriate funds for community−based juvenile delinquency−related services. Actual expenditure of county funds shall be reported in compliance with procedures developed by the department.

(c) The joint committee on finance may require the department to submit contracts between county departments under ss. 46.215, 46.22, and 46.23 and providers of services under this subchapter or ch. 48 or of community−based juvenile delinquency−related services under ch. 938 to the committee for review and approval.

(2r) WITHHOLDING FUNDS. (a) The department, after reasonable notice, may withhold a portion of the appropriation allocated to a county department under s. 46.215, 46.22 or 46.23 if the department determines that that portion of the allocated appropriation is any of the following:

1. For services under this subchapter or ch. 48 or community−based juvenile delinquency−related services under ch. 938 that duplicate or are inconsistent with services being purchased or provided by the department or other county departments receiving grants−in−aid or reimbursement from the department.

2. Inconsistent with state or federal statutes, rules, or regulations, in which case the department may also arrange for the provision of services under this subchapter or ch. 48 or community−based juvenile delinquency−related services under ch. 938 by an alternate agency. The department may not arrange for the provision of those services by an alternate agency unless the joint committee on finance or a review body designated by the committee reviews and approves the department's determination.

5. Inconsistent with the provisions of the county department's contract under sub. (2g).

(b) If the department withholds a portion of the allocable appropriation under par. (a), the county department under s. 46.215, 46.22 or 46.23 that is affected by the action of the department may submit to the county board of supervisors in a county with a single−county department or to its designated agent or the county boards of supervisors in counties with a multicounty department or their designated agents a plan to rectify the deficiency found by the department. The county board of supervisors or its designated agent in a county with a single−county department or the county boards of supervisors in counties with a multicounty department or their designated agents may approve or amend the plan and may submit for departmental approval the plan as adopted. If a multicounty department is administering a program, the plan may not be submitted unless each county board of supervisors which participated in the establishment of the multicounty department, or its designated agent, adopts it.

(3) OPEN PUBLIC PARTICIPATION PROCESS. (a) *Citizen advisory committee.* Except as provided in par. (b), the county board of supervisors of each county or the county boards of supervisors of 2 or more counties jointly shall establish a citizen advisory committee to the county departments under ss. 46.215, 46.22 and 46.23. The citizen advisory committee shall advise in the formulation of the budget under sub. (1). Membership on the committee shall be determined by the county board of supervisors in a county with a single−county committee or by the county boards of supervisors in counties with a multicounty committee and shall include representatives of those persons receiving services, providers of services and citizens. A majority of the members of the committee shall be citizens and consumers of services. At least one member of the committee shall be chosen from the governing or administrative board of the community action agency serving the county or counties under s. 49.265, if any. The committee's membership may not consist of more than 25 percent county supervisors, nor of more than 20 percent services providers. The chairperson of the committee shall be appointed by the county board of supervisors establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards of supervisors establishing it. The county board of supervisors in a county with a single−county committee or the county boards of supervisors in counties with a multicounty committee may designate an agent to determine the membership of the committee and to appoint the committee chairperson or approve the nominee.

(b) *Alternate process.* The county board of supervisors or the boards of 2 or more counties acting jointly may submit a report to the department on the open public participation process used under sub. (2). The county board of supervisors may designate an agent, or the boards of 2 or more counties acting jointly may designate an agent, to submit the report. If the department approves the report, establishment of a citizen advisory committee under par. (a) is not required.

(c) *Yearly report.* The county board of supervisors or its designated agent, or the boards of 2 or more counties acting jointly or their designated agent, shall submit to the department a list of members of the citizen advisory committee under par. (a) or a report on the open public participation process under par. (b) on or before July 1 annually.

History: 1995 a. 27; 2007 a. 20; 2015 a. 55.

49.34 Purchase of care and services. (1) All services under this subchapter and ch. 48 and all community−based juvenile delinquency−related services under ch. 938 purchased by the department or by a county department under s. 46.215, 46.22, or 46.23 shall be authorized and contracted for under the standards established under this section. The department may require the county departments to submit the contracts to the department for review and approval. For purchases of $10,000 or less the requirement for a written contract may be waived by the department. No contract is required for care provided by foster homes that are required to be licensed under s. 48.62. When the department directly contracts for services, the department shall follow the procedures in this section in addition to meeting purchasing requirements established in s. 16.75.

(2) All services purchased under this subchapter and ch. 48 and all community−based juvenile delinquency−related services purchased under ch. 938 shall meet standards established by the department and other requirements specified by the purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of the services, and document the specific services in meeting the service plan for the client and the objective of the service.

(3) (a) Purchase of service contracts shall be written in accordance with rules promulgated and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

(b) Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the contracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

(c) For proprietary agencies, contracts may include a percentage add−on for profit according to rules promulgated by the department.

(d) Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start−up period not to exceed 180 days. This reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

(e) If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, the actual cost incurred by the provider may be reimbursed in an amount determined by mutual agreement of the parties.

(4) For purposes of this section and as a condition of reimbursement, each provider under contract shall:

(a) Except as provided in this subsection, maintain a uniform double entry accounting system and a management information system that are compatible with cost accounting and control systems prescribed by the department.

(b) Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

(c) Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report if the care and services purchased exceed $25,000. The audit shall follow standards that the department prescribes.

(d) Transfer a client from one category of care or service to another only with the approval of the purchaser.

(e) Charge a uniform schedule of fees as specified under s. 49.32 (1) unless waived by the purchaser with the approval of the department. Whenever providers recover funds attributed to the client, such funds shall offset the amount paid under the contract.

(5) Except as provided in sub. (5m), the purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

(5m) (a) In this subsection:

1. "Provider" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this section to provide client services on the basis of a unit rate per client service or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that contracts under this section to provide client services on the basis of a unit rate per client service.

2. "Rate−based service" means a service or a group of services, as determined by the department, that is reimbursed through a prospectively set rate and that is distinguishable from other services or groups of services by the purpose for which funds are provided for that service or group of services and by the source of funding for that service or group of services.

(b) 1. Subject to subds. 2. and 3. and par. (em), if revenue under a contract for the provision of a rate−based service exceeds allowable costs incurred in the contract period, the provider may retain from the surplus generated by that rate−based service up to 5 percent of the contract amount. A provider that retains a surplus under this subdivision shall use that retained surplus to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate−based service that generated the surplus or to address the programmatic needs of clients served by the same rate−based service that generated the surplus. This subdivision does not apply to a child welfare agency that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02 (15d).

2. Subject to subd. 3. and par. (em), a provider may accumulate funds from more than one contract period under this paragraph, except that, if at the end of a contract period the amount accumulated from all contract periods for a rate−based service exceeds 10 percent of the amount of all current contracts for that rate−based service, the provider shall, at the request of a purchaser, return to that purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client for that rate−based service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a rate−based service that is equal to or exceeds 10 percent of the amount of all current contracts for that rate−based service, the provider shall apply 50 percent of that accumulated amount to reducing its unit rate per client for that rate−based service in the next contract period. The department may grant an exception to this subdivision upon request of a provider that is a child welfare agency that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02 (15d).

3. If on December 31, 1995, the amount accumulated by a provider from all contract periods ending on or before that date for all rate−based services provided by the provider exceeds 10 percent of the provider's total contract amount for all rate−based services provided by the provider in 1995, the provider shall, at the request of a purchaser, return to that purchaser the purchaser's proportional share of that excess.

(em) Notwithstanding par. (b) 1. and 2., a county department under s. 46.215, 51.42, or 51.437 providing client services in a county having a population of 750,000 or more or a nonstock, nonprofit corporation providing client services in such a county may not retain a surplus generated by a rate−based service or accumulate funds from more than one contract period for a rate−based service from revenues that are used to meet the maintenance−of−effort requirement under the federal temporary assistance for needy families program under 42 USC 601 to 619.

(f) All providers that are subject to this subsection shall comply with any financial reporting and auditing requirements that the department may prescribe. Those requirements shall include a requirement that a provider provide to any purchaser and the department any information that the department needs to claim federal reimbursement for the cost of any services purchased from the provider and a requirement that a provider provide audit reports to any purchaser and the department according to standards specified in the provider's contract and any other standards that the department may prescribe.

(6) Contracts may be renegotiated by the purchaser under conditions specified in the contract.

(7) The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

History: 1995 a. 27; 1997 a. 79; 2007 a. 20; 2009 a. 28, 335; 2015 a. 55, 128, 172.

49.343 Rates for residential care centers, group homes, and child welfare agencies. (1d) DEFINITIONS. In this section:

(a) "Administrative rate" means the difference between the rate charged by a child welfare agency to a purchaser of foster care services and the rate paid by the child welfare agency to a foster parent for the care and maintenance of a child.

(b) "Child welfare agency" means a child welfare agency that is authorized under s. 48.61 (7) to license foster homes.

(c) "Group home" has the meaning given in s. 48.02 (7).

(cg) "Performance−based contracting system" means a system of paying a provider for services based on the achievement of specified measurable outcomes.

(cr) "Provider" means a residential care center for children and youth, a group home, or a child welfare agency.

(d) "Residential care center for children and youth" has the meaning given in s. 48.02 (15d).

(1g) ESTABLISHMENT OF RATES. For services provided beginning on January 1, 2011, the department shall establish the per client rate that a residential care center for children and youth or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its foster care services, as provided in this section. In establishing rates for a placement specified in s. 938.357 (4) (c) 1. or 2., the department shall consult with the department of corrections. A residential care center for children and youth and a group home shall charge all purchasers the same rate for the same services and a child welfare agency shall charge all purchasers the same administrative rate for the same foster care services. The department shall determine the levels of care created under the rules promulgated under s. 48.62 (8) to which this section applies.

(2) DETERMINATION OF RATES. (a) By October 1, annually, a residential care center for children and youth or a group home shall submit to the department the per client rate that it proposes to charge for services provided in the next year and a child welfare agency shall submit to the department the proposed per client administrative rate that it proposes to charge for foster care services provided in the next year. The department shall provide forms and instructions for the submission of proposed rates under this paragraph and a residential care center for children and youth, group home, or child welfare agency that is required to submit a proposed rate under this paragraph shall submit that proposed rate using those forms and instructions.

(b) The department shall review a proposed rate submitted under par. (a) and audit the provider submitting the proposed rate to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the provider to provide those services, and the reasonable and necessary costs of providing those services. In reviewing a proposed rate, the department shall consider all of the following factors:

1. Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

1m. Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

2. Changes in the allowable costs of the residential care center for children and youth, group home, or child welfare agency based on current actual cost data or documented projections of costs.

3. Changes in program utilization that affect the per client rate or per client administrative rate.

4. Changes in the department's expectations relating to service delivery.

5. Changes in service delivery proposed by the provider and agreed to by the department.

6. The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services.

6m. Whether the agency is accredited by a national accrediting body that has developed child welfare standards.

7. Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage, as defined in s. 49.141 (1) (g).

8. Competitive factors.

9. The availability of funding to pay for the services to be provided under the proposed rate.

10. Any other factor relevant to the setting of a rate that the department may determine by rule promulgated under sub. (4).

(c) If the department determines under par. (b) that a proposed rate submitted under par. (a) is appropriate, the department shall approve the proposed rate. If the department does not approve a proposed rate, the department shall negotiate with the provider to determine an agreed to rate. If after negotiations a rate is not agreed to, the department and the provider shall engage in mediation under the rate resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to rate. If after mediation a rate is not agreed to, the department shall order a rate for the service after considering the factors under par. (b). A provider may appeal the rate set by the department as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

(3) AUDIT. The department may require an audit of any provider for the purpose of collecting federal funds.

(4) RULES. The department shall promulgate rules to implement this section. Those rules shall include rules providing for all of the following:

(a) Standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a provider to provide those services, and the reasonable and necessary costs of providing those services.

(b) Factors for the department to consider in reviewing a proposed rate.

(c) Procedures for reviewing proposed rates, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

(5) ADVISORY COMMITTEE. The secretary shall create an advisory committee under s. 15.04 (1) (c) consisting of representatives of purchasers; county departments; the department, in a county having a population of 750,000 or more; tribes; consumers; and a statewide association of private, incorporated family and children's social service agencies representing all groups of providers that are affected by the rate regulation process. The committee shall advise the department on all of the following:

(a) The development of administrative rules under sub. (4).

(b) The implementation of rate regulation for providers as authorized under this section.

(c) The identification of the measurements specified in sub. (6) (a) and the development of the payment levels specified in sub. (6) (a).

(6) PERFORMANCE−BASED CONTRACTING SYSTEM. (a) For purposes of implementing a performance−based contracting system, the department, in cooperation with the advisory committee created under sub. (5), shall do all of the following:

1. Identify measurements by which to evaluate the performance of providers in meeting both the goals for the children placed in their care and the goals for the out−of−home care system in this state and adjust, as needed, those measurements.

2. Develop payment levels that correspond to the achievement of the measurements identified under subd. 1. based on the assessed level of care of a child.

(b) By November 1, 2010, the department shall submit a report that outlines a plan for implementing a performance−based contracting system to the standing committee of each house of the legislature that is concerned with child welfare issues. The report shall describe the measurements identified under par. (a) 1. and the payment levels developed under par. (a) 2.

(c) Beginning on January 1, 2011, the department shall select a representative sample of providers and evaluate the performance of those providers in attaining the measurements identified under par. (a) 1. Based on that evaluation, the department, in con-

sultation with the advisory committee created under sub. (5), shall adjust, as needed, those measurements by December 31, 2011.

(d) Beginning on January 1, 2013, the department shall evaluate the performance of all providers in this state in attaining the measurements identified under par. (a) 1. Based on that evaluation, the department, in consultation with the advisory committee created under sub. (5), shall adjust, as needed, those measurements by December 31, 2013, and in subsequent years as determined necessary by the department.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71, 335; 2011 a. 260 s. 80; 2015 a. 172.

49.345 Cost of care and maintenance; liability; collection and deportation counsel; collections; court actions; recovery. (1) Liability and the collection and enforcement of such liability for the care, maintenance, services, and supplies specified in this section are governed exclusively by this section, except in cases of child support ordered by a court under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2) or ch. 767.

(2) Except as provided in sub. (14) (b) and (c), any person, including a person placed under s. 48.32 (1) (am) or (b), 48.345 (3), 48.357 (1) or (2m), 938.183, 938.34 (3) or (4d), or 938.357 (1), (2m), (4), or (5) (e), receiving care, maintenance, services, and supplies provided by any institution in this state, in which the state is chargeable with all or part of the person's care, maintenance, services, and supplies, and the person's property and estate, including the homestead, and the spouse of the person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of the person, and their property and estates, including their homestead, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, and his or her property and estate, including his or her homestead, shall be liable for the cost of the care, maintenance, services, and supplies in accordance with the fee schedule established by the department under s. 49.32 (1). If a spouse, widow, or minor, or an incapacitated person may be lawfully dependent upon the property for his or her support, the court shall release all or such part of the property and estate from the charges that may be necessary to provide for the person. The department shall make every reasonable effort to notify the liable persons as soon as possible after the beginning of the maintenance, but the notice or the receipt of the notice is not a condition of liability.

(3) After investigation of the liable persons' ability to pay, the department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay, giving due regard to relationship and the present needs of the person or of the lawful dependents. However, the liability of relatives for maintenance shall be in the following order: first, the spouse of the person; then, in the case of a minor, the parent or parents.

(4) (a) If a person liable under sub. (2) fails to make payment or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order.

(b) If judgment is rendered in an action brought under par. (a) for any balance that is 90 or more days past due, interest at the rate of 12 percent per year shall be computed by the clerk and added to the liable person's costs. That interest shall begin on the date on which payment was due and shall end on the day before the date of any interest that is computed under s. 814.04 (4).

(c) If the department issues an order to compel payment under par. (a), interest at the rate of 12 percent per year shall be computed by the department and added at the time of payment to the person's liability. That interest shall begin on the date on which payment was due and shall end on the day before the date of final payment.

(5) If any person named in an order to compel payment issued under sub. (4) (a) fails to pay the department any amount due under the terms of the order, and no contested case to review the order is pending, and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this subsection shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(6) The sworn statement of the collection and deportation counsel, or of the secretary, shall be evidence of the fee and of the care and services received by the person.

(7) The department shall administer and enforce this section. It shall appoint an attorney to be designated "collection and deportation counsel" and other necessary assistants. The department may delegate to the collection and deportation counsel such other powers and duties as it considers advisable. The collection and deportation counsel or any of the assistants may administer oaths, take affidavits and testimony, examine public records, and subpoena witnesses and the production of books, papers, records, and documents material to any matter of proceeding relating to payments for the cost of maintenance. The department shall encourage agreements or settlements with the liable person, having due regard to ability to pay and the present needs of lawful dependents.

(8) The department may do any of the following:

(a) Appear for the state in any and all collection and deportation matters arising in the several courts, and may commence suit in the name of the department to recover the cost of maintenance against the person liable therefor.

(b) Determine whether any person is subject to deportation, and on behalf of this state enter into reciprocal agreements with other states for deportation and importation of persons who are public charges, upon such terms as will protect the state's interests and promote mutual amicable relations with other states.

(c) From time to time investigate the financial condition and needs of persons liable under sub. (2), their present ability to maintain themselves, the persons legally dependent upon them for support, the protection of the property and investments from which they derive their living and their care and protection, for the purpose of ascertaining the person's ability to make payment in whole or in part.

(d) After due regard to the case and to a spouse and minor children who are lawfully dependent on the property for support, compromise or waive any portion of any claim of the state or county for which a person specified under sub. (2) is liable, but not any claim payable by an insurer under s. 632.89 (2) or (4m) or by any other 3rd party.

(e) Make an agreement with a person who is liable under sub. (2), or who may be willing to assume the cost of maintenance of any person, providing for the payment of such costs at a specified rate or amount.

(f) Make adjustment and settlement with the several counties for their proper share of all moneys collected.

(g) Pay quarterly from the appropriation under s. 20.437 (1) (gg) the collection moneys due county departments under ss. 46.215, 46.22, and 46.23. Payments shall be made as soon after the close of each quarter as is practicable.

(9) Any person who willfully testifies falsely as to any material matter in an investigation or proceeding under this section shall be guilty of perjury. Banks, employers, insurers, savings banks, savings and loan associations, brokers, and fiduciaries,

upon request of the department, shall furnish in writing and duly certified, full information regarding the property, earnings, or income or any funds deposited to the credit of or owing to any person liable under sub. (2). That certified statement shall be admissible in evidence in any action or proceeding to compel payment under this section, and shall be evidence of the facts stated in the certified statement, if a copy of the statement is served upon the party sought to be charged not less than 3 days before the hearing.

(10) The department shall make all reasonable and proper efforts to collect all claims for maintenance, to keep payments current, and periodically to review all unpaid claims.

(11) (a) Except as provided in par. (b), in any action to recover from a person liable under this section, the statute of limitations may be pleaded in defense.

(b) If a person who is liable under this section is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. This paragraph applies to liability incurred on or after July 20, 1985.

(14) (a) Except as provided in pars. (b) and (c), liability of a person specified in sub. (2) or s. 49.32 (1) for care and maintenance of persons under 18 years of age in residential, nonmedical facilities such as group homes, foster homes, subsidized guardianship homes, and residential care centers for children and youth is determined in accordance with the cost−based fee established under s. 49.32 (1). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (4m) or by other 3rd−party benefits, subject to rules that include formulas governing ability to pay established by the department under s. 49.32 (1). Any liability of the person not payable by any other person terminates when the person reaches age 18, unless the liable person has prevented payment by any act or omission.

(b) Except as provided in par. (c), and subject to par. (cm), liability of a parent specified in sub. (2) or s. 49.32 (1) for the care and maintenance of the parent's minor child who has been placed by a court order under s. 48.32, 48.355, 48.357, 938.183, 938.355, or 938.357 in a residential, nonmedical facility such as a group home, foster home, subsidized guardianship home, or residential care center for children and youth shall be determined by the court by using the percentage standard established by the department under s. 49.22 (9) and by applying the percentage standard in the manner established by the department under par. (g).

(c) Upon request by a parent, the court may modify the amount of child support payments determined under par. (b), subject to par. (cm), if, after considering the following factors, the court finds by the greater weight of the credible evidence that the use of the percentage standard is unfair to the child or to either of the parents:

1. The needs of the child.

2. The physical, mental, and emotional health needs of the child, including any costs for the child's health insurance provided by a parent.

3. The standard of living and circumstances of the parents, including the needs of each parent to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

4. The financial resources of the parents.

5. The earning capacity of each parent, based on each parent's education, training, and work experience and based on the availability of work in or near the parent's community.

6. The need and capacity of the child for education, including higher education.

7. The age of the child.

8. The financial resources and the earning ability of the child.

9. The needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

10. The best interests of the child, including, but not limited to, the impact on the child of expenditures by the family for improvement of any conditions in the home that would facilitate the reunification of the child with the child's family, if appropriate, and the importance of a placement that is the least restrictive of the rights of the child and the parents and the most appropriate for meeting the needs of the child and the family.

11. Any other factors that the court in each case determines are relevant.

(cm) 1. Except as provided in subd. 2., if a parent who is required to pay child support under par. (b) or (c) is receiving adoption assistance under s. 48.975 for the child for whom support is ordered, the amount of the child support payments determined under par. (b) or (c) may not exceed the amount of the adoption assistance maintenance payments under s. 48.975 (3) (a). If an agreement under s. 48.975 (4) is in effect that provides for a payment of $0 under s. 48.975 (3) (a), the payment of $0 shall be considered to be an adoption assistance maintenance payment for purposes of this subdivision.

2. Subdivision 1. does not apply if, after considering the factors under par. (c) 1. to 11., the court finds by the greater weight of the credible evidence that limiting the amount of the child support payments to the amount of the adoption assistance maintenance payments under s. 48.975 (3) (a) is unfair to the child or to either of the parents.

(d) If the court finds under par. (c) that use of the percentage standard is unfair to the minor child or either of the parents, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the parent, its reasons for the amount of the modification, and the basis for the modification.

(e) 1. An order issued under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2) for support determined under this subsection constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, income continuation insurance benefits under s. 40.62, duty disability benefits under s. 40.65, benefits under ch. 102 or 108, and other money due or to be due in the future to the county department under s. 46.215, 46.22, or 46.23 in the county where the order was entered or to the department, depending upon the placement of the child as specified by rules promulgated under subd. 5. The assignment shall be for an amount sufficient to ensure payment under the order.

2. Except as provided in subd. 3., for each payment made under the assignment, the person from whom the payer under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the payer.

3. Benefits under ch. 108 may be assigned and withheld only in the manner provided in s. 108.13 (4). Any order to withhold benefits under ch. 108 shall be for an amount certain. When money is to be withheld from these benefits, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

4. No employer may use an assignment under this paragraph as a basis for the denial of employment to a person, the discharge of an employee, or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this subdivision may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Except as provided in this subdivision, restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this subdivision.

5. The department shall promulgate rules for the operation and implementation of assignments under this paragraph.

(f) If the amount of the child support determined under this subsection is greater than the cost for the care and maintenance of the minor child in the residential, nonmedical facility, the assignee under par. (e) 1. shall expend or otherwise dispose of any funds that are collected in excess of the cost of such care and maintenance in a manner that the assignee determines will serve the best interests of the minor child.

(g) For purposes of determining child support under par. (b), the department shall promulgate rules related to the application of the standard established by the department under s. 49.22 (9) to a child support obligation for the care and maintenance of a child who is placed by a court order under s. 48.32, 48.355, 48.357, 938.183, 938.355, or 938.357 in a residential, nonmedical facility. The rules shall take into account the needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

(16) The department shall delegate to county departments under ss. 46.215, 46.22, and 46.23 or the local providers of care and services meeting the standards established by the department under s. 49.34 the responsibilities vested in the department under this section for collection of fees for services other than those provided at state facilities, if the county departments or providers meet the conditions that the department determines are appropriate. The department may delegate to county departments under ss. 46.215, 46.22, and 46.23 the responsibilities vested in the department under this section for collection of fees for services provided at the state facilities if the necessary conditions are met.

History: 2007 a. 20 ss. 893, 1507; 2009 a. 28, 218; 2011 a. 260; 2015 a. 55, 373.

Sections 46.03 (18) and 46.10 do not constitute an unlawful delegation of legislative power. In Matter of Guardianship of Klisurich, 98 Wis. 2d 274, 296 N.W.2d 742 (1980).

Sections 46.03 (18) and 46.10 permit the department to promulgate rules that consider non−liable family members' incomes in determining a liable family member's ability to pay. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Section 46.03 (18) (b) imposes liability upon minors and parents for the costs of services, but does not give counties an automatic right of recovery; Section 46.10 governs enforcement procedure and allows courts to exercise discretion. In Matter of S.E. Trust, 159 Wis. 2d 709, 465 N.W.2d 231 (Ct. App. 1990).

The uniform fee system under ss. 46.03 (18) and 46.10 allows imputing income and, consequently, looking beyond tax returns to determine ability to pay. In Interest of Kevin C. 181 Wis. 2d 146, 510 N.W.2d 746 (Ct. App. 1993).

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education−related costs against the parents. Calumet County Department of Human Services v. Randall H. 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503, 01−1272.

NOTE: The above−cited cases relate to cost of care and maintenance for a person receiving services provided by predecessor agencies to the department of children and families under s. 46.10.

49.348 Recidivism reduction program. (1) The department may request proposals for a program that reduces the rate of recidivism of persons in the city of Milwaukee who have previously been incarcerated following a criminal conviction. The department shall specify that the program will be conducted under a contract with a 5−year term and that no payment will be made under the contract until the organization selected to conduct the program demonstrates, after the 5−year term, that the program met a certain minimum level of success, as determined under subs. (2) and (4). The selected organization may serve as an intermediary for obtaining funding to perform the contract by raising capital from private donors or investors and for subcontracting with direct providers to achieve the specified performance outcomes. In evaluating proposals, the department shall give a preference to those that incorporate reuniting parents with their children.

(2) The legislative audit bureau shall assist the department and the selected organization in identifying benchmarks by which to measure the organization's performance under the contract.

(4) After completion of the 5−year contract term, the legislative audit bureau shall conduct an audit of the program to determine whether the benchmarks identified under sub. (2) have been met.

History: 2015 a. 55.

49.35 Public assistance; supervisory functions of department. (1) (a) The department shall supervise the administration of programs under this subchapter and ch. 48 and of community−based juvenile delinquency−related programs under ch. 938. The department shall submit to the federal authorities state plans for the administration of programs under this subchapter and ch. 48 and of community−based juvenile delinquency−related programs under ch. 938 in such form and containing such information as the federal authorities require, and shall comply with all requirements prescribed to ensure their correctness.

(b) All records of the department and all county records relating to programs under this subchapter and ch. 48, community−based juvenile delinquency−related programs under ch. 938, and aid under s. 49.18, 1971 stats., s. 49.20, 1971 stats., and s. 49.61, 1971 stats., as affected by chapter 90, laws of 1973, shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding ss. 48.396 (2) and 938.396 (2), all county records relating to the administration of the services and public assistance specified in this paragraph shall be open to inspection at all reasonable hours by authorized representatives of the department.

(bm) All records of the department relating to aid provided under s. 49.19 are open to inspection at reasonable hours by members of the legislature who require the information contained in the records in pursuit of a specific state legislative purpose. All records of any county relating to aid provided under s. 49.19 are open to inspection at reasonable hours by members of the board of supervisors of the county or the governing body of a city, village or town located in the county who require the information contained in the records in pursuit of a specific county or municipal legislative purpose. The right to records access provided by this paragraph does not apply if access is prohibited by federal law or regulation or if this state is required to prohibit such access as a condition precedent to participation in a federal program in which this state participates.

(c) The department may at any time audit all county records relating to the administration of the services and public assistance specified in this section and may at any time conduct administrative reviews of county departments under ss. 46.215, 46.22 and 46.23. If the department conducts such an audit or administrative review in a county, the department shall furnish a copy of the audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single−county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.215, 46.22 or 46.23.

(2) The county administration of all laws relating to programs under this subchapter and ch. 48 and to community−based juvenile delinquency−related programs under ch. 938 shall be vested in the officers and agencies designated in the statutes.

History: 1995 a. 27; 2005 a. 344; 2007 a. 20; 2015 a. 55.

49.36 Work experience program for noncustodial parents. (1) In this section:

(a) "Custodial parent" means a parent who lives with his or her child for substantial periods of time.

(b) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe or band.

(2) The department may contract with any county, tribal governing body, or Wisconsin Works agency to administer a work experience and job training program for parents who are not custodial parents and who fail to pay child support or to meet their children's needs for support as a result of unemployment or underemployment. The program may provide the kinds of work experience and job training services available from the program under s. 49.193, 1997 stats., or s. 49.147 (3) or (4). The program may

also include job search and job orientation activities. The department shall fund the program from the appropriations under s. 20.437 (2) (dz) and (k).

(3) (a) Except as provided in par. (f) and subject to sub. (3m), a person ordered to register under s. 767.55 (2) (am) shall participate in a work experience program if services are available.

(b) A person may not be required to participate for more than 32 hours per week in the program under this section.

(c) A person may not be required to participate for more than 16 weeks during each 12−month period in a program under this section.

(d) If a person is required by a governmental entity to participate in another work or training program, the person may not be required to participate in a program under this section in a week for more than 32 hours minus the number of hours he or she is required to participate in the other work or training program in that week.

(e) If a person is employed, the person may not be required to participate in a program under this section in a week for more than 80 percent of the difference between 40 hours and the number of hours actually worked in the unsubsidized job during that week.

(f) A person who works, on average, 32 hours or more per week in an unsubsidized job is not required to participate in a program under this section.

(3m) A person is not eligible to participate in a program under this section unless the person satisfies all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual.

(4) When a person completes 16 weeks of participation in a program under this section, the county, tribal governing body, or Wisconsin works agency operating the program shall inform the clerk of courts, by affidavit, of that completion.

(5) A person participating in work experience as part of the program under this section is considered an employee of the county, tribal governing body, or Wisconsin works agency administering the program under this section for purposes of worker's compensation benefits only.

(6) A county, tribal governing body, or Wisconsin works agency administering the program under this section shall reimburse a person for reasonable transportation costs incurred because of participation in a program under this section up to a maximum of $25 per month.

(7) The department shall pay a county, tribal governing body, or Wisconsin works agency not more than $400 for each person who participates in the program under this section in the region in which the county, tribal governing body, or Wisconsin works agency administers the program under this section. The county, tribal governing body, or Wisconsin works agency shall pay any additional costs of the program.

History: 1987 a. 413; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 2135 to 2142; 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2005 a. 443 s. 265; 2007 a. 20; 2013 a. 20; 2015 a. 55.

49.38 Menominee Enterprises, Inc., bonds, acquisition. (1) The department is authorized to exercise options to purchase securities assigned to the state of Wisconsin under s. 710.05, 1973 stats., at par value, or to accept an assignment of such securities, for the purpose of providing relief, public assistance or welfare aid under this section.

(2) The department shall exercise the options to purchase such securities or accept an assignment of such securities when it finds that the owner of the securities is a resident of this state and is in need of public assistance, or who but for the ownership of such securities would qualify for public assistance. If the department exercises an option to purchase such security, the purchase price shall be paid out, at par value, as a relief payment. Where the department accepts an assignment of such security as provided in this section it shall pay out as relief an amount equal to the par value of the security assigned. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts as will in the discretion of the department meet the needs of the recipient and protect the public. The department is authorized to exercise the options to purchase assigned to it in whole or in part, or to accept an assignment of such securities in whole or in part. The department is granted such authority as may be necessary and convenient to enable it to exercise the functions and perform the duties required of it by this section, including without limitation because of enumeration the authority to promulgate rules governing eligibility and the furnishing and paying of relief under this section, the authority to enter into suitable agreements with the owner of the security or other appropriate persons for the purpose of carrying out this section, and the authority to sell or transfer the securities or defend and prosecute all actions concerning it and pay all just claims against it and do all other things necessary for the protection, preservation and management of the securities.

(3) If the relief, public assistance, or other welfare aid provided pursuant to this section is discontinued during the life of the person receiving such aid and the value of the securities transferred to the department exceed the total amount of assistance paid under this section, the excess of such property shall be returned to such person; and in the event of the person's death the excess shall be considered the property of such person for administration proceedings.

(4) The department may make loans to the owner of such securities for relief and welfare purposes which loans shall be secured by pledges of the securities to the state. The department may by rule establish the purposes for which loans may be made, permissible interest rates and fees, time and manner in which the loan is paid out, time and manner of repayment, general procedures to be followed in making loans, the action which shall be taken if a borrower defaults on a loan, maximum amount which may be loaned to any one borrower, and any other rules necessary to carry out the purposes of this section.

(5) Nothing in this section as created by chapter 2, laws of Special Session of 1963, is in derogation of other rights and remedies provided by law.

(6) On and after May 20, 1972, where the owner of such security is otherwise eligible for welfare assistance, such security shall be an exempt asset under the welfare law and shall not disqualify such person from receiving welfare assistance.

History: 1971 c. 302; 1975 c. 422 s. 163; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (19); 1985 a. 29, 120; 1989 a. 359; 1991 a. 316; 1995 a. 27 ss. 3180, 3181; Stats. 1995 s. 49.38.

NOTE: Ch. 303, 1971 laws, provided for returning to its original owners Menominee Enterprises, Inc. bonds assigned to the state as a condition for receiving public assistance.

49.385 No action against members of the Menominee Indian tribe in certain cases. No action shall be commenced under s. 46.10 or 49.08 or any other provision of law for the recovery from assets distributed to members of the Menominee Indian tribe and others by the United States pursuant to P.L. 83−399, as amended, for the value of relief or old−age assistance under s. 49.20, 1971 stats., as affected by chapter 90, laws of 1973, and the value of maintenance in state institutions under ch. 46, furnished prior to termination date as defined in s. 70.057 (1), 1967 stats., to any legally enrolled member of the Menominee Indian tribe, his or her dependents, or lawful distributees of such member under section 3, said P.L. 83−399, as amended. For purposes of this section, "legally enrolled members of the Menominee Indian tribe" shall include only those persons whose names appear on "Final Roll−Menominee Indian Tribe of Wisconsin" as proclaimed by the secretary of the interior November 26, 1957, and published at pages 9951 et seq. of the federal register, Thursday, December 12, 1957.

History: 1973 c. 147, 243; 1983 a. 192; 1995 a. 27 s. 2768m; Stats. 1995 s. 49.385.

SUBCHAPTER IV

MEDICAL ASSISTANCE

49.43 Definitions. As used in ss. 49.43 to 49.497 unless the context indicates otherwise:

(1e) "Accommodated person" means any person in a hospital or in a skilled nursing facility or intermediate care facility, as defined in Title XIX of the social security act, who would have been eligible for benefits under s. 49.19 or 49.77 or federal Title XVI if the person were not in such a hospital or facility, and any person in such an institution who can be found eligible for Title XIX under the social security act.

(1m) "Charge" means the customary, usual and reasonable demand for payment as established prospectively, concurrently or retrospectively by the department for services, care or commodities which does not exceed the general level of charges by others who render such service or care, or provide such commodities, under similar or comparable circumstances within the community in which the charge is incurred.

(2) "Cost" means the reasonable cost of services, care or commodities as determined by the principles of reimbursement used under 42 USC 1395 to 1395rr, in effect on April 30, 1980.

(2m) "Cost−effective" has the meaning given in P.L. 101−508, section 4402 (a) (2).

(2r) "County," "county department," and "county department under s. 46.215, 46.22, or 46.23" includes a multicounty consortium in accordance with a contract under s. 49.78 (2).

(3) "Dentist" means a person licensed to practice dentistry.

(3e) "Department" means the department of health services.

(3m) "Developmentally disabled" has the meaning specified in s. 51.01 (5).

(3r) "Group health plan" has the meaning given in P.L. 101−508, section 4402 (a) (2).

(4) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(5) "Hospital" means an institution, approved by the appropriate state agency, providing 24−hour continuous nursing service to patients confined therein; which provides standard dietary, nursing, diagnostic and therapeutic facilities; and whose professional staff is composed only of physicians and surgeons, or of physicians and surgeons and doctors of dental surgery.

(6) "Inpatient psychiatric hospital services for individuals 21 years of age or for individuals under 22 years of age who are receiving such service immediately prior to reaching age 21" has the same meaning as provided in section 1905 (h) of the federal social security act.

(6m) "Institution for mental diseases" has the meaning specified in 42 CFR 435.1009.

(7) "Intermediate care facility" means either of the following:

(a) An institution or distinct part thereof, which is:

1. Licensed or approved under state law to provide, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designated to provide but who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(b) A public institution, or distinct part thereof, which is:

1. Licensed or approved under state law for individuals with an intellectual disability or persons with related conditions, the primary purpose of which is to provide health or rehabilitative services for individuals with an intellectual disability according to rules promulgated by the department; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(8) "Medical assistance" means any services or items under ss. 49.45 to 49.473, except s. 49.472 (6), and under ss. 49.49 to 49.497, or any payment or reimbursement made for such services or items.

(8m) "Multicounty consortium" has the meaning given in s. 49.78 (1) (br).

(9) "Physician" means a person licensed to practice medicine and surgery, and includes graduates of osteopathic colleges holding an unlimited license to practice medicine and surgery.

(10) "Provider" means a person, corporation, limited liability company, partnership, unincorporated business or professional association and any agent or employee thereof who provides medical assistance.

(10m) "Public medical institution" has the meaning designated in Title XIX of the federal social security act.

(10s) "Secretary" means the secretary of health services.

(10v) "Serious and persistent mental illness" has the meaning given in s. 51.01 (14t).

(11) "Skilled nursing home" means a facility or distinct part thereof, which:

(a) Is licensed or approved under state law for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care;

(b) Employs sufficient registered nursing practitioners for supervision of those giving nursing care to patients; and

(c) Qualifies as a "skilled nursing facility" within the meaning of Title XIX of the social security act.

(12) "Spouse" means the legal husband or wife of the beneficiary, whether or not eligible for medical assistance.

History: 1977 c. 29 ss. 583m, 591; 1977 c. 418 s. 929 (18); 1979 c. 221; 1981 c. 20 s. 2202 (20) (m); 1981 c. 93; 1983 a. 189; 1987 a. 27; 1987 a. 403 s. 256; 1987 a. 413; 1991 a. 39; 1993 a. 27, 99, 112, 437; 1995 s. 27 ss. 2649, 2661, 2943 to 2946, 9126 (19); 1999 a. 9; 2001 a. 16; 2005 a. 264; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32, 126.

49.45 Medical assistance; administration. (1) PURPOSE. To provide appropriate health care for eligible persons and obtain the most benefits available under Title XIX of the federal social security act, the department shall administer medical assistance, rehabilitative and other services to help eligible individuals and families attain or retain capability for independence or self−care as hereinafter provided.

(2) DUTIES. (a) The department shall:

1. Exercise responsibility relating to fiscal matters, the eligibility for benefits under standards set forth in ss. 49.46 to 49.471, and general supervision of the medical assistance program.

2. Employ necessary personnel under the classified service for the efficient and economical performance of the program and shall supply residents of this state with information concerning the program and procedures.

3. Determine the eligibility of persons for medical assistance, rehabilitative, and social services under ss. 49.46, 49.468, 49.47, and 49.471 and rules and policies adopted by the department and may, under a contract under s. 49.78 (2), delegate all, or any portion, of this function to the county department under s. 46.215, 46.22, or 46.23 or a tribal governing body.

4. To the extent funds are available under s. 20.435 (4) (bm), certify all proper charges and claims for administrative services to the department of administration for payment and the department of administration shall draw its warrant forthwith.

5. Cooperate with the division for learning support in the department of public instruction to carry out the provisions of Title XIX.

6. Appoint such advisory committees as are necessary and proper.

7. Cooperate with the federal authorities for the purpose of providing the assistance and services available under Title XIX to obtain the best financial reimbursement available to the state from federal funds.

8. Periodically report to the joint committee on finance concerning projected expenditures and alternative reimbursement and cost control policies in the medical assistance program.

9. Periodically set forth conditions of participation and reimbursement in a contract with provider of service under this section.

10. a. After reasonable notice and opportunity for hearing, recover money improperly or erroneously paid or overpayments to a provider by offsetting or adjusting amounts owed the provider under the program, crediting against a provider's future claims for reimbursement for other services or items furnished by the provider under the program, or requiring the provider to make direct payment to the department or its fiscal intermediary.

b. Establish a deadline for payment of a recovery imposed under this subdivision and, if a provider fails to pay all of the amount to be recovered by the deadline, require payment, by the provider, of interest on any delinquent amount at the rate of 1 percent per month or fraction of a month from the date of the overpayment.

c. Promulgate rules to implement this subdivision.

11. a. Establish criteria for certification of providers of medical assistance and, except as provided in par. (b) 6m. and s. 49.48, and subject to par. (b) 7. and 8., certify providers who meet the criteria.

b. Promulgate rules to implement this subdivision.

c. The department shall accept relevant education, training, instruction, or other experience that an applicant obtained in connection with military service, as defined in s. 111.32 (12g), to count toward the education, training, instruction, or other experience that is required to certify providers of medical assistance if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience required for the certification.

12. a. Decertify a provider from or restrict a provider's participation in the medical assistance program, if after giving reasonable notice and opportunity for hearing the department finds that the provider has violated a federal statute or regulation or a state statute or administrative rule and the violation is, by statute, regulation, or rule, grounds for decertification or restriction. The department shall suspend the provider pending the hearing under this subdivision if the department includes in its decertification notice findings that the provider's continued participation in the medical assistance program pending hearing is likely to lead to the irretrievable loss of public funds and is unnecessary to provide adequate access to services to medical assistance recipients. As soon as practicable after the hearing, the department shall issue a written decision. No payment may be made under the medical assistance program with respect to any service or item furnished by the provider subsequent to decertification or during the period of suspension.

b. Promulgate rules to implement this subdivision.

12r. Notify the medical examining board, or any affiliated credentialing board attached to the medical examining board, of any decertification or suspension of a person holding a license granted by the board or the affiliated credentialing board if the grounds for the decertification or suspension include fraud or a quality of care issue.

13. Impose additional sanctions for noncompliance with the terms of provider agreements under subd. 9. or certification criteria established under subd. 11.

14. Assure due process in implementing subds. 12. and 13. by providing written notice, a fair hearing and a written decision.

15. Routinely provide notification to persons eligible for medical assistance, or such persons' guardians, of the department's access to provider records.

16. Notify the joint committee on finance and appropriate standing committees in each house of the legislature prior to renewing, extending or amending the claims processing contract under the medical assistance program.

18. Conduct outreach for the early and periodic screening, diagnosis and treatment program as required under 42 CFR 441. This activity is limited to persons under 21 years of age who have been determined to be eligible for medical assistance.

19. Contract with a county department under s. 46.21, 46.23, 51.42 or 51.437 to perform preadmission screening and resident review under sub. (6c).

20. Submit a report, by May 1, 1991, and annually thereafter, to the joint committee on finance on the participation rates of children in the early and periodic screening and diagnosis program.

22. After consulting with counties, independent living centers, consumer organizations and home health agencies, periodically identify those barriers to the provision of personal care services under s. 49.46 (2) (b) 6. j. which lead to a failure to respond to the needs and preferences of individuals who are eligible for these services and act to remove the barriers to the extent possible.

23. Promulgate rules that define "supportive services", "personal services" and "nursing services" provided in a certified residential care apartment complex, as defined under s. 50.01 (6d), for purposes of reimbursement under ss. 46.27 (11) (c) 7. and 46.277 (5) (e).

24. In consultation with hospitals, health maintenance organizations, county departments of social services and of human services and other interested parties, develop and, not later than January 1, 1999, implement a process for expediting medical assistance eligibility determinations for persons in urgent medical situations. The department shall promulgate any rules necessary for the implementation of that process.

24m. Promulgate rules that require that the written plan of care for persons receiving personal care services under medical assistance be reviewed by a registered nurse at least every 60 days. The rules shall provide that the written plan of care shall designate intervals for visits to the recipient's home by a registered nurse as part of the review of the plan of care. The designated intervals for visits shall be based on the individual recipient's needs, and each recipient shall be visited in his or her home by a registered nurse at least once in every 12−month period. The rules shall also provide that a visit to the recipient is also required if, in the course of the nurse's review of the plan of care, there is evidence that a change in the recipient's condition has occurred that may warrant a change in the plan of care.

(b) The department may:

1. Direct a county department under s. 46.215, 46.22 or 46.23 to perform other functions, responsibilities and services, including any functions related to health maintenance organizations, limited service health organizations and preferred provider plans.

2. Contract with any organization whether or not organized for profit to administer, in full or in part, the benefits under the medical assistance program including prepaid health care. The department shall accept bids on contracts for administrative services and services evaluating the medical assistance program as provided in ch. 16, but may accept the contract deemed most advantageous for claims processing services; or contract with any insurer authorized under the insurance code of this state to insure the program in full or in part and on behalf of the department. The department shall submit a report each December 31 to the governor, the joint committee on finance and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding the effectiveness of

the management information system for monitoring and analyzing medical assistance expenditures.

3. Audit all claims filed by any contractor making the payment of benefits paid under ss. 49.46 to 49.471 and make proper fiscal adjustments.

4. Audit claims filed by any provider of medical assistance, and as part of that audit, request of any such provider, and review, medical records of individuals who have received benefits under the medical assistance program.

5. Enter into contracts with providers who donate their services at no charge or who provide services for reduced payments.

6m. Limit the number of providers of particular services that may be certified under par. (a) 11. or the amount of resources, including employees and equipment, that a certified provider may use to provide particular services to medical assistance recipients, if the department finds that existing certified providers and resources provide services that are adequate in quality and amount to meet the need of medical assistance recipients for the particular services; and if the department finds that the potential for medical assistance fraud or abuse exists if additional providers are certified or additional resources are used by certified providers. The department shall promulgate rules to implement this subdivision.

7. Require, as a condition of certification under par. (a) 11., all providers of a specific service that is among those enumerated under s. 49.46 (2), 49.47 (6) (a), or 49.471 (11), as specified in this subdivision, to file with the department a surety bond issued by a surety company licensed to do business in this state. Providers subject to this subdivision provide those services specified under s. 49.46 (2), 49.47 (6) (a), or 49.471 (11) for which providers have demonstrated significant potential to violate s. 49.49 (3p) or (4m) (a) or 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require recovery under par. (a) 10., or to need additional sanctions under par. (a) 13. The surety bond shall be payable to the department in an amount that the department determines is reasonable in view of amounts of former recoveries against providers of the specific service and the department's costs to pursue those recoveries. The department shall promulgate rules to implement this subdivision that specify all of the following:

a. Services under Medical Assistance for which providers have demonstrated significant potential to violate s. 49.49 (3p) or (4m) (a) or 946.91 (2), (3) (a) or (b), (4), (5), or (6), to require recovery under par. (a) 10., or to need additional sanctions under par. (a) 13.

b. The amount or amounts of the surety bonds.

c. Terms of the surety bond, including amounts, if any, without interest to be refunded to the provider upon withdrawal or decertification from the medical assistance program.

8. Require a person who takes over the operation, as defined in sub. (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation of the provider, regardless of whether the person is currently certified. The department may withhold the certification required under this subdivision until any outstanding repayment under sub. (21) is made. The department shall promulgate rules to implement this subdivision.

9. After providing reasonable notice and opportunity for a hearing, charge an assessment to a provider that repeatedly has been subject to recoveries under par. (a) 10. a. because of the provider's failure to follow identical or similar billing procedures or to follow other identical or similar program requirements. The assessment shall be used to defray in part the costs of audits and investigations by the department under sub. (3) (g) and may not exceed $1,000 or 200 percent of the amount of any such repeated recovery made, whichever is greater. The provider shall pay the assessment to the department within 10 days after receipt of notice of the assessment or the final decision after administrative hearing, whichever is later. The department may recover any part of an assessment not timely paid by offsetting the assessment against any medical assistance payment owed to the provider and may refer any unpaid assessments not collected in this manner to the attorney general, who may proceed with collection under this subdivision. Failure to timely pay in any manner an assessment charged under this subdivision, other than an assessment that is offset against any medical assistance payment owed to the provider, is grounds for decertification under par. (a) 12. A provider's payment of an assessment does not relieve the provider of any other legal liability incurred in connection with the recovery for which the assessment is charged, but is not evidence of violation of a statute or rule. The department shall credit all assessments received under this subdivision to the appropriation account under s. 20.435 (4) (iL). The department shall promulgate rules to implement this subdivision.

(2n) REPORT ON MEDICAL ASSISTANCE PROGRAM CHANGES AND FINANCES. (a) In this subsection, "Medical Assistance program" includes any program operated under this subchapter, demonstration program operated under 42 USC 1315, and program operated under a waiver of federal law relating to medical assistance that is granted by the federal department of health and human services.

(b) Before January 1, 2015, and every 90 days thereafter, the department shall submit to the joint committee on finance a report that contains all of the following information:

1. An updated description of any Medical Assistance program changes implemented by the department, including any amendments to the Medical Assistance state plan.

2. An updated estimate of the projected savings associated with any changes described under subd. 1.

3. An updated projection of the total Medical Assistance program benefit expenditures during the fiscal biennium and an analysis of how these projected expenditures compare to the funding provided in the most recent biennial budget act.

(3) PAYMENT. (a) Reimbursement shall be made to each county department under ss. 46.215, 46.22, and 46.23 for any administrative services performed in the Medical Assistance program on the basis of s. 49.78 (8). For purposes of reimbursement under this paragraph, assessments completed under s. 46.27 (6) (a) are administrative services performed in the Medical Assistance program.

(ag) Reimbursement shall be made to each entity contracted with under s. 46.283 (2) for functional screenings performed by the entity.

(b) 1. The contractor, if any, administering benefits or providing prepaid health care under s. 49.46, 49.465, 49.468, 49.47, or 49.471 shall be entitled to payment from the department for benefits so paid or prepaid health care so provided or made available when a certification of eligibility is properly on file with the contractor in addition to the payment of administrative expense incurred pursuant to the contract and as provided in sub. (2) (a) 4., but the contractor shall not be reimbursed for benefits erroneously paid where no certification is on file.

2. The contractor, if any, insuring benefits under s. 49.46, 49.465, 49.468, 49.47, or 49.471 shall be entitled to receive a premium, in an amount and on terms agreed, for such benefits for the persons eligible to receive them and for its services as insurer.

(c) Payment for services provided under this section shall be made directly to the hospital, skilled and intermediate nursing homes, prepaid health care group, other organization or individual providing such services or to an organization which provides such services or arranges for their availability on a prepayment basis.

(d) No payment may be made for inpatient hospital services, skilled nursing home services, intermediate care facility services, tuberculosis institution services or inpatient mental institution services, unless the facility providing such services has in operation a utilization review program and meets federal regulations governing such utilization review program.

(dm) After distribution of computer software has been made under 1993 Wisconsin Act 16, section 9126 (13h), no payment may be made for home health care services provided to persons who are enrolled in the federal medicare program and are recipi-

ents of medical assistance under s. 49.46, 49.47, or 49.471 unless the provider of the services has in use the computer software to maximize payments under the federal medicare program under 42 USC 1395.

(e) 1. The department may develop, implement and periodically update methods for reimbursing or paying hospitals for allowable services or commodities provided a recipient. The methods may include standards and criteria for limiting any given hospital's total reimbursement or payment to that which would be provided to an economically and efficiently operated facility.

2. A hospital whose reimbursement or payment is determined on the basis of the methods developed and implemented under subd. 1. shall annually prepare a report of cost and other data in the manner prescribed by the department.

3. The department may adopt a prospective payment system under subd. 1. which may include consideration of an average rate per diem, diagnosis−related groups or a hospital−specific prospective rate per discharge.

4. If the department maintains a retrospective reimbursement system under subd. 1. for specific provided services or commodities, total reimbursement for allowable services, care or commodities provided recipients during the hospital's fiscal year may not exceed the lower of the hospital's charges for the services or the actual and reasonable allowable costs to the hospital of providing the services, plus any disproportionate share funding that the hospital is qualified to receive under 42 USC 1396r−4.

7. The daily reimbursement or payment rate to a hospital for services provided to medical assistance recipients awaiting admission to a skilled nursing home, intermediate care facility, community−based residential facility, group home, foster home, or other custodial living arrangement may not exceed the maximum reimbursement or payment rate based on the average adjusted state skilled nursing facility rate, created under sub. (6m). This limited reimbursement or payment rate to a hospital commences on the date the department, through its own data or information provided by hospitals, determines that continued hospitalization is no longer medically necessary or appropriate during a period when the recipient awaits placement in an alternate custodial living arrangement. The department may contract with a peer review organization, established under 42 USC 1320c to 1320c−10, to determine that continued hospitalization of a recipient is no longer necessary and that admission to an alternate custodial living arrangement is more appropriate for the continued care of the recipient. In addition, the department may contract with a peer review organization to determine the medical necessity or appropriateness of physician services or other services provided during the period when a hospital patient awaits placement in an alternate custodial living arrangement.

7m. Notwithstanding subd. 7., the daily reimbursement or payment rate for services at a hospital established under s. 45.50 (10) provided to medical assistance recipients whose continued hospitalization is no longer medically necessary or appropriate during a period where the recipient awaits placement in an alternate custodial living arrangement shall be the skilled nursing facility rate paid to a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50.

9. Hospital research costs that the department finds to be indirectly related to patient care are not allowable costs in establishing a hospital's reimbursement or payment rate under subd. 1.

10. Hospital procedures on an inpatient basis that could be performed on an outpatient basis shall be reimbursed or paid at the outpatient rate. The department shall determine which procedures this subdivision covers.

10m. All facilities listed in a certificate of approval issued to the University of Wisconsin Hospitals and Clinics Authority under s. 50.35 are a hospital for purposes of reimbursement under this section.

10r. All facilities listed in a certificate of approval issued to a free−standing pediatric teaching hospital under s. 50.35 are a hospital for purposes of reimbursement under this section. Notwithstanding this subdivision, the department shall use physician clinic reimbursement rates to reimburse the facilities under this section for types of services for which, before July 1, 2009, the department reimbursed the facilities using physician clinic reimbursement rates, as determined by the department.

11. The department shall use a portion of the moneys collected under s. 50.38 (2) (a) to pay for services provided by eligible hospitals, as defined in s. 50.38 (1), other than critical access hospitals, under the Medical Assistance Program under this subchapter, including services reimbursed on a fee−for−service basis and services provided under a managed care system. For state fiscal year 2008−09, total payments required under this subdivision, including both the federal and state share of Medical Assistance, shall equal the amount collected under s. 50.38 (2) (a) for fiscal year 2008−09 divided by 57.75 percent. For each state fiscal year after state fiscal year 2008−09, total payments required under this subdivision, including both the federal and state share of Medical Assistance, shall equal the amount collected under s. 50.38 (2) (a) for the fiscal year divided by 61.68 percent.

12. The department shall use a portion of the moneys collected under s. 50.38 (2) (b) to pay for services provided by critical access hospitals under the Medical Assistance Program under this subchapter, including services reimbursed on a fee−for−service basis and services provided under a managed care system. For each state fiscal year, total payments required under this subdivision, including both the federal and state share of Medical Assistance, shall equal the amount collected under s. 50.38 (2) (b) for the fiscal year divided by 61.68 percent.

(f) 1. Providers of services under this section shall maintain records as required by the department for verification of provider claims for reimbursement. The department may audit such records to verify actual provision of services and the appropriateness and accuracy of claims.

2. The department may deny any provider claim for reimbursement which cannot be verified under subd. 1. or may recover the value of any payment made to a provider which cannot be so verified. The measure of recovery will be the full value of any claim if it is determined upon audit that actual provision of the service cannot be verified from the provider's records or that the service provided was not included in s. 49.46 (2) or 49.471 (11). In cases of mathematical inaccuracies in computations or statements of claims, the measure of recovery will be limited to the amount of the error.

2m. The department shall adjust reimbursement claims for hospital services that are provided during a period when the recipient awaits placement in an alternate custodial living arrangement under par. (e) 7. and that fail to meet criteria the department may establish concerning medical necessity or appropriateness for hospital care. In addition, the department shall deny any provider claim for services that fail to meet criteria the department may establish concerning medical necessity or appropriateness.

3. Contractors under sub. (2) (b) shall maintain records as required by the department for audit purposes. Contractors shall provide the department access to the records upon request of the department, and the department may audit the records.

(fm) The department shall seek, on behalf of dentists who are providers, federal reimbursement for the cost of any equipment that the department requires dentists to use to verify medical assistance eligibility electronically. If the department is successful in obtaining federal reimbursement of that expense, the department shall reimburse dentists who are providers for the portion of the cost of the equipment that is reimbursed by the federal government.

(g) 1. The secretary may authorize personnel to audit or investigate and report to the department on any matter involving violations or complaints alleging violations of statutes, regulations, or rules applicable to the medical assistance program and to perform such investigations or audits as are required to verify the actual

provision of services or items available under the medical assistance program and the appropriateness and accuracy of claims for reimbursement submitted by providers participating in the program. Department employees authorized by the secretary under this paragraph shall be issued, and shall possess at all times while they are performing their investigatory or audit functions under this section, identification, signed by the secretary, that specifically designates the bearer as possessing the authorization to conduct medical assistance investigations or audits. Under the request of a designated person and upon presentation of the person's authorization, providers and medical assistance recipients shall accord the person access to any provider personnel, records, books, or documents or other information needed. Under the written request of a designated person and upon presentation of the person's authorization, providers and recipients shall accord the person access to any needed patient health care records of a recipient. Authorized employees may hold hearings, administer oaths, take testimony, and perform all other duties necessary to bring the matter before the department for final adjudication and determination.

2. The department shall promulgate rules to implement this paragraph.

(h) 1m. The failure or refusal of a provider to accord department auditors or investigators access as required under par. (g) to any provider personnel, records, books, patient health care records of medical assistance recipients, or documents or other information requested constitutes grounds for decertification or suspension of the provider from participation in the medical assistance program. No payment may be made for services rendered by the provider following decertification, during the period of suspension, or during any period of provider failure or refusal to accord access as required under par. (g).

1n. The department shall promulgate rules to implement this paragraph.

(j) Reimbursement for administrative contract costs under this section is limited to the funds available under s. 20.435 (4) (bm).

(k) If a physician performs a surgical procedure that is within the scope of practice of a podiatrist, as defined in s. 448.60 (3), the allowable charge for the procedure may not exceed the charge the department determines is reasonable.

(L) 1. In this paragraph:

a. "Designated health service" has the meaning given in 42 USC 1395nn (h) (6).

b. "Medicare" means coverage under Part A or Part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395ccc.

c. "Physician" has the meaning given in s. 448.01 (5).

d. "Referral" has the meaning given in 42 USC 1395nn (h) (5).

2. The department may not pay a provider for a designated health service that is authorized under this section or s. 49.46, 49.47, or 49.471, that is provided as the result of a referral made to the provider by a physician and that, under 42 USC 1396b (s), if made on behalf of a beneficiary of medicare under the requirements of 42 USC 1395nn, as amended to August 10, 1993, would result in the denial of payment for the service under 42 USC 1395nn.

3. A provider shall submit to the department information concerning the ownership arrangements of the provider or the entity of which the provider is a part that corresponds to the information required of providers under 42 USC 1395nn (f), as amended to August 10, 1993.

4. Any person who fails to comply with subd. 3. may be required to forfeit not more than $10,000. Each day of continued failure to comply constitutes a separate offense.

5. The department shall administer this paragraph consistently with 42 USC 1395nn and 42 USC 1396b (s).

(m) 1. To be certified under sub. (2) (a) 11. to provide transportation by specialized medical vehicle, a person must have at least one human service vehicle, as defined in s. 340.01 (23g), that satisfies the requirements imposed under s. 110.05 for a vehicle that is used to transport a person in a wheelchair. If a certified provider uses 2 or more vehicles to provide transportation by specialized medical vehicle, at least 2 of the vehicles must be human service vehicles that satisfy the requirements imposed under s. 110.05 for a vehicle that is used to transport a person in a wheelchair, and any 3rd or additional vehicle must be a human service vehicle to which the equipment required under s. 110.05 for transporting a person in a wheelchair may be added. The department shall pay for transportation by specialized medical vehicle under s. 49.46 (2) (b) 3. or 49.471 (11) (m) that is provided in a human service vehicle that is not equipped to transport a person in a wheelchair if the person being transported does not use a wheelchair. The reimbursement rate for transportation by specialized medical vehicle provided in a vehicle that is not equipped to accommodate a wheelchair shall be the same as for transportation by specialized medical vehicle provided in a vehicle that is equipped to accommodate a wheelchair.

2. A person who is certified to provide transportation by specialized medical vehicle under sub. (2) (a) 11. shall ensure that every person who drives or serves as an attendant to passengers on a specialized medical vehicle, before driving or serving as an attendant, has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction.

(3g) PAYMENTS TO FEDERALLY QUALIFIED HEALTH CENTERS. (a) For services provided by a federally qualified health center before July 1, 2016, to a recipient of the Medical Assistance program under this subchapter, the department shall reimburse the federally qualified health center under a payment methodology in effect on January 1, 2015, and in accordance with 42 USC 1396a (bb) (6).

(b) For services provided by a federally qualified health center on or after July 1, 2016, to a recipient of the Medical Assistance program under this subchapter, the department shall reimburse the federally qualified health centers using a payment methodology based on the Medicaid prospective payment system under 42 USC 1396a (bb) (1) to (3). The department shall consult with federally qualified health centers in developing the payment methodology under this paragraph. The department shall phase−in over fiscal years 2016−17, 2017−18, and 2018−19 payment of new rates under the payment methodology developed under this paragraph.

(3m) DISPROPORTIONATE SHARE HOSPITAL PAYMENTS. (a) Subject to par. (c) and notwithstanding sub. (3) (e), from the appropriations under s. 20.435 (4) (b) and (o), in each fiscal year, the department shall pay to hospitals that serve a disproportionate share of low−income patients an amount equal to the sum of $15,000,000, as the state share of payments, and the matching federal share of payments. The department may make a payment to a hospital under this subsection under the calculation method described in par. (b) if the hospital meets all of the following criteria:.

1. The hospital is located in this state.

2. The hospital provides a wide array of services, including services provided through an emergency department.

3. The inpatient days for Medical Assistance recipients at the hospital were at least 6 percent of the total inpatient days at that hospital during the most recent year for which such information is available.

4. The hospital meets applicable, minimum requirements to be a disproportionate share hospital under 42 USC 1396r−4 and any other applicable federal law.

(b) The department shall comply with all of the following when making payments to hospitals described in par. (a):

1. The department shall distribute the total amount of moneys described under par. (a) to be paid to hospitals with a disproportionate share of low−income patients by doing all of the following:

a. Dividing the number of Medical Assistance recipient inpatient days at a hospital by the number of total inpatient days at the hospital to obtain the percentage of Medical Assistance recipient inpatient days at that hospital.

b. Subject to subds. 2. and 3., providing an increase to the inpatient fee−for−service base rate for each hospital that qualifies for a disproportionate share hospital payment such that the hospital's overall fee−for−service add−on percentage under this subsection increases as the hospital's percentage of Medical Assistance recipient inpatient days increases.

2. The department shall ensure that the total amount of moneys available to pay hospitals with a disproportionate share of low−income patients is distributed in each fiscal year.

3. The department shall limit the maximum payment to hospitals such that all of the following are true for disproportionate share hospital payments under this subsection in a fiscal year:

a. No single hospital receives more than $2,500,000.

b. The amount of payment is in accordance with federal rules concerning the hospital specific limit.

(c) If the department needs data to calculate the payments under this subsection other than the data available from the Medicaid Management Information System, the fiscal survey data, or the federal centers for Medicare and Medicaid services public records, the department shall collect the necessary data from hospitals.

(d) The department shall seek any necessary approval from the federal department of health and human services to implement the hospital payment methodology described under pars. (a) and (b). If approval is necessary and approval from the federal department of health and human services is received, the department shall implement the payment methodology described under pars. (a) and (b). If approval is necessary and the department and the federal department of health and human services negotiate a methodology for making payments to hospitals with a disproportionate share of low−income patients that is different from the methodology described under pars. (a) and (b), the department, before implementing the negotiated payment methodology, shall submit to the joint committee on finance the negotiated payment methodology. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the submittal by the department that the committee has scheduled a meeting for the purpose of reviewing the negotiated payment methodology, the department may implement the negotiated payment methodology. If, within 14 working days after the date of the submittal by the department, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the negotiated payment methodology, the negotiated payment methodology may be implemented only on approval of the committee.

(4) INFORMATION RESTRICTED. The use or disclosure of any information concerning applicants and recipients of medical assistance not connected with the administration of this section is prohibited.

(4m) FINANCIAL RECORD MATCHING PROGRAM. (a) *Definitions*. In this subsection:

1. "Account" means a demand deposit account, checking account, negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

2. "Applicant" means an individual applying for benefits under this subchapter.

3. "Financial institution" means any of the following:

a. A depository institution, as defined in 12 USC 1813 (c).

c. A federal credit union, as defined in 12 USC 1752, or state credit union, as defined in 12 USC 1752.

f. A broker−dealer, as defined in s. 551.102 (4).

4. "Other individual" means an individual whose resources are required by law to be disclosed to determine the eligibility of an applicant or recipient.

5. "Recipient" means an individual who receives benefits under this subchapter.

(b) *Matching program and agreements*. 1. The department shall operate a financial record matching program under this subsection for the purpose of verifying the assets of applicants, recipients, and other individuals with respect to any program under this subchapter that requires asset verification.

2. The department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this subsection. An agreement shall require the financial institution to participate in the financial record matching program by electing either the financial institution matching option under par. (c) or the state matching option under par. (d). Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days before the effective date of the change. The department shall furnish the financial institution with a signed copy of the agreement.

3. The department shall reimburse a financial institution up to $125 per calendar quarter for participating in the financial record matching program under this subsection.

4. To the extent feasible, the information to be exchanged under the matching program shall be provided by electronic data exchange as prescribed by the department in the agreement under subd. 2.

(c) *Financial institution matching option*. If a financial institution with which the department has an agreement under par. (b) elects the financial institution matching option under this paragraph, all of the following apply:

1. At least once each calendar quarter, the department shall provide to the financial institution, in the manner specified in the agreement under par. (b) 2., information regarding applicants, recipients, and other individuals. The information shall include names and social security or other taxpayer identification numbers.

2. Based on the information received under subd. 1., the financial institution shall take actions necessary to determine whether any applicant, recipient, or other individual has an ownership interest in an account maintained at the financial institution. If the financial institution determines that an applicant, recipient, or other individual has an ownership interest in an account at the financial institution, the financial institution shall provide the department with a notice containing the applicant's, recipient's, or other individual's name, address of record, social security number or other taxpayer identification number, and account information. The account information shall include the account number, the account type, the nature of the ownership interest in the account, and the balance of the account at the time that the record match is made. The notice under this subdivision shall be provided in the manner specified in the agreement under par. (b) 2. and, to the extent feasible, by an electronic data exchange.

(d) *State matching option*. If a financial institution with which the department has an agreement under par. (b) elects the state matching option under this paragraph, all of the following apply:

1. At least once each calendar quarter, the financial institution shall provide the department with information concerning all accounts maintained at the financial institution. For each account maintained at the financial institution, the financial institution shall notify the department of the name and social security number or other tax identification number of each person having an ownership interest in the account, together with a description of each person's interest. The information required under this subdivision shall be provided in the manner specified in the agreement under

par. (b) 2. and, to the extent feasible, by an electronic data exchange.

2. The department shall take actions necessary to determine whether any applicant, recipient, or other individual has an ownership interest in an account maintained at the financial institution providing information under subd. 1. Upon the request of the department, the financial institution shall provide to the department, for each applicant, recipient, or other individual who matches information provided by the financial institution under subd. 1., the address of record, the account number and account type, and the balance of the account.

(e) *Use of information by financial institution; penalty.* A financial institution participating in the financial record matching program under this subsection, and the employees, agents, officers, and directors of the financial institution, may use information received from the department under par. (c) only for the purpose of matching records and may use information provided by the department in requesting additional information under par. (d) only for the purpose of providing the additional information. Neither the financial institution nor any employee, agent, officer, or director of the financial institution may disclose or retain information received from the department concerning applicants, recipients, or other individuals. Any person who violates this paragraph may be fined not less than $50 nor more than $1,000 or imprisoned in the county jail for not less than 10 days or more than one year or both.

(f) *Use of information by department.* The department may use information provided by a financial institution under this subsection only for matching records under par. (d), for administering the financial record matching program under this subsection, and for determining eligibility or continued eligibility under this subchapter. The department may not disclose or retain information received from a financial institution under this subsection concerning account holders who are not applicants, recipients, or other individuals.

(g) *Financial institution liability.* A financial institution is not liable to any person for disclosing information to the department under this subsection or for any other action that the financial institution takes in good faith to comply with this subsection.

(5) APPEAL. (a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

(b) 1. Upon receipt of a timely petition under par. (a) the department shall give the applicant or recipient reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and, if a county department under s. 46.215, 46.22, or 46.23 is responsible for making the medical assistance determination, to the county clerk of the county. The county may be represented at such hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient, to the county clerk, and to any county officer charged with administration of the Medical Assistance program. The decision of the department shall have the same effect as an order of a county officer charged with the administration of the Medical Assistance program. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for a hearing or shall refuse to grant relief if:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state or federal law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within the timely notice period specified in 42 CFR 431.231 (c), medical assistance coverage shall not be suspended, reduced, or discontinued until a decision is rendered after the hearing but medical assistance payments made pending the hearing decision may be recovered by the department if the contested decision or failure to act is upheld. If a county department is responsible for making the medical assistance determination, the department shall notify the county department of the county in which the recipient resides that the recipient has requested a hearing. Medical assistance coverage shall be suspended, reduced, or discontinued if:

a. The recipient is contesting a state or federal law or a change in state or federal law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her medical assistance coverage while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if medical assistance is to be suspended, reduced or terminated pending the hearing decision.

(5m) SUPPLEMENTAL FUNDING FOR RURAL HOSPITALS. (am) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gm), (o), (w) and (xc), the department shall distribute not more than $5,000,000 in each fiscal year, to provide supplemental funds to rural hospitals that, as determined by the department, have high utilization of inpatient services by patients whose care is provided from governmental sources, except that the department may not distribute funds to a rural hospital to the extent that the distribution would exceed any limitation under 42 USC 1396b (i) (3).

(b) The supplemental funding for rural hospitals under par. (am) shall be based on the utilization, by recipients of medical assistance, of the total inpatient days of a rural hospital in relation to that utilization in other rural hospitals.

(5r) SUPPLEMENTAL FUNDING FOR UNCOMPENSATED CARE. Notwithstanding sub. (3) (e), from the appropriation account under s. 20.435 (4) (w), the department shall distribute $3,000,000 in each fiscal year to the University of Wisconsin Hospital and Clinics for care that is not otherwise compensated, except that the department may not make payments that exceed limitations based on customary charges under 42 USC 1396b (i) (3).

(6b) CENTERS FOR THE DEVELOPMENTALLY DISABLED. From the appropriation under s. 20.435 (2) (gk), the department may reimburse the cost of services provided by the centers for the developmentally disabled. Beginning in fiscal year 2009−10, following each placement made under s. 46.275 that involves a relocation from a center for the developmentally disabled, the department shall reduce the reimbursement to the center by an amount, as determined by the department for each placement, that is equal to the nonfederal share of the costs for the placement under s. 46.275.

(6c) PREADMISSION SCREENING AND RESIDENT REVIEW. (a) *Definitions.* In this subsection:

1. "Active treatment for developmental disability" means a continuous program for an individual who has a developmental disability that includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services, that is directed toward the individual's acquiring behaviors necessary for him or her to function with as much self−determination and independence as possible and that is directed toward preventing or decelerating regression or loss of the individual's current optimal functional status. "Active treatment for developmental disability" does not include services to maintain generally independent individuals with developmental disability who are able to function with little supervision or in the absence of active treatment for developmental disability.

2. "Active treatment for mental illness" means the implementation of an individualized plan of care for an individual with mental illness that is developed under and supervised by a physician licensed under ch. 448 and other qualified mental health care providers and that prescribes specific therapies and activities for the treatment of the individual while the individual experiences an acute episode of severe mental illness which necessitates supervision by trained mental health care providers.

3. "County department" means a department under s. 46.21, 46.23, 51.42 or 51.437.

4. "Developmental disability" means any of the following:

a. Significantly subaverage general intellectual functioning that is concurrent with an individual's deficits in adaptive behavior and that manifested during the individual's developmental period.

b. A severe, chronic disability that meets all of the conditions for individuals with related conditions as specified in 42 CFR 435.1009.

5. "Facility" has the meaning given under 42 USC 1396r (a).

6. "Facility care" means services provided in a facility that are in conformity with 42 USC 1396r and that are payable under sub. (6m).

6m. "Intermediate facility" has the meaning given in s. 46.279 (1) (b).

7. "Mental illness" has the meaning given in 42 USC 1396r (e).

(b) *Preadmission screening*. Except as provided in par. (e), every individual who applies for admission to a facility or to an institution for mental diseases shall be screened to determine if the individual has developmental disability or mental illness. The department or an entity to which the department has delegated authority shall screen every individual who has been identified as having a developmental disability or mental illness to determine if the individual needs facility care. If the individual is determined to need facility care, the department or an entity to which the department has delegated authority shall also assess the individual to determine if he or she requires active treatment for developmental disability or active treatment for mental illness. If the department or entity determines that the individual requires active treatment for developmental disability, the department or entity shall determine whether the level of care required by the individual that is provided by a facility could be provided safely in an intermediate facility or under a plan that is developed under s. 46.279 (4).

(c) *Resident review*. Except as provided in par. (e), the department or an entity to which the department has delegated authority shall review every resident of a facility or institution for mental diseases who has a developmental disability or mental illness and who has experienced a significant change in his or her physical or mental condition to determine all of the following:

1. Whether the resident needs facility care.

2. Whether the resident requires active treatment for developmental disability or active treatment for mental illness.

3. If the department or entity determines under subd. 1. that the resident needs facility care and under subd. 2. that the resident requires active treatment for developmental disability, whether the level of care required by the resident that is provided by a facility could be provided safely in an intermediate facility or under a plan that is developed under s. 46.279 (4).

(d) *Payment for facility care*. 1. No payment may be made under sub. (6m) to a facility or to an institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46, 49.47, or 49.471, who has developmental disability or mental illness and for whom under par. (b) or (c) it is determined that he or she does not need facility care, unless it is determined that the individual requires active treatment for developmental disability or active treatment for mental illness and has continuously resided in a facility or institution for mental diseases for at least 30 months prior to the date of the determination. If that individual requires active treatment and has so continuously resided, he or she shall be offered the choice of receiving active treatment for developmental disability or active treatment for mental illness in the facility or institution for mental diseases or in an alternative setting. A facility resident who has developmental disability or mental illness, for whom under par. (c) it is determined that he or she does not need facility care and who has not continuously resided in a facility for at least 30 months prior to the date of the determination, may not continue to reside in the facility after December 31, 1993, and shall, if the department so determines, be relocated from the facility after March 31, 1990, and before December 31, 1993. The county department shall be responsible for securing alternative residence on behalf of an individual who is required to be relocated from a facility under this subdivision, and the facility shall cooperate with the county department in the relocation.

2. Payment may be made under sub. (6m) to a facility or institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46, 49.47, or 49.471 and who has developmental disability or mental illness and is determined under par. (b) or (c) to need facility care, regardless of whether it is determined under par. (b) or (c) that the individual does or does not require active treatment for developmental disability or active treatment for mental illness.

(e) 1. Payment under sub. (6m) may be made to a facility and no screening under par. (b) or review under par. (c) is required for an individual who is medically diagnosed as having developmental disability or mental illness, and who is not a danger to himself or herself or to others, if, immediately after release from a hospital, the individual enters the facility, as part of a medically prescribed period of recovery, for a period not to exceed 30 days and the admission is approved by the department or an entity to which the department has delegated authority.

2. Payment under sub. (6m) may be made to a facility or institution for mental diseases for an individual who is 65 years of age or older, is medically diagnosed as having developmental disability or mental illness, is not a danger to himself or herself or to others and is competent to make an independent decision, if, following screening under par. (b) or review under par. (c), all of the following apply:

a. It is determined that the individual needs facility care and requires active treatment for developmental disability or active treatment for mental illness.

b. The individual chooses not to participate in active treatment.

(f) *Hearing*. An individual for whom admission to a facility or institution for mental diseases is denied under par. (b) or for whom a determination under par. (c) results in prohibition of payment to a facility or institution for mental diseases under par. (d) and relocation from the facility to a facility or institution for mental diseases may request a hearing from the department.

(g) *Rule making*. The department shall promulgate all of the following rules:

1. Establishing criteria and procedures for a determination by the department under par. (d) that a resident be relocated from a facility after March 31, 1990, and before December 31, 1993.

2. Establishing standards for the conduct of hearings under par. (f).

(6h) LIABILITY FOR DISALLOWANCES. If the department or the federal health care financing administration finds a skilled nursing facility or intermediate care facility in this state that provides care to medical assistance recipients for which the facility receives reimbursement under sub. (6m) to be an institution for mental diseases, the facility shall be liable for any retroactive federal medicaid disallowances for services provided after the date of the finding.

(6j) LIMITATION ON CERTAIN FACILITY COVERAGE. The department shall determine, under a method devised by the department,

the average population during the period from January 1, 1987, to June 30, 1988, of persons in each skilled nursing facility or an intermediate care facility who are mentally ill and are aged 21 to 64, except persons under 22 years of age who were receiving medical assistance services in the facility prior to reaching age 21 and continuously thereafter. Beginning July 1, 1988, the payment under sub. (6m) for services provided by a facility to persons who are mentally ill and are within the age limitations specified in this subsection may not exceed the payment for the average population of these persons in that facility, as determined by the department.

(6m) PAYMENT TO FACILITIES. (a) In this subsection:

1. "Active treatment" has the meaning specified in 42 USC 1396r (e) (7) (G) (iii).

2. "Cost center" means a group of similar facility expenses.

3. "Facility" means a nursing home or a community−based residential facility that is licensed under s. 50.03 and that is certified by the department as a provider of medical assistance.

5. "Nursing home" has the meaning given under s. 50.01 (3).

6. "Resource Utilization Groupings " means a comparative resource utilization grouping that classifies each facility resident based on information obtained from performing, for the resident, a minimum data set assessment developed by the federal Centers for Medicare and Medicaid Services.

(ag) Payment for care provided in a facility under this subsection made under s. 20.435 (4) (b), (gm), (o), (pa), or (w) shall, except as provided in pars. (bg), (bm), and (br), be determined according to a prospective payment system updated annually by the department. The payment system shall implement standards that are necessary and proper for providing patient care and that meet quality and safety standards established under subch. II of ch. 50 and ch. 150. The payment system shall reflect all of the following:

1. A prudent buyer approach to payment for services, under which a reasonable price recognizing selected factors that influence costs is paid for service that is of acceptable quality.

2. Except as provided in subd. 3r., standards established by the department that shall be based upon allowable costs incurred by facilities in the state as available from information submitted under par. (c) 3. and compiled by the department.

3m. For each state fiscal year, rates that shall be set by the department based on information from cost reports for costs specified under par. (am) 1. bm., 4., 5m., and 6. for the most recently completed fiscal year of the facility.

3p. For all costs specified under par. (am) 1. bm., an acuity−based payment rate system to which all of the following applies:

a. The system may incorporate acuity measurements under the most recent Resource Utilization Groupings methodology to determine factors for case−mix adjustment.

b. Four times annually, for each facility resident who is a Medical Assistance recipient on March 31, June 30, September 30, or December 31, as applicable, the system shall determine the average case−mix index by use of the factors specified under subd. 3p. a.

c. The system shall incorporate payment adjustments for dementia, behavioral needs, or other complex medical conditions.

d. The system may include incentives for providing high quality of care.

3r. Flat−rate payment for all costs specified under par. (am) 1. a. and 2.

5. Consideration for special needs of facility residents.

6. Standards for capital payment that will be based upon replacement value of a facility as determined by a commercial estimator with which the department contracts and criteria and limitations as determined by the department.

7. Assurance of an acceptable quality of care for all medical assistance recipients provided nursing home care.

(am) In determining payments for a facility under the payment system in par. (ag), the department shall consider all of the following cost centers:

1. Allowable direct care costs, including, if provided, any of the following:

a. Personal comfort supplies; medical supplies; over−the−counter drugs; and nonbillable services of a ward clerk, activity person, recreation person, social worker, volunteer coordinator, teacher for residents aged 22 and older, vocational counselor for residents aged 22 and older, religious person, therapy aide, therapy assistant, and counselor on resident living.

bm. Nonbillable services of a registered nurse, licensed practical nurse, and nurse aide.

2. Allowable support service costs, including the following allowable facility expenses:

a. Dietary service for the provision of meals to facility residents.

b. Environmental service for the provision of maintenance, housekeeping, laundry and security service.

c. Allowable fuel and utility costs, including the facility expenses that the department determines are allowable for the provision of electrical service, water and sewer services, and heat.

d. Allowable administrative and general costs, including costs related to the facility's overall management and administration and allowable expenses that are not recognized or reimbursed in other cost centers and including the costs of commercial estimators approved by the department under par. (ar) 6.

4. Property tax or municipal service costs paid by the owner of the facility for the facility.

5m. Allowable interest expense of the facility, less interest income of the facility and less interest income of affiliated entities, to the extent required under the approved state plan for services under 42 USC 1396.

6. Capital payment necessary for the provision of service over time, including allowable facility expenses for suitable space, furnishings, property insurance and movable equipment for patient care.

(ap) If the bed occupancy of a nursing home is below the minimum patient day occupancy standards that are established by the department under par. (ar) (intro.), the department may approve a request by the nursing home to delicense any of the nursing home's licensed beds. If the department approves the nursing home's request, all of the following apply:

1. The department shall delicense the number of beds in accordance with the nursing home's request.

2. The department may not include the number of beds of the nursing home that the department delicenses under this paragraph in determining the costs per patient day under the minimum patient day occupancy standards under par. (ar).

3. The nursing home may not use or sell a bed that is delicensed under this paragraph.

4. a. Every 12 months following the delicensure of a bed under this paragraph, for which a nursing home has not resumed licensure under subd. 5., the department shall reduce the licensed bed capacity of the nursing home by 10 percent of all of the nursing home's beds that remain delicensed under this paragraph or by 25 percent of one bed, whichever is greater. The department shall reduce the statewide maximum number of licensed nursing home beds under s. 150.31 (1) (intro.) by the number or portion of a number of beds by which the nursing home's licensed bed capacity is reduced under this subdivision.

b. Subdivision 4. a. does not apply with respect to the delicensure of beds between October 14, 1997, and the date that is 60 days after October 14, 1997, during the period of any contract entered into by a nursing home prior to January 1, 1997, if the contract requires the nursing home to maintain its current licensed bed capacity.

5. A nursing home retains the right to resume licensure of a bed of the nursing home that was delicensed under this paragraph unless the licensed bed capacity of the nursing home has been reduced by that bed under subd. 4. The nursing home may not resume licensure of a fraction of a bed. The nursing home may resume licensure 18 months after the nursing home notifies the department in writing that the nursing home intends to resume the licensure. If a nursing home resumes licensure of a bed under this subdivision, subd. 2. does not apply with respect to that bed.

6. If subd. 4. b. applies and the nursing home later resumes licensure of a bed that was delicensed between October 14, 1997, and the date that is 60 days after October 14, 1997, the department shall calculate the costs per patient day using the methodology specified in the state plan that is in place at the time that the delicensed beds are resumed.

(ar) In determining payments for a facility under par. (ag), the department may establish minimum patient day occupancy standards for determining costs per patient day and shall apply the following methods to calculate amounts payable for the rate year for the cost centers described under par. (am):

1. For direct care costs:

a. The department shall establish standards for payment of allowable direct care costs under par. (am) 1. bm., for facilities that do not primarily serve the developmentally disabled, that take into account direct care costs for a sample of all of those facilities in this state and separate standards for payment of allowable direct care costs, for facilities that primarily serve the developmentally disabled, that take into account direct care costs for a sample of all of those facilities in this state. The standards shall be adjusted by the department for regional labor cost variations. The department shall treat as a single labor region the counties of Dane, Dodge, Iowa, Columbia, Richland, Sauk, and Rock and shall adjust payment so that the direct care cost targets of facilities in Dane, Iowa, Columbia, and Sauk counties are not reduced as a result of including facilities in Dodge, Richland, and Rock Counties in this labor region. For facilities in Douglas, Dunn, Pierce, and St. Croix counties, the department shall perform the adjustment by use of the wage index that is used by the federal department of health and human services for hospital reimbursement under 42 USC 1395 to 1395ggg.

b. The department shall establish the direct care component of the facility rate for each facility by comparing actual allowable direct care cost information of that facility adjusted for inflation to the standards established under subd. 1. a.

c. If a facility has an approved program for provision of service to residents who have an intellectual disability, residents dependent upon ventilators, or residents requiring supplemental skilled care due to complex medical conditions, a supplement to the direct care component of the facility rate under subd. 1. b. may be made to that facility according to a method developed by the department.

cm. Funding distributed to facilities for the provision of active treatment to residents with a diagnosis of developmental disability shall be distributed in accordance with a method developed by the department which is consistent with a prudent buyer approach to payment for services.

2. For support service costs, the department shall establish one or more standards for the payment of support service costs that take into account support service costs for a sample of all facilities within the state.

4. For net property taxes or municipal services, payment shall be made for the amount of the previous calendar year's tax or the amount of municipal service costs for a period specified by the department, subject to a maximum limit as determined by the department.

6. Capital payment shall be based on a replacement value for a facility. The replacement value shall be determined by a commercial estimator contracted for by the department and paid for by the facility. The replacement value shall be subject to limitations determined by the department.

(av) The department shall calculate a payment rate for a facility by applying the criteria set forth under pars. (ag) 1. to 5. and 7., (am) 1. bm., 4., 5m. and 6., and (ar) 1., 4., and 6. to information from cost reports submitted by the facility, as affected by any adjustment for ancillary services and materials under par. (b).

(b) The charges for ancillary materials and services that would be incurred by a prudent buyer may be included as an adjustment to the rate determined by par. (av) when so determined by the department. The department may not authorize any adjustments to the rate established under par. (av) to pay for a cost overrun that the department fails to approve under s. 150.11 (3). Ancillary materials and services for which payment may be made include, if provided, oxygen, medical transportation and laboratory and X−ray services. Payment for these services and materials shall not exceed medical assistance limitations for reimbursement of the services and materials. For services in a facility for which the department may make payment to a service provider other than a facility, the department may make payment to the facility but not in excess of the estimated amount of payment available if a separate service provider provided the service. The department may promulgate rules setting forth conditions of and limitations to this paragraph.

(bg) The department shall determine payment levels for the provision of skilled, intermediate, limited, personal or residential care or care for individuals with an intellectual disability in the state centers for the developmentally disabled and in a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50 separately from the payment principles, applicable costs and methods established under this subsection.

(bm) Except as provided in par. (bo), the department may establish payment methods for a facility for which any of the following applies:

1. The facility is newly constructed.

2. The total of licensed beds for the facility has significantly increased or decreased prior to calculation of its rate under the payment system.

3. The facility has undergone a change in certification or licensure level.

5. The facility has received approval or disapproval for provision of service to residents requiring supplemental skilled care due to complex medical conditions.

6. The facility has received approval or been disapproved for provision of service to residents who have any of the following:

a. Brain injury, as defined in s. 51.01 (2g).

b. A diagnosis of acquired immunodeficiency syndrome.

c. An HIV infection, as defined in s. 252.01 (2), and illness or injury associated with the development of acquired immunodeficiency syndrome.

(bo) The department may establish payment methods for capital payment for a newly constructed facility that first provided services after June 30, 1984.

(bp) Notwithstanding pars. (am) 6. and (ar) 6., the department may establish payment methods based on actual costs for capital payment for a facility to which, after December 31, 1982, any of the following applies:

1. The facility was constructed.

2. The facility was purchased.

3. The facility incurred annual remodeling costs of more than $600,000.

4. The facility incurred remodeling costs necessary to meet physical plant requirements under 42 USC 1396a (a) (13) (A).

(br) If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds under applicable federal acts or programs for the

reduction of operation deficits under sub. (6u), all of the following apply:

1. Notwithstanding s. 20.435 (7) (b) or 20.437 (1) (cj) or (2) (dz), the department shall reduce allocations of funds to counties in the amount of the disallowance from the appropriation account under s. 20.435 (7) (b), or the department shall direct the department of children and families to reduce allocations of funds to counties or Wisconsin Works agencies in the amount of the disallowance from the appropriation account under s. 20.437 (1) (cj) or (2) (dz), in accordance with s. 16.544 to the extent applicable.

2. If a city, village or town owns and operates a facility that has received funds to reduce an operating deficit, the city, village or town shall reimburse the county in which the city, village or town is located in the amount of funds so received.

(c) As a condition of payment under this section a facility shall:

1. Meet the staffing standard requirements for direct care costs including the supplement, if any, made under par. (ar) 1. c. and maintain such records as prescribed by the department to document that such level of care was actually provided.

2. Provide at the time of a patient's admission to a home, for the development and implementation of a rehabilitation plan including the development of an alternate care plan for the patient.

3. Provide, upon request, cost information relating to the overall financial operation of the facility, including, but not limited to wages and hours worked, costs of food, housekeeping, maintenance and administration.

4. Agree to admit patients 7 days of the week.

5. Admit only patients assessed or who waive or are exempt from the requirement of assessment under s. 46.27 (6) (a) or, if required under s. 50.035 (4n) or 50.04 (2h), who have been referred to a resource center.

6. Provide, upon request, such information as the department considers necessary to determine allowable interest expenses under par. (am) 5m.

(d) The department shall:

2. Terminate payment to a facility for a patient, unless a utilization review team established pursuant to federal regulations upon review of the patient's needs and the implementation of a rehabilitation plan for that patient determines that the patient's need for care and services can only be provided in a facility and determines the appropriate level of care.

3. Establish, maintain, and periodically update a patient needs evaluation system to be used in determining the need and level of care at a facility, which shall include the social and rehabilitative needs of the patient, provide levels of care to correspond to the actual staff time required to provide such care, and define the contents of the services to be provided.

4. Periodically audit all nursing homes and intermediate care facilities receiving funds under this paragraph, and recover payments made where the home is not meeting the conditions under which the payment was made as specified in par. (c) 1. and 2. Erroneous information provided under par. (c) 3. shall constitute grounds for recovery.

5. Beginning October 1, 1989, deny payment to a facility for a patient who is admitted to the facility after the department has provided newspaper notice and notice under s. 50.03 (2m) (b) that the facility violates 42 USC 1396 to 1396s and before the date, if any, that the department determines that the facility is in substantial compliance with 42 USC 1396 to 1396s.

(g) Payment under this section to a facility may not include the cost of care reimbursable for persons eligible for medicare benefits under 42 USC 1395 to 1395zz. Medical assistance recipients are not liable for these costs. The department may require that a facility recover these costs from the appropriate agencies. The department may, by rule, require medicare certification under 42 USC 1395 to 1395zz, in whole or in part, of skilled nursing facilities. Any intermediate care facility or skilled nursing facility is subject to a fine of not less than $10 nor more than $100 for each day it refuses to recover costs or refuses to obtain the required certification.

(h) The department may require by rule that all claims for payment of services provided facility residents under this subchapter be submitted or countersigned by the respective facility administrator. The department may specify those categories of services for which payment will be made only if the services are rendered or authorized in writing by a primary health care provider designated by the recipient for the particular category of services.

(i) 1. On or after October 1, 1981, medical assistance payment for inpatient nursing care may only be provided for persons receiving skilled, intermediate, or limited levels of nursing care as these levels are defined under s. DHS 132.13, Wis. Adm. Code.

2. Payment for personal or residential care is available for a person in a facility certified under 42 USC 1396 to 1396p only if the person entered a facility before the date specified in subd. 1. and has continuously resided in a facility since the date specified in subd. 1. If the person has a primary diagnosis of developmental disabilities or serious and persistent mental illness, payment for personal or residential care is available only if the person entered a facility on or before November 1, 1983.

(j) The department may develop a separate rate of payment, under this subsection, for persons requiring intense skilled nursing care, as defined by the department.

(k) Notwithstanding pars. (ag) to (b), (bp) and (br), the department may participate in a demonstration project on case mix nursing home reimbursement authorized under 42 USC 1315 (a) and may modify the payment system under this section, on an experimental basis, as necessary for participation in the demonstration project.

(L) For purposes of ss. 46.27 (11) (c) 7. and 46.277 (5) (e), the department shall, by July 1 annually, determine the statewide medical assistance daily cost of nursing home care and submit the determination to the department of administration for review. The department of administration shall approve the determination before payment may be made under s. 46.27 (11) (c) 7. or 46.277 (5) (e).

(m) To hold a bed in a facility, the department may pay the full payment rate under this subsection for up to 30 days for services provided to a person during the pendency of an undue hardship determination, as provided in s. 49.453 (8) (b) 3.

(6tw) PAYMENTS TO CITY HEALTH DEPARTMENTS. From the appropriation account under s. 20.435 (7) (b), if the department selects the payment procedure under s. 49.45 (52) (a), the department may make payments to local health departments, as defined under s. 250.01 (4) (a) 3. Payment under this subsection to such a local health department may not exceed on an annualized basis payment made by the department to the local health department under s. 49.45 (6t), 2003 stats., for services provided by the local health department in 2002.

(6u) SUPPLEMENTAL PAYMENTS TO CERTAIN FACILITIES AND CARE MANAGEMENT ORGANIZATIONS. (ag) In this subsection:

1. "Care management organization" means a care management organization, as defined in s. 46.2805 (1), that contracts under s. 46.284 (4) (d) for provision of services with a facility that is established under s. 49.70 (2) or that is owned and operated by a city, village, or town.

2. "Facility" has the meaning given in sub. (6m) (a) 3.

(am) Notwithstanding sub. (6m), from the appropriations under s. 20.435 (4) (o), and (w), for reduction of operating deficits, as defined under the methodology used by the department in December 2000, incurred by a facility that is established under s. 49.70 (1) or that is owned and operated by a city, village, or town, and as payment to care management organizations, the department may not distribute to these facilities and to care management organizations more than $39,100,000 in each fiscal year, as determined by the department. The total amount that a county certifies

under this subsection may not exceed 100 percent of otherwise−unreimbursed care. In distributing funds under this subsection, the department shall perform all of the following:

1. Estimate the availability of federal medical assistance funds that may be matched to county funds or funds of a city, village or town for the reduction of operating deficits incurred by the facility.

2. Based on the amount estimated available under subd. 1., develop a method to distribute this allocation to the individual facilities that have incurred operating deficits that shall include:

a. Development of criteria for determining operating deficits.

b. Agreement by the county in which is located the facility established under s. 49.70 (1) and agreement by the city, village, or town that owns and operates the facility that the applicable county, city, village, or town shall provide funds to match federal medical assistance matching funds under this paragraph.

bm. Identification by the county in which is located the facility established under s. 49.70 (1) of all county funds expended in each calendar year to operate the facility, and certification by the county to the department of this amount.

c. Consideration of the size of a facility's operating deficit.

3. Distribute the allocation under the distribution method that is developed, unless a county has failed to comply with subd. 2. bm.

4. If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (4) (o) and (w) that result in a lesser allocation amount than that allocated under this paragraph, allocate not more than the lesser amount so approved by the federal department of health and human services.

5. If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (4) (o) and (w) that result in a lesser allocation amount than that allocated under this paragraph, submit a revision of the method developed under subd. 2. for approval by the joint committee on finance in that state fiscal year.

6. If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds distributed under subd. 3., apply the requirements under sub. (6m) (br).

7. If a facility that is otherwise eligible for an allocation of funds under this section is found by the federal health care financing administration or the department to be an institution for mental diseases, as defined under 42 CFR 435.1009, cease distributing to that facility funds under this section after the date on which the finding is made.

(b) Notwithstanding the limitation on the amount of disbursements under par. (am) (intro.), from the appropriation under s. 20.435 (4) (wm), the department shall, using the criteria specified in par. (am) 1. to 7., disburse any federal medical assistance funds that are received by the state as federal financial participation for operating deficits incurred by a facility that is operated by a county, city, village, or town and that are in excess of the amount of federal financial participation anticipated and budgeted as revenue in the biennial budget act for the fiscal year in which the funds are received.

(6w) HOSPITAL OPERATING DEFICIT REDUCTION. From the appropriation under s. 20.435 (4) (o), for reduction of operating deficits, as defined under criteria developed by the department, incurred by a hospital, as defined under s. 50.33 (2) (a) and (b), that is operated by the state, established under s. 49.71 or owned and operated by a city or village, the department shall allocate up to $3,300,000 in each fiscal year to these hospitals, as determined by the department, and shall perform all of the following:

(a) For the reduction of operating deficits incurred by the hospital, estimate the availability of federal medicaid funds that may be matched to any of the following:

1. State general purpose revenues, for a hospital operated by the state.

2. County funds, for a hospital established under s. 49.71.

3. Funds of a city or village, for a hospital owned and operated by a city or village.

(b) Based on the amount estimated available under par. (a), develop a method to distribute this allocation to the individual hospitals that have incurred operating deficits that shall include:

1. Development of criteria for determining operating deficits.

2. With respect to funds to match federal medicaid matching funds under this section, any of the following, as applicable:

a. Provision by the state of matching funds from general purpose revenues for a hospital operated by the state.

b. Agreement to provide matching funds by the county in which is located a hospital established under s. 49.71.

c. Agreement to provide matching funds by the city or village that owns and operates a hospital.

3. Consideration of the size of a hospital's operating deficit.

(c) Except as provided in par. (d), distribute the allocation under the distribution method that is developed.

(d) If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (4) (o) that result in a lesser allocation amount than that allocated under this subsection or disallows use of the allocation of federal medicaid funds under par. (c), reduce allocations under this subsection and distribute on a prorated basis, as determined by the department.

(6x) FUNDING FOR ESSENTIAL ACCESS CITY HOSPITAL. (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w), the department shall distribute all of the following, except that the department may not allocate funds to a hospital to the extent that the allocation would exceed any limitation under 42 USC 1396b (i) (3):

1. Not more than $2,997,700 in fiscal year 2011−12 and not more than $2,988,700 in each fiscal year after fiscal year 2011−12 to an essential access city hospital that has previously received the supplemental payment for being an essential access city hospital.

2. Not more than $999,200 in fiscal year 2011−12 and not more than $996,200 in each fiscal year after fiscal year 2011−12 to a hospital that would qualify for an essential access city hospital supplemental payment, under the criteria described in the 2010−11 inpatient hospital state plan, except that the hospital did not meet the criteria to be an essential access city hospital during fiscal year 1995−96.

3. If the federal department of health and human services allows the payment, $300,000 from the appropriation account under s. 20.435 (4) (b) annually to a hospital that meets all of the following criteria:

a. The hospital is located in a city that has a municipal border that is also a state border.

b. The hospital has a Medical Assistance recipient patient mix that consists of at least 25 percent of residents from a state that borders this state.

c. The hospital is located in a city with a poverty level, as determined from the 2000 U.S. census, that is greater than 5 percent.

d. The hospital is located in a city with a population of less than 15,000 people.

(b) The department shall develop procedures for solicitation and review of requests for funds and a method to distribute the funds under par. (a) to an individual hospital that shall include establishment of criteria for the designation as an essential access city hospital.

(c) Except as provided in par. (d), the department shall distribute the funds under par. (a) under the distribution method that is developed under par. (b).

(d) If the federal department of health and human services approves for state expenditure in any state fiscal year amounts under s. 20.435 (4) (o) that result in a lesser distribution amount than that distributed under this subsection or disallows use of federal medicaid funds under par. (a), the department of health services shall reduce the distributions under this subsection.

(e) The department need not promulgate as rules under ch. 227 the procedures, method of distribution and criteria required for distribution under this subsection.

(6y) SUPPLEMENTAL FUNDING FOR CERTAIN HOSPITALS. (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w), the department may distribute funding in each fiscal year to provide supplemental payment to hospitals that enter into a contract under s. 49.02 (2) to provide health care services funded by a relief block grant, as determined by the department, for hospital services that are not in excess of the hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3). If no relief block grant is awarded under this chapter or if the allocation of funds to such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department may distribute funds to hospitals that have not entered into a contract under s. 49.02 (2).

(ap) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (o) and (xc), the department shall distribute not more than $8,000,000 in each fiscal year as supplemental payments to hospitals that satisfy the criteria established by the American College of Surgeons for classification as a Level I adult trauma center, except that the department may not make payments that exceed limitations based on customary charges under 42 USC 1396b (i) (3).

(ar) Notwithstanding sub. (3) (e), the department may, from the appropriation account under s. 20.435 (4) (xc), make supplemental payments to hospitals based on hospital performance, in accordance with a payment methodology developed by the department, except that the department may not make payments that exceed limitations based on customary charges under 42 USC 1396b (i) (3).

(b) The department need not promulgate as rules under ch. 227 the procedures, methods of distribution, and criteria required for distribution under par. (a).

(6z) SUPPLEMENTAL FUNDING FOR CERTAIN HOSPITALS SERVING LOW−INCOME PATIENTS. (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w), the department may distribute funding in each fiscal year to supplement payment for services to hospitals that enter into indigent care agreements, in accordance with the approved state plan for services under 42 USC 1396a, with relief agencies that administer the medical relief block grant under this chapter, if the department determines that the hospitals serve a disproportionate number of low−income patients with special needs. If no medical relief block grant under this chapter is awarded or if the allocation of funds to such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department may distribute funds to hospitals that have not entered into indigent care agreements. The department may not distribute funds under this subsection to the extent that the distribution would do any of the following:

1. Be inconsistent with 42 USC 1396r−4 (c) (3).

2. Exceed the limitation on payment under 42 USC 1396r−4 (f) (B) in any fiscal year.

(b) The department need not promulgate as rules under ch. 227 the procedures, methods of distribution and criteria required for distribution under par. (a).

(7) PERSONAL FUNDS. (a) A recipient who is a patient in a public medical institution or an accommodated person and has a monthly income exceeding the payment rates established under 42 USC 1382 (e) may retain $45 unearned income or the amount of any pension paid under 38 USC 5503 (d), whichever is greater, per month for personal needs. Except as provided in s. 49.455 (4) (a), the recipient shall apply income in excess of $45 or the amount of any pension paid under 38 USC 5503 (d), whichever is greater, less any amount deducted under rules promulgated by the department, toward the cost of care in the facility.

(b) Where a facility participating in the medical assistance program has been delegated in writing by a resident within that facility to manage and control the personal funds of the resident including but not limited to those funds identified in par. (a) the facility shall establish for the resident a personal fund account. All deposits and withdrawals of funds shall be documented by the facility to indicate the amount and date of deposit and amount, date and purpose of withdrawal. Such documentation shall be maintained in the resident's records.

(c) Upon the removal of a resident from the facility as a result of death or permanent transfer, the facility shall transfer the balance of the resident's trust account to the personal representative of the resident's estate, the legal guardian of the resident or if appropriate to the resident personally. A copy of the trust account records shall be transferred with the funds. No facility or any of its employees or representatives may benefit from the distribution of a deceased resident's personal funds unless they are specifically named in the resident's will or constitute an heir at law.

(d) 1. The department shall accept from any person a verified complaint concerning any violation of this subsection. The department shall forward to the accused within 10 days a copy of such complaint. The department, upon such investigation as it deems necessary, may dismiss the complaint or may find probable cause to believe that a violation of this subsection has occurred.

2. If the department finds probable cause to believe that a violation of this subsection has occurred, it may assess a forfeiture of not less than $25 nor more than $500 for each occurrence, and in addition may order that any amount illegally charged against a resident's account be restored. The department shall immediately inform the complainant and respondent of any such decision and the amount of forfeiture or repayment, if any. If the department is not notified in writing that a party wishes to contest a decision within 15 working days after the parties are informed of such decision, the department's determination shall be deemed final and may not be appealed to a court.

3. The department shall inform the nursing home administrators examining board of all decisions made under this paragraph.

4. The department's determination of serious misconduct under this subsection shall be cause for terminating the facility's participation in the state−funded portion of the medical assistance program under this subchapter.

(e) Nursing homes shall adopt a uniform accounting system prescribed by the department for purposes of managing residents personal fund accounts.

(8) PER−VISIT LIMITS ON HOME HEALTH SERVICES REIMBURSEMENT. (a) In this subsection:

2. "Licensed practical nurse" has the meaning given in s. 146.40 (1) (c).

2m. "Nurse aide" has the meaning given in s. 146.40 (1) (d).

3. "Occupational therapist" has the meaning given in s. 448.96 (4).

4. "Patient care visit" means a personal contact with a patient in a patient's home that is made by a registered nurse, licensed practical nurse, nurse aide, physical therapist, occupational therapist, or speech−language pathologist who is on the staff of or under contract or arrangement with a home health agency, or by a registered nurse or licensed practical nurse practicing independently, to provide a service that is covered under s. 49.46, 49.47, or 49.471. "Patient care visit" does not include time spent by a nurse, therapist, or nurse aide on case management, care coordination, travel, record keeping, or supervision that is related to the patient care visit.

5. "Physical therapist" has the meaning given in s. 448.50 (3).

6. "Registered nurse" has the meaning given in s. 146.40 (1) (f).

7. "Speech−language pathologist" means an individual engaged in the practice of speech−language pathology, as regulated under ch. 459.

(b) Reimbursement under s. 20.435 (4) (b), (gm), (o), and (w) for home health services provided by a certified home health agency or independent nurse shall be made at the home health agency's or nurse's usual and customary fee per patient care visit, subject to a maximum allowable fee per patient care visit that is established under par. (c).

(c) The department shall establish a maximum statewide allowable fee per patient care visit, for each type of visit with respect to provider, that may be no greater than the cost per patient care visit, as determined by the department from cost reports of home health agencies, adjusted for costs related to case management, care coordination, travel, record keeping and supervision.

(8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE. The rate of payment for obstetric and gynecological care provided in primary care shortage areas, as defined in s. 36.60 (1) (cm), or provided to recipients of medical assistance who reside in primary care shortage areas, that is equal to 125 percent of the rates paid under this section to primary care physicians in primary care shortage areas, shall be paid to all certified primary care providers who provide obstetric or gynecological care to those recipients.

(8v) INCENTIVE−BASED PHARMACY PAYMENT SYSTEM. The department shall establish a system of payment to pharmacies for legend and over−the−counter drugs provided to recipients of medical assistance that has financial incentives for pharmacists who perform services that result in savings to the medical assistance program. Under this system, the department shall establish a schedule of fees that is designed to ensure that any incentive payments made are equal to or less than the documented savings. The department may discontinue the system established under this subsection if the department determines, after performance of a study, that payments to pharmacists under the system exceed the documented savings under the system.

(9) FREE CHOICE. Any person eligible for medical assistance under s. 49.46, 49.468, 49.47, or 49.471 may use the physician, chiropractor, dentist, pharmacist, podiatrist, hospital, skilled nursing home, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care of his or her choice, except that free choice of a provider may be limited by the department if the department's alternate arrangements are economical and the recipient has reasonable access to health care of adequate quality. The department may also require a recipient to designate, in any or all categories of health care providers, a primary health care provider of his or her choice. After such a designation is made, the recipient may not receive services from other health care providers in the same category as the primary health care provider unless such service is rendered in an emergency or through written referral by the primary health care provider. Alternate designations by the recipient may be made in accordance with guidelines established by the department. Nothing in this subsection shall vitiate the legal responsibility of the physician, chiropractor, dentist, pharmacist, podiatrist, skilled nursing home, hospital, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care to patients. All contract and tort relationships with patients shall remain, notwithstanding a written referral under this section, as though dealings are direct between the physician, chiropractor, dentist, pharmacist, podiatrist, skilled nursing home, hospital, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care and the patient. No physician, chiropractor, pharmacist, podiatrist, or dentist may be required to practice exclusively in the medical assistance program.

(9m) REFERRALS. The department may, consistent with sub. (9), specify services for which reimbursement will be made only if the services are provided in accordance with a referral, in writing, which specifies the services to be rendered and the duration of such services. The referral form shall describe the referred services as required by the department.

(9p) PRIOR AUTHORIZATION PROHIBITED FOR WHEELCHAIR REPAIRS. (a) In this subsection, "recipient of medical assistance" means an individual who receives medical assistance under any of the following:

1. A program operated under this subchapter.

2. A demonstration program operated under 42 USC 1315.

3. A program operated under a waiver of federal law relating to medical assistance that is granted by the federal department of health and human services.

(b) The department may not require any person to obtain prior authorization from the department for a repair to a wheelchair used by a recipient of medical assistance that satisfies the following criteria:

1. If the repair is to a power wheelchair, the cost of the repair is less than $300.

2. If the repair is to a manual wheelchair, the cost of the repair is less than $150.

3. The cost of the repair is a covered benefit under the program of which the individual is a recipient.

(9s) DISCLOSURE. Any person who is an employee of, or an owner, partner, member, stockholder or investor in, any legal entity providing services which are reimbursed under this section, shall notify the department, on forms provided by the department for that purpose, if such person is an employee of, or an owner, partner, member, stockholder or investor in, any other legal entity providing services which are reimbursed under this section.

(10) RULE−MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance. The department shall promulgate a rule defining the term "part−time intermittent care" for the purpose of s. 49.46.

(11) PENALTY. Any person who receives or assists another in receiving assistance under this section, to which the recipient is not entitled, shall be subject to the penalties under ss. 946.91 and 946.93.

(12) MACHINE−READABLE MEDICAL ASSISTANCE CARDS. (a) The department shall assist the commissioner of insurance to conduct the study of health insurance identification cards under s. 601.57 (1).

(b) If the commissioner of insurance promulgates rules under s. 601.57 (2) establishing a health insurance identification card system and its computerized support system, the department shall develop a plan to coordinate a system of machine−readable identification cards for medical assistance recipients with the systems established by the commissioner and shall submit the plan to the governor, and to the legislature under s. 13.172 (2), before issuing a request for proposals under par. (c).

(c) The department shall request proposals for a system of machine−readable identification cards for medical assistance recipients and a computerized support system for the cards that will accept and respond to electronically conveyed requests from health care providers for information related to medical assistance recipients, such as eligibility, coverages and authorizations. The request for proposals shall specify that the systems are to be operating by January 1, 1997.

(13) FINANCIAL REPORTS. (a) The department may require service providers to prepare and submit cost reports or financial reports for purposes of rate certification under Title XIX, cost verification, fee schedule determination or research and study purposes. These financial reports may include independently audited financial statements which shall include balance sheets and state-

ments of revenues and expenses. The department may withhold reimbursement or may decrease or not increase reimbursement rates if a provider does not submit the reports required under this paragraph or if the costs on which the reimbursement rates are based cannot be verified from the provider's cost or financial reports or records from which the reports are derived.

(b) The department may require any provider who fails to submit a cost report or financial report under par. (a) within the period specified by the department to forfeit not less than $10 nor more than $100 for each day the provider fails to submit the report.

(15) COMMUNITY CARE ORGANIZATION PROJECT GUARANTEE. Upon termination of the community care organization demonstration projects in Barron, La Crosse and Milwaukee counties, any client who was receiving services through any of those projects may continue to receive the full range of community care organization services. The cost of the services shall continue to be paid by medical assistance.

(16) CERTIFICATION. On or after January 1, 1984, the department may only continue to certify as a medical assistance provider a community−based residential facility that is so certified on December 31, 1983. On or after January 1, 1984, no community−based residential facility may be certified for more beds than the number for which it was certified on December 31, 1983.

(18) RECIPIENT COST SHARING. (ac) Except as provided in pars. (am) to (d), and subject to par. (ag), any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided under s. 49.46 (2). The service provider shall collect the specified or allowable copayment, coinsurance, or deductible, unless the service provider determines that the cost of collecting the copayment, coinsurance, or deductible exceeds the amount to be collected. The department shall reduce payments to each provider by the amount of the specified or allowable copayment, coinsurance, or deductible. No provider may deny care or services because the recipient is unable to share costs, but an inability to share costs specified in this subsection does not relieve the recipient of liability for these costs.

(ag) Except as provided in pars. (am), (b), and (c), and subject to par. (d), a recipient specified in par. (ac) shall pay all of the following:

1. A copayment of $1 for each prescription of a drug that bears only a generic name, as defined in s. 450.12 (1) (b).

2. A copayment of $3 for each prescription of a drug that bears a brand name, as defined in s. 450.12 (1) (a).

(am) 1. Except as provided in subd. 2., no person is liable under this subsection for services provided through prepayment contracts.

2. A person who is eligible for the benefits under s. 49.46 (2) (a) and (b) under s. 49.471 is liable under this subsection for services provided through a prepayment contract in the amounts and according to the procedures specified by the department.

(b) The following services are not subject to recipient cost sharing under this subsection:

1. Any service provided to a person receiving care as an inpatient in a skilled nursing home or intermediate care facility certified under 42 USC 1396 to 1396k.

2. Any service provided to a person who is less than 18 years old. This subdivision does not apply if the person's family income exceeds 100 percent of the poverty line and he or she is eligible for the benefits under s. 49.46 (2) (a) and (b) under s. 49.471.

3. Any service provided under s. 49.46 (2) to a pregnant woman, if the service relates to the pregnancy or to other conditions that may complicate the pregnancy.

4. Emergency services.

5. Family planning services, as defined in s. 253.07 (1) (b).

6. Transportation by common carrier or private motor vehicle, if authorized in advance by a county department under s. 46.215 or 46.22.

7. Home health services or, if a home health agency is unavailable, nursing services.

11. Personal care services.

12. Case management services.

(c) The department may limit any medical assistance recipient's liability under this subsection for services it designates.

(d) No person who designates a pharmacy or pharmacist as his or her sole provider of prescription drugs and who so uses that pharmacy or pharmacist is liable under this subsection for more than $12 per month for prescription drugs received.

(19) ESTABLISHING PATERNITY AND ASSIGNING SUPPORT RIGHTS. (a) As a condition of eligibility for medical assistance, a person shall:

1. Fully cooperate in good faith with efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which the person and the dependent child or children may have rights. This cooperation shall be in accordance with federal law and regulations applying to paternity establishment and collection of support payments and may not be required if the person has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

2. Notwithstanding other provisions of the statutes, be deemed to have assigned to the state, by applying for or receiving medical assistance, any rights to medical support or other payment of medical expenses from any other person, including rights to unpaid amounts accrued at the time of application for medical assistance as well as any rights to support accruing during the time for which medical assistance is paid.

(b) If a person charged with the care and custody of a dependent child or children does not comply with the requirements of this subsection, the person is ineligible for medical assistance. In this case, medical assistance payments shall continue to be made on behalf of the eligible child or children.

(bm) The department or the county department under s. 46.215 or 46.22 shall notify applicants of the requirements of this subsection at the time of application.

(c) If the mother of a child was enrolled in a health maintenance organization or other prepaid health care plan under medical assistance at the time of the child's birth, birth expenses that may be recovered by the state under this subsection are the birth expenses incurred by the health maintenance organization or other prepaid health care plan.

(20) EXEMPTION FROM CONTINUATION REQUIREMENTS. An insurer, as defined in s. 632.897 (1) (d), with which the department contracts under sub. (2) (b) 2. for the provision of health care to medical assistance recipients is exempt from the continuation of group coverage requirements of s. 632.897 with regard to those recipients, their spouses and dependents.

(21) TAKING OVER PROVIDER'S OPERATION; REPAYMENTS REQUIRED. (ag) In this subsection, "take over the operation" means obtain, with respect to an aspect of a provider's business for which the provider has filed claims for medical assistance reimbursement, any of the following:

1. Ownership of the provider's business or all or substantially all of the assets of the business.

2. Majority control over decisions.

3. The right to any profits or income.

4. The right to contact and offer services to patients, clients, or residents served by the provider.

5. An agreement that the provider will not compete with the person at all or with respect to a patient, client, resident, service, geographical area, or other part of the provider's business.

6. The right to perform services that are substantially similar to services performed by the provider at the same location as those performed by the provider.

7. The right to use any distinctive name or symbol by which the provider is known in connection with services to be provided by the person.

(ar) Before a person may take over the operation of a provider that is liable for repayment of improper or erroneous payments or overpayments under ss. 49.43 to 49.497, full repayment shall be made. Upon request, the department shall notify the provider or the person that intends to take over the operation of the provider as to whether the provider is liable.

(b) If, notwithstanding the prohibition under par. (ar), a person takes over the operation of a provider and the applicable amount under par. (ar) has not been repaid, the department may, in addition to withholding certification as authorized under sub. (2) (b) 8., proceed against the provider or the person. Within 30 days after the certified provider receives notice from the department, the amount shall be repaid in full. If the amount is not repaid in full, the department may bring an action to compel payment, may proceed under sub. (2) (a) 12., or may do both.

(c) The department may enforce this subsection within 4 years following a transfer.

(d) This subsection supersedes any provision of chs. 180, 181, 185, and 193.

(e) The department shall promulgate rules to implement this subsection.

(22) MEDICAL ASSISTANCE SERVICES PROVIDED BY HEALTH MAINTENANCE ORGANIZATIONS. If the department contracts with health maintenance organizations for the provision of medical assistance it shall give special consideration to health maintenance organizations that provide or that contract to provide comprehensive, specialized health care services to pregnant teenagers. If the department contracts with health maintenance organizations for the provision of medical assistance, the department shall determine which medical assistance recipients who have attained the age of 2 but have not attained the age of 6 and who are at risk for lead poisoning have not received lead screening from those health maintenance organizations. The department shall report annually to the appropriate standing committees of the legislature under s. 13.172 (3) on the percentage of medical assistance recipients under the age of 2 who received a lead screening test in that year provided by a health maintenance organization compared with the percentage that the department set as a goal for that year.

(23) ASSISTANCE FOR CHILDLESS ADULTS DEMONSTRATION PROJECT. (a) The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to conduct a demonstration project to provide health care coverage to adults who are under the age of 65, who have family incomes not to exceed 100 percent of the poverty line before application of the 5 percent income disregard under 42 CFR 435.603 (d), and who are not otherwise eligible for medical assistance under this subchapter, the Badger Care health care program under s. 49.665, or Medicare under 42 USC 1395 et seq.

(b) If the waiver is granted and in effect, the department may promulgate rules defining the health care benefit plan, including more specific eligibility requirements and cost−sharing requirements. Cost sharing may include an annual enrollment fee, which may not exceed $75 per year. Notwithstanding s. 227.24 (3), the plan details under this subsection may be promulgated as an emergency rule under s. 227.24 without a finding of emergency. If the waiver is granted and in effect, the demonstration project under this subsection shall begin on the effective date of the waiver.

(d) In determining income for purposes of eligibility under this subsection, the department shall apply s. 49.471 (7) (d) to the individual to the extent the federal department of health and human services approves, if approval is required.

(e) The department shall apply the definition of family income under s. 49.471 (1) (f) and the regulations defining household under 42 CFR 435.603 (f) to determinations of income for purposes of eligibility under this subsection.

(f) The department may provide services to individuals who are eligible under this subsection through a medical home initiative under sub. (24j).

(g) 1. The department shall submit to the secretary of the federal department of health and human services an amendment to the waiver requested under par. (a) that authorizes the department to do all of the following with respect to the childless adults demonstration project under this subsection:

a. Impose monthly premiums as determined by the department.

b. Impose higher premiums for enrollees who engage in behaviors that increase their health risks, as determined by the department.

c. Require a health risk assessment for all enrollees.

d. Limit an enrollee's eligibility under the demonstration project to no more than 48 months. The department shall specify the eligibility formula in the waiver amendment.

e. Require, as a condition of eligibility, that an applicant or enrollee submit to a drug screening assessment and, if indicated, a drug test, as specified by the department in the waiver amendment.

2. If the secretary of the federal department of health and human services approves the amendment to the waiver under par. (a), in whole or in part, the department shall implement the changes to the demonstration project under this subsection specified in subd. 1. a. to e. that are approved by the secretary, consistent with the approval.

(24) PRIMARY CARE PROVIDER PILOT. The department may request a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (b) (1) to permit the establishment of a primary care provider pilot project. If the waiver is granted, the department may establish a primary care provider pilot project under which primary care providers act as case managers for medical assistance beneficiaries. If the department establishes a primary care provider pilot project, it shall reimburse a case manager for the allowable charges for case management services provided to a beneficiary participating in the pilot project.

(24g) PHYSICIAN PRACTICE PAYMENT PILOT. (a) The department shall develop a proposal to increase medical assistance reimbursement to providers to which at least one of the following applies:

1. The provider is recognized by the National Committee on Quality Assurance as a Patient−Centered Medical Home.

2. The secretary determines that the provider performs well with respect to all of the following aspects of care:

a. Adoption of written standards for patient access and patient communication.

b. Use of data to show that standards for patient access and patient communication are satisfied.

c. Use of paper or electronic charting tools to organize clinical information.

d. Use of data to identify diagnoses and conditions among the provider's patients that have a lasting detrimental effect on health.

e. Adoption and implementation of guidelines that are based on evidence for treatment and management of at least 3 chronic conditions.

f. Active support of patient self−management.

g. Systematic tracking of patient test results and systematic identification of abnormal patient test results.

h. Systematic tracking of referrals using a paper or electronic system.

i. Measuring the quality of the performance of the physician practice and of individual physicians within the practice, including with respect to provision of clinical services, patient outcomes, and patient safety.

j. Reporting to members of the physician practice and to other persons on the quality of the performance of the physician practice and of individual physicians.

(c) The department's proposal under par. (a) shall specify increases in reimbursement rates for providers that satisfy the conditions under par. (a) 1. or 2., and shall provide for payment of a monthly per−patient care coordination fee to those providers. The department shall set the increases in reimbursement rates and the monthly per−patient care coordination fee so that together they provide sufficient incentive for providers to satisfy a condition under par. (a) 1. or 2. The proposal shall specify effective dates for the increases in reimbursement rates and the monthly per−patient care coordination fee that are no sooner than July 1, 2011.

(d) The department shall submit the proposal under par. (a) to the joint committee on finance. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's submittal that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department shall, subject to approval by the U.S. department of health and human services of any required waiver of federal law relating to medical assistance and any required amendment to the state plan for medical assistance under 42 USC 1396a, implement the proposal beginning January 1, 2010. If, within 14 working days after the date of the department's submittal, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department may implement the proposal only upon approval of the committee. If the committee reviews the proposal and approves it, the department shall, subject to approval by the U.S. department of health and human services of any required waiver of federal law relating to medical assistance and any required amendment to the state plan for medical assistance under 42 USC 1396a, implement the proposal beginning January 1, 2010.

(e) By October 1, 2012, the department shall, if it was required under par. (d) to increase reimbursement to providers that satisfy a condition under par. (a) 1. or 2., submit a report to the joint committee on finance on whether the increased reimbursement results in net cost reductions for the Medical Assistance program under this subchapter and a recommendation as to whether to continue the increased reimbursement. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's submittal that the committee has scheduled a meeting for the purpose of reviewing the report and recommendation, the department may implement its recommendation. If, within 14 working days after the date of the department's submittal, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the report and recommendation, the department may discontinue the increased reimbursement only upon the approval of the committee.

(24j) MEDICAL HOME PILOT PROJECTS. (a) The department may administer the medical home initiative as a service delivery mechanism to provide and coordinate care for individuals who are eligible for a Medical Assistance program under this subchapter that provides services under a fee−for−service model. The department may administer a medical home initiative to serve individuals who are members of any of the following populations:

1. Children who are in out−of−home care or are receiving adoption assistance under 42 USC 670 to 679c.

2. Pregnant women.

3. Individuals who are exiting mental health facilities or correctional facilities.

4. Individuals with a diagnosis of serious mental illness or substance abuse disorder.

5. Adults with two or more chronic medical conditions.

6. Other groups of individuals with conditions that the department determines would benefit from services through a medical home.

(b) The department shall provide to individuals through any medical home initiative administered under this subsection the benefits described under s. 49.46 (2) (a) and (b). The department may provide to individuals though any medical home initiative administered under this subsection benefits in addition to the standard plan benefits that are targeted to the population receiving services through the medical home.

(c) The department may elect to administer any medical home initiative under this subsection in a limited geographical area.

(d) The department may make an all−inclusive payment to the provider offering services through a medical home.

(e) If the federal department of health and human services approves the department's request to administer a medical home initiative, the department shall automatically enroll an individual who is eligible for a medical home initiative under this subsection in the medical home initiative. At any time after the first 6 months of enrollment in the medical home initiative, the individual who is enrolled in the medical home initiative may opt out of participation in the medical home initiative.

(24k) DENTAL REIMBURSEMENT PILOT PROJECT. (a) 1. Subject to approval of the federal department of health and human services under par. (b), the department, as a pilot project, shall distribute moneys in each fiscal year to increase the reimbursement rate under Medical Assistance for pediatric dental care and adult emergency dental services, as defined by the department, that are provided in Brown, Marathon, Polk, and Racine counties.

2. For dental services provided on a fee−for−service basis as of July 1, 2015, the reimbursement rate increase specified in subd. 1. shall be distributed on a fee−for−service basis. For dental services provided as of July 1, 2015, by a health maintenance organization that contracts with the department to provide Medical Assistance services at a capitated rate, the department shall distribute the reimbursement rate increase under subd. 1. to the health maintenance organization. The department shall include in a contract with a health maintenance organization that provides dental services described in subd. 1. in the counties specified in subd. 1. a requirement that the health maintenance organization reimburse providers of services in accordance with the reimbursement rate increase pilot project under subd. 1. The department may not distribute the reimbursement rate increase under subd. 1. to federally qualified health centers that receive a grant under 42 USC 254b.

(b) The department shall request any waiver from and submit any amendments to the state Medical Assistance plan to the federal department of health and human services necessary for the reimbursement rate increase pilot project under par. (a). If any necessary waiver request or state plan amendment request is approved, the department shall implement par. (a) beginning on the effective date of the waiver or plan amendment.

(24m) From the appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w), in order to test the feasibility of instituting a system of reimbursement for providers of home health care and personal care services for medical assistance recipients that is based on competitive bidding, the department shall:

(a) By September 1, 1990, select a county in this state and solicit bids from providers of home health care and personal care services in that county for the provision, on a contractual basis, of home health and personal care services authorized under ss. 49.46 (2) (a) 4. d. and (b) 6. j. and 49.47 (6) (a) 1.

(b) Award contracts for the provision of home health care and personal care services from the bids received under par. (a) only if the department determines that the contracts would result in a lower cost alternative to fee−for−service reimbursement.

(24s) FAMILY PLANNING PROJECT. (a) The department shall request a waiver from the secretary of the federal department of

health and human services to permit the department to provide optional services for family planning, as defined in s. 253.07 (1) (a), under medical assistance [to any female between the ages of 15 and 44 whose family income does not exceed 200 percent of the poverty line for a family the size of the female's family]. The department shall implement any waiver granted.

NOTE: Par. (a) was created by 2011 Wis. Act 32, s. 1441b, eff. 7−1−11 and amended by 2011 Wis Act 32, s. 1441bg, eff. 1−1−15. Although the language in brackets was removed from the creation of par. (a) in s. 1441b by the governor's partial veto, the amendment by s. 1441bg of par. (a) does not reflect the removal of that language.

(b) The department shall request a waiver, or an amendment to the waiver requested under par. (a), from the secretary of the federal department of health and human services to require all of the following:

1. As a condition of receiving services under par. (a), parental notification for family planning services for any female under 18 years of age.

2. The department to determine eligibility to receive family planning services under par. (a) for a female under 18 years of age using the family income of the female's parent or guardian instead of only the female's income.

(25) CASE MANAGEMENT SERVICES. (a) In this subsection, "severely emotionally disturbed child" means an individual under 21 years of age who has emotional and behavioral problems that:

1. Are severe in degree;

2. Are expected to persist for at least one year;

3. Substantially interfere with the individual's functioning in his or her family, school or community and with his or her ability to cope with the ordinary demands of life; and

4. Cause the individual to need services from 2 or more agencies or organizations that provide social services or services or treatment for mental health, juvenile justice, child welfare, special education or health.

(am) Except as provided under pars. (be), (bg), and (bj) and sub. (24), case management services under s. 49.46 (2) (b) 9. and (bm) are reimbursable under Medical Assistance only if provided to a Medical Assistance beneficiary who receives case management services from or through a certified case management provider in a county, city, village, or town that elects, under par. (b), to make the services available and who meets at least one of the following conditions:

1. Has a developmental disability, as defined under s. 51.01 (5) (a).

2. Has a serious and persistent mental illness.

3. Has Alzheimer's disease, as defined under s. 46.87 (1) (a).

4. Is an alcoholic, as defined under s. 51.01 (1).

5. Is drug dependent, as defined under s. 51.01 (8).

6. Is physically disabled, as defined by the department.

7. Is a severely emotionally disturbed child.

8. Is age 65 or over.

9. Is a member of a family that has a child who is at risk of serious physical, mental or emotional dysfunction, as defined by the department.

10. Has HIV infection, as defined in s. 252.01 (2).

11. Is a child who is eligible for early intervention services under s. 51.44.

12. Is infected with tuberculosis.

13. Is a child with asthma.

14. Is a woman who is aged 45 to 64 and who is not a resident of a nursing home or otherwise receiving case management services under this paragraph.

(b) A county, city, village, town or, in a county having a population of 750,000 or more, the department may elect to make case management services under this subsection available in the county, city, village or town to one or more of the categories of beneficiaries under par. (am) through the medical assistance program. A county, city, village, town or, in a county having a population of 750,000 or more, the department that elects to make the services available shall reimburse a case management provider for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government.

(be) A private nonprofit agency that is a certified case management provider may elect to provide case management services to medical assistance beneficiaries who have HIV infection, as defined in s. 252.01 (2). The amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government shall be paid from the appropriation account under s. 20.435 (1) (am).

(bg) An independent living center, as defined in s. 46.96 (1) (ah), that is a certified case management provider and satisfies the criteria in s. 46.96 (3m) (a) 1. to 3. and (am) may elect to provide case management services to one or more of the categories of medical assistance beneficiaries specified under par. (am). The amount of allowable charges for the services under the medical assistance program that is not provided by the federal government shall be paid from nonfederal, public funds received by the independent living center from a county, city, village or town or from funds distributed as a grant under s. 46.96.

(bj) The department of corrections may elect to provide case management services under this subsection to persons who are under the supervision of that department under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), who are Medical Assistance beneficiaries, and who meet one or more of the conditions specified in par. (am). The amount of the allowable charges for those services under the Medical Assistance program that is not provided by the federal government shall be paid from the appropriation account under s. 20.410 (3) (hm), (ho), or (hr).

(bm) Case management services under this subsection may not be provided to a person under par. (am) 7. unless any of the following is true:

1. A team of mental health experts appointed by the case management provider determines that the person is a severely emotionally disturbed child. The team shall consist of at least 3 members. The case management provider shall appoint at least one member of the team who is a licensed psychologist or a physician specializing in psychiatry. The case management provider shall appoint at least 2 members of the team who are members of the professions of school psychologist, school social worker, registered nurse, social worker, child care worker, occupational therapist or teacher of emotionally disturbed children. The case management provider shall appoint as a member of the team at least one person who personally participated in a psychological evaluation of the child.

2. Individuals who are designated by the coordinating committee have, or a service coordination agency has, determined under s. 46.56 (8) (d) that the person is a child, as defined in s. 46.56 (1) (bm), with emotional and behavioral disabilities.

(c) Except as provided in pars. (b), (be), (bg), and (bj), the department shall reimburse a provider of case management services under this subsection only for the amount of the allowable charges for those services under the Medical Assistance program that is provided by the federal government.

(d) This subsection does not apply to case management services provided under sub. (15) or s. 49.46 (2) (a) 2. or through a community support program under s. 49.46 (2) (b) 6. L.

(25g) HIV CARE COORDINATION. (a) In this subsection, "care coordination" includes coordination of outpatient medical care, specialty care, inpatient care, dental care, and mental health care and medical case management.

(b) The department shall develop a proposal to increase medical assistance reimbursement to each provider that receives a grant under s. 252.12 (2) (a) 8. and to which at least one of the following applies:

1. The provider is recognized by the National Committee on Quality Assurance as a Patient−Centered Medical Home.

2. The secretary determines that the provider performs well with respect to all of the following aspects of care:

a. Adoption of written standards for patient access and patient communication.

b. Use of data to show that standards for patient access and patient communication are satisfied.

c. Use of paper or electronic charting tools to organize clinical information.

d. Use of data to identify diagnoses and conditions among the provider's patients that have a lasting detrimental effect on health.

e. Adoption and implementation of guidelines that are based on evidence for treatment and management of HIV−related conditions.

f. Active support of patient self−management.

g. Systematic tracking of patient test results and systematic identification of abnormal patient test results.

h. Systematic tracking of referrals using a paper or electronic system.

i. Measuring the quality of the performance of the provider and of individuals who perform services on behalf of the provider, including with respect to provision of clinical services, patient outcomes, and patient safety.

j. Reporting to employees and contractors of the provider and to other persons on the quality of the performance of the provider and of individuals who perform services on behalf of the provider.

(c) The department's proposal under par. (b) shall specify increases in reimbursement rates for providers that satisfy the conditions under par. (b), and shall provide for payment of a monthly per−patient care coordination fee to those providers. The department shall set the increases in reimbursement rates and the monthly per−patient care coordination fee so that together they provide sufficient incentive for providers to satisfy a condition under par. (b) 1. or 2. The proposal shall specify effective dates for the increases in reimbursement rates and the monthly per−patient care coordination fee that are no sooner than January 1, 2011.

(d) The department shall, subject to approval by the U.S. department of health and human services of any required waiver of federal law relating to medical assistance and any required amendment to the state plan for medical assistance under 42 USC 1396a, implement the proposal under par. (b) beginning January 1, 2011.

(e) A provider may not seek medical assistance reimbursement under this subsection and sub. (25) (be) for the same services.

(26) MANAGED CARE SYSTEM. The department shall study alternatives for a system to manage the usage of alcohol and other drug abuse services, including day treatment services, provided under the medical assistance program. On or before September 1, 1988, the department shall submit a plan for a medical assistance alcohol and other drug abuse managed care system to the joint committee on finance. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan within 14 working days after the date of the department's submittal, the department may implement the plan. If within 14 working days after the date of the department's submittal the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the department may not implement the plan until it is approved by the committee, as submitted or as modified. If a waiver from the secretary of the federal department of health and human services is necessary to implement the proposed plan, the department of health services may request the waiver, but it may not implement the waiver until it is authorized to implement the plan, as provided in this subsection.

(27) ELIGIBILITY OF ALIENS. A person who is not a U.S. citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law may not receive medical assistance benefits except as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v).

(29) HOSPICE REIMBURSEMENT. The department shall promulgate rules limiting aggregate payments made to a hospice under ss. 49.46, 49.47, and 49.471.

(29r) BEHAVIORAL HEALTH CARE COORDINATION PILOT PROJECTS. (a) In this subsection, "health care provider" does not include a health maintenance organization.

(b) Subject to par. (c), the department shall develop and award at least 2 pilot projects lasting no more than 3 years each to test alternative, coordinated care delivery and Medical Assistance payment models designed to reduce costs of recipients of Medical Assistance under this subchapter who have significant or chronic mental illness. A health care provider that is awarded a pilot project shall target a Medical Assistance population of high volume or high intensity users of non−behavioral health medical services, such as individuals with more than 5 emergency department visits in a year or individuals who have frequent or longer than average inpatient hospital stays, who also have significant or chronic mental illness. The department may not limit eligibility for the pilot project or awards under this subsection on the basis that the health care provider that is awarded the pilot project serves a target population that includes individuals enrolled in a Medical Assistance health maintenance organization. Each pilot project under this subsection shall include either a Medical Assistance payment on a per member per month basis for a specified pilot project population that is in addition to existing payment for services provided under the Medical Assistance program, including services reimbursed on a fee−for−service basis and services provided under managed care, or shall include an alternative Medical Assistance payment for a specified pilot project. The department shall require health care providers that are awarded a pilot project to submit to the department interim and final reports analyzing differences in utilization of services and Medical Assistance expenditures between individuals in the pilot project population and individuals in a control group that is agreed upon by the health care provider awarded the pilot project and the department. A health care provider that is awarded a pilot project shall submit the interim report by January 1, 2017, and shall submit a final report by January 1, 2019, and at the conclusion of the pilot project if the project concludes later than January 1, 2019. The department shall provide to a health care provider that is awarded a pilot project the Medical Assistance utilization and expenditure data necessary for the health care provider to create the reports. The department shall award the pilot projects and allocate funding only to health care providers that meet all of the following criteria:

1. The health care provider provides all of the following services directly or through an affiliated entity:

a. Emergency department services.

b. Outpatient psychiatric services.

c. Outpatient primary care services.

d. Inpatient psychiatric services.

e. General inpatient hospital services.

f. Services of a care coordinator or navigator for each individual in the pilot project.

2. The health care provider provides, directly or through an affiliated entity or contracted entity, the coordination of social services fostering the individual's recovery following an inpatient psychiatric discharge.

(c) Subject to approval by the federal department of health and human services of any required waiver of federal Medicaid law or any required amendment to the state Medical Assistance plan, the department shall implement the pilot projects under par. (b) beginning no earlier than January 1, 2016.

(d) Subject to par. (c), the department shall allocate a total state share amount of $600,000 plus any federal matching moneys as funding for all 3−year pilot projects under this subsection. The

department shall seek federal Medicaid moneys to match the state share allocated for the pilot projects under this subsection.

(29u) PSYCHIATRIC CONSULTATION REIMBURSEMENT PILOT PROJECT. (a) In this subsection, "health care provider" does not include a health maintenance organization.

(b) Subject to par. (e), the department shall develop and award a pilot project lasting up to 3 years to test a new Medical Assistance payment model for adult recipients of Medical Assistance that is designed to encourage the provision of psychiatric consultations by psychiatrists to health care providers treating primary care issues and to selected specialty health care providers to help those providers manage and treat adults with mild to moderate mental illness and physical health needs. An applicant for the pilot project under this subsection shall submit a strategy to use the pilot project funding to improve mental health access in the applicant's service area and to reduce overall Medical Assistance costs. The department shall require the health care provider that is awarded the pilot project to submit to the department interim and final reports analyzing the differences in utilization of services and Medical Assistance expenditures between individuals in the pilot project population and individuals in a control group that is agreed upon by the health care provider awarded the pilot project and the department. A health care provider that is awarded a pilot project shall submit the interim report by January 1, 2017, and shall submit a final report by January 1, 2019, and at the conclusion of the pilot project if the project concludes later than January 1, 2019. The department shall provide to a health care provider that is awarded a pilot project the Medical Assistance utilization and expenditure data necessary for the health care provider to create the reports.

(c) The department shall award a pilot project only to a health care provider that is an organization that provides outpatient psychiatric services and primary and specialty care outpatient services for physical health conditions. The department shall allocate funding to the health care provider that is awarded a pilot project or to individual psychiatrists providing care within the organization of the health care provider that is awarded a pilot project. The department shall allocate a total state share amount of $200,000 plus any federal matching moneys as funding for the 3−year pilot project under this subsection. The department shall seek federal Medicaid moneys to match the state share allocated for the pilot project under this subsection.

(d) The department may limit a pilot project awarded to a health care provider described under par. (c) to specific providers or clinics within the multispecialty outpatient clinic organization.

(e) Subject to approval by the federal department of health and human services of any required waiver of federal Medicaid law or any required amendment to the state Medical Assistance plan, the department shall implement the pilot project under par. (b) beginning no earlier than January 1, 2016.

(29w) MENTAL HEALTH SERVICES. (a) In providing mental health benefits under this subchapter, the department shall do all of the following:

1. Allow a severely emotionally disturbed child, as defined in sub. (25) (a), to access in−home therapy without having to show a failure to succeed in outpatient therapy.

2. Allow qualifying families to participate in in−home therapy even if a child in that family is enrolled in a day treatment program.

(b) 1. In this paragraph:

a. "Mental health service" means a service that is covered under one of the Medical Assistance mental health or substance abuse benefits under s. 49.46 (2) of outpatient mental health, outpatient substance abuse, pharmacologic management, mental health day treatment, substance abuse day treatment, crisis intervention, service provided by a community support program or community based−psychosocial service program, community recovery services, psychotherapy and alcohol and other drug abuse services, child or adolescent day treatment services, or any other mental health or substance abuse benefit described in s. 49.46 (2).

b. "Telehealth" is a service provided from a remote location using a combination of interactive video, audio, and externally acquired images through a networking environment between an individual at an originating site and a provider at a remote location with the service being of sufficient audio and visual fidelity and clarity as to be functionally equivalent to face−to−face contact. "Telehealth" does not include telephone conversations or Internet−based communications between providers or between providers and individuals.

2. Mental health services provided through telehealth are reimbursable by the Medical Assistance program under this subchapter if the provider of the service through telehealth satisfies all of the following criteria:

a. The provider is a certified provider of mental health services under Medical Assistance in this state and is an agency that is certified by the department as an emergency mental health service program, a comprehensive community services program, a mental health day treatment services program for children, a program organized under s. 46.23, 51.42, or 51.437, an outpatient psychotherapy clinic, or a community support program or that is certified by the department to perform a community substance abuse prevention and treatment service, except for narcotic treatment service for opiate addiction.

ag. The provider and the individual providing the service comply with all Medical Assistance coverage policies and standards established by the department, rules, and federal statutes and regulations for each particular mental health service provided.

ar. The provider is certified for telehealth by the department.

b. The individual who is providing the service is currently licensed, certified, or registered in his or her profession in this state and is in good standing with the applicable examining board in this state for that individual's profession.

c. The provider is located in the United States. The provider is not required to be located in this state.

(30) SERVICES PROVIDED BY COMMUNITY SUPPORT PROGRAMS. (a) A county shall provide the portion of the cost of services under s. 49.46 (2) (b) 6. L. that is not provided by the federal government.

(b) The department shall reimburse a provider of services under s. 49.46 (2) (b) 6. L. only for the amount of the allowable charges for those services that is provided by the federal government.

(30c) LICENSED TREATMENT PROFESSIONALS. To the extent allowable by the federal department of health and human services, the department shall certify and reimburse under the Medical Assistance program under this subchapter licensed treatment professionals, as defined in s. 51.03 (6) (a), for mental health services provided at a school regardless of whether the school site is designated as a clinic office and regardless of whether the licensed treatment professional is employed by, a contractor of, or affiliated with a clinic. The department shall seek any approval necessary from the federal department of health and human services to provide reimbursement to licensed treatment professionals under this subsection.

(30e) COMMUNITY−BASED PSYCHOSOCIAL SERVICE PROGRAMS. (a) *When services are reimbursable.* Services under s. 49.46 (2) (b) 6. Lm. provided to an individual are reimbursable under the medical assistance program only if all of the following conditions are met:

1. Reimbursement for the services under s. 49.46 (2) (b) 6. Lm. in the manner provided under this subsection is permitted pursuant to federal law or pursuant to a waiver from the secretary of the federal department of health and human services.

2. The county in which the individual resides elects to make the services under s. 49.46 (2) (b) 6. Lm. available in the county through the medical assistance program.

3. The individual's psychosocial health needs require more than outpatient counseling, but less than the services provided by a community support program under s. 51.421.

4. The psychosocial services are provided by a community−based psychosocial service program certified under rules promulgated by the department under par. (b) 3.

5. Any other condition required by rule under par. (b) 4. is satisfied.

(b) *Rules*. The department shall promulgate rules regarding all of the following:

1. Standards for determining whether an individual is eligible under par. (a) 3.

2. The scope of psychosocial services that may be provided under s. 49.46 (2) (b) 6. Lm.

3. Requirements for certification of community−based psychosocial service programs.

4. Any other conditions for coverage of community−based psychosocial services under the Medical Assistance Program.

(c) *Provider reimbursement*. A county that elects to make the services under s. 49.46 (2) (b) 6. Lm. available shall reimburse a provider of the services for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government. The department shall reimburse the provider only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

Cross−reference: See also ch. DHS 36, Wis. adm. code.

(d) *Provision of services on regional basis*. Notwithstanding par. (c) and subject to par. (e), in counties that elect to deliver the services under s. 49.46 (2) (b) 6. Lm. through the Medical Assistance program on a regional basis according to criteria established by the department, the department shall reimburse a provider of the services for the amount of the allowable charges for those services under the Medical Assistance program that is provided by the federal government and for the amount of the allowable charges that is not provided by the federal government.

(e) *Report; release of funds*. 1. Prior to implementing, and receiving funding for implementing, the regional basis provision of services under par. (d), the department shall submit to the joint committee on finance, no later than March 1, 2014, a request for the release of funds and a report on its proposal for implementation that includes all of the following:

a. A description of the criteria that the department will apply in its regionalization model.

b. A description of how the regions will be established and the degree of county participation in that process.

c. An updated list of the counties that have indicated, by the date of the report, that they will offer the services under s. 49.46 (2) (b) 6. Lm. through the Medical Assistance program on a regional basis according to the criteria established by the department.

d. An evaluation of the estimated long−term costs of the proposed regional model.

2. If the cochairpersons of the committee do not notify the department within 14 working days after the date that the department submits the report and the funding request that the committee has scheduled a meeting for the purpose of reviewing the proposal for implementation and the funding request, the funding shall be released and the department may implement its proposal for the regional basis provision of services on July 1, 2014. If, within 14 working days after the date that the department submits the report and the funding request, the cochairpersons notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposal for implementation and the funding request, the funding shall be released, and the department may implement its proposal for the regional basis provision of services, only upon approval of the committee.

(30f) PSYCHOTHERAPY AND ALCOHOL AND OTHER DRUG ABUSE SERVICES. The department shall include licensed mental health professionals, as defined in s. 632.89 (1) (dm), and licensed psychologists, as defined in s. 455.01 (4), as providers of psychotherapy and of alcohol and other drug abuse services. Except for services provided under sub. (30e), the department may not require that licensed mental health professionals or licensed psychologists be supervised; may not require that clinical psychotherapy or alcohol and other drug abuse services be provided under a certified program; and, notwithstanding subs. (9) and (9m), may not require that a physician or other health care provider first prescribe psychotherapy or alcohol and other drug abuse services to be provided by a licensed mental health professional or licensed psychologist before the professional or psychologist may provide the services to the recipient. This subsection does not affect the department's powers under ch. 50 or 51 to establish requirements for facilities that are licensed, certified, or operated by the department.

(30g) COMMUNITY RECOVERY SERVICES. (a) *When services are reimbursable*. Community recovery services under s. 49.46 (2) (b) 6. Lo. provided to an individual are reimbursable under the Medical Assistance program only if all of the following conditions are met:

1. An approved amendment to the state medical assistance plan permits reimbursement for the services under s. 49.46 (2) (b) 6. Lo. in the manner provided under this subsection.

2. The county in which the individual resides elects to provide the community recovery services under s. 49.46 (2) (b) 6. Lo. through the Medical Assistance program.

3. The individual, the community recovery services, and the community recovery services provider meet any condition set forth in the approved amendment to the medical assistance plan.

(b) *Limit on the amount of reimbursement*. If community recovery services are reimbursable under par. (a), the department shall reimburse each participating county for the portion of the federal share of allowable charges for the community recovery services provided by the county that exceeds that county's proportionate share of $600,000 in fiscal year 2010−2011 and for 95 percent of the federal share of allowable charges for the community recovery services provided by the county in each fiscal year thereafter. The portion of the federal share of allowable charges not reimbursed to counties shall be transferred to the appropriation account under s. 20.435 (5) (kx).

(30m) CERTAIN SERVICES FOR DEVELOPMENTALLY DISABLED. (a) Except as provided in par. (am), a county shall provide the portion of payment that is not provided by the federal government for all of the following services to individuals with developmental disability who are eligible for medical assistance:

1. Services under s. 51.06 (1m) (d).

2. Services in an intermediate care facility for persons with an intellectual disability, as defined in s. 46.278 (1m) (am), other than a state center for the developmentally disabled.

3. Services for which payment is permitted under sub. (6c) (d) 2. that are provided in a nursing facility, as defined in s. 46.279 (1) (c).

(am) 1. The department shall provide the portion of the payment that is not provided by the federal government for any of the services specified in par. (a) 1. to 3. that are provided to an individual with developmental disability who is eligible for medical assistance, as determined under the contract under s. 46.279 (4m).

2. For individuals receiving the family care benefit under s. 46.286, the care management organization that manages the family care benefit for the recipient shall pay the portion of the payment that is not covered by the federal government for services that are described under par. (a) 1. and are covered services under the family care benefit; the department shall pay the remainder of the portion of the payment that is not covered by the federal government.

(b) No payment under this section may be made for services specified under par. (a) or (am) unless the individual who receives the services is provided protective placement under s. 55.06 (9) (a), 2003 stats., or s. 55.12, is provided emergency protective services under s. 55.05 (4), 2003 stats., or s. 55.13, or is provided an emergency protective placement under s. 55.06 (11) (a), 2003 stats., or s. 55.135 or a temporary protective placement under s. 55.06 (11) (c), 2003 stats., or s. 55.135 (5) or 55.055 (5).

(c) No payment under this section may be made for services specified under par. (a) 2. or 3. that are provided to an individual who was placed in or admitted to an intermediate facility, as defined in s. 46.279 (1) (b), or nursing facility, as defined in s. 46.279 (1) (c), unless one of the following applies:

1. Any placement or admission that is made after April 30, 2005, complied with the requirements of s. 46.279.

2. For an individual who was provided protective placement under ch. 55 at any time, any annual review that is conducted under s. 55.18 (1) (a) (intro.) after April 30, 2005, complies with the requirements of s. 55.18 (1) (ar).

(30r) SERVICES IN A MENTAL HEALTH INSTITUTE. A county shall provide the portion of payment that is not provided by the federal government for services under s. 49.46 (2) (b) 6. e. in a mental health institute under s. 51.05.

(30x) LICENSED MIDWIFE SERVICES. (a) *Provider reimbursement.* Beginning January 1, 2016, services under s. 49.46 (2) (b) 12t. provided to an individual are reimbursable under the Medical Assistance program if an amendment to the state medical assistance plan approved by the federal department of health and human services permits reimbursement under s. 49.46 (2) (b) 12t.

(b) *Plan amendment.* The department shall submit to the federal department of health and human services an amendment to the state medical assistance plan to permit the application of par. (a). The department may not pay reimbursement under par. (a) unless the amendment to the state plan allowing reimbursement under s. 49.46 (2) (b) 12t. is approved and in effect.

(31) LONG-TERM CARE PARTNERSHIP PROGRAM. (a) The department shall submit to the federal department of health and human services, not later than 3 months after October 27, 2007, an amendment to the state medical assistance plan that establishes in this state a Long−Term Care Partnership Program, as described in this subsection, and shall implement the program if the amendment to the state plan is approved. Under the program, the department shall exclude an amount equal to the amount of benefits that an individual receives under a qualifying long−term care insurance policy, as described in par. (b), when determining any of the following:

1. The individual's resources for purposes of determining the individual's eligibility for medical assistance.

2. The amount to be recovered from the individual's estate if the individual receives medical assistance.

(b) To be eligible for the program, an individual must have been a resident of this state when the long−term care insurance policy was issued, and the policy must satisfy all of the following criteria:

1. The policy was not issued before the date specified in the amendment to the state plan, which may not be before the first day of the calendar quarter in which the amendment is submitted to the federal department of health and human services.

2. The policy meets the definition of a qualified long−term care insurance policy under 26 USC 7702B (b).

3. The policy meets the long−term care insurance model regulations and the requirements of the long−term care insurance model act promulgated by the National Association of Insurance Commissioners that are specified in 42 USC 1396p (b) (5).

4. The policy includes the applicable inflation protection specified in 42 USC 1396p (b) (1) (C) (iii) (IV).

5. The commissioner of insurance certifies to the department that the policy meets the criteria under subds. 2. to 4.

(c) 1. The department and the office of the commissioner of insurance shall approve a training program for individuals who sell long−term care insurance policies in the state to ensure that those individuals understand the relation of long−term care insurance to the Medical Assistance program and are able to explain to consumers the protections offered by long−term care insurance and how this type of insurance relates to private and public financing of long−term care.

2. The training program approved under this paragraph shall include initial training that is not less than 8 hours long and ongoing training sessions that are not less than 4 hours long per session. Individuals who sell long−term care insurance policies shall be required to attend an ongoing training session every 24 months after the initial training. The commissioner may approve the initial and ongoing training sessions for continuing education requirements under s. 628.04 (3).

3. The training under this paragraph shall cover at a minimum long−term care insurance, long−term care services, qualified partnerships, and the relationship between qualified partnerships and other public and private coverage of long−term care costs.

(d) An insurer that issues a long−term care insurance policy described in par. (b) shall be required to submit reports to the secretary of the federal department of health and human services, in accordance with regulations developed by the secretary, that include notice of when benefits are paid under the policy, the amount of the benefits, notice of the termination of the policy, and any other information required by the secretary.

(e) 1. Notwithstanding par. (b) (intro.), the department, when making a determination under par. (a) 1. or 2. with respect to an individual, shall disregard an amount equal to the insurance benefit payments that are made to or on behalf of the individual under a qualified long−term care insurance policy under 26 USC 7702B (b) that was purchased in a state that had a state plan amendment that provided for a qualified state long−term care partnership, as defined in 42 USC 1396p (b) (1) (C) (iii), at the time of the purchase of the policy.

2. The department shall comply with standards established by the federal department of health and human services in accordance with section 6021 (b) of the federal Deficit Reduction Act of 2005.

(32) COMMUNITY CARE FOR THE ELDERLY. The department may request a waiver under 42 USC 1315 to permit the establishment of a community care for the elderly demonstration project to provide medical care, case management services, adult day care and other support services that promote independence and enhance the quality of life of frail elderly persons. If the waiver is approved, the department may establish the community care for the elderly demonstration project and pay a fixed per person fee for the services.

(34) MEDICAL ASSISTANCE MANUAL. The department shall prepare a medical assistance manual that is clear, comprehensive and consistent with this subchapter and 42 USC 1396a to 1396u and shall, no later than July 1, 1992, provide the manual to counties for use by county employees who administer the medical assistance program.

(35m) COMPUTER SYSTEM REDESIGN. The department shall ensure that any redesign or replacement of the computer network that is used by counties on May 12, 1992, to determine eligibility for medical assistance includes the capability of determining eligibility for medical assistance under s. 49.47 (4) (c) 2.

(36) HOMELESS BENEFICIARIES. The department or a county department under s. 46.215, 46.22, or 46.23 may not place the word "homeless" on the medical assistance identification card of any person who is determined to be eligible for medical assistance benefits and who is homeless.

(37) PLANS OF CARE. The department may seek a waiver of the requirement under 42 USC 1396n (c) (1) that the department review and approve every written plan of care developed for each individual who receives, under 42 USC 1396n (c) (1), home or

community−based services under ss. 49.46 (2) (b) 8. and 49.47 (6) (a) 1. The waiver of the requirement, if granted, shall apply to those county departments or private nonprofit agencies that administer the services and that the department finds and certifies have implemented effective quality assurance systems for service plan development and implementation. If the federal health care financing administration approves the department's request for waiver of the requirement, the department shall, in evaluating a quality assurance system for certification, consider all of the following:

(a) The adequacy, safety and comprehensiveness of plans of care developed for individuals and of the services provided to them.

(b) Opportunities for individuals to exercise choice and be involved in the provision of services.

(c) Overall conformance to required state and federal quality assurance standards.

(d) Factors in addition to those in pars. (a) to (c) that are required by the federal health care financing administration, if any.

(38) HOME OR COMMUNITY−BASED SERVICES FOR DISABLED WORKERS. The department shall request a waiver from the secretary of the federal department of health and human services to authorize federal financial participation for medical assistance coverage of persons described in ss. 49.46 (1) (a) 14. and 49.47 (4) (as).

(39) SCHOOL MEDICAL SERVICES. (a) *Definitions.* In this subsection:

1. "School" means a public school described under s. 115.01 (1), a charter school, as defined in s. 115.001 (1), the Wisconsin Center for the Blind and Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing. It includes school−operated early childhood programs for developmentally delayed and disabled 4−year−old and 5−year−old children.

2. "School medical services" means health care services that are provided in a school to children who are eligible for medical assistance that are appropriate to a school setting, as provided in the amendment to the state medical assistance plan under par. (am).

(am) *Plan amendment.* No later than September 30, 1995, the department shall submit to the federal department of health and human services an amendment to the state medical assistance plan to permit the application of pars. (b) and (c). If the amendment to the state plan is approved, school districts, cooperative educational service agencies, and the department of public instruction on behalf of the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing claim reimbursement under pars. (b) and (c). Paragraphs (b) and (c) do not apply unless the amendment to the state plan is approved and in effect. The department shall submit to the federal department of health and human services an amendment to the state plan if necessary to permit the application of pars. (b) and (c) to the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

(b) *School medical services.* 1. 'Payment for school medical services.' If a school district or a cooperative educational service agency elects to provide school medical services and meets all requirements under par. (c), the department shall reimburse the school district or the cooperative educational service agency for 60 percent of the federal share of allowable charges for the school medical services that it provides and, as specified in subd. 2., for allowable administrative costs. If the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing elects to provide school medical services and meets all requirements under par. (c), the department shall reimburse the department of public instruction for 60 percent of the federal share of allowable charges for the school medical services that the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing provides and, as specified in subd. 2., for allowable administrative costs. A school district, cooperative educational service agency, the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may submit, and the department shall allow, claims for common carrier transportation costs as a school medical service unless the department receives notice from the federal health care financing administration that, under a change in federal policy, the claims are not allowed. If the department receives the notice, a school district, cooperative educational service agency, the Wisconsin Center for the Blind and Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may submit, and the department shall allow, unreimbursed claims for common carrier transportation costs incurred before the date of the change in federal policy. The department shall promulgate rules establishing a methodology for making reimbursements under this paragraph. All other expenses for the school medical services provided by a school district or a cooperative educational service agency shall be paid for by the school district or the cooperative educational service agency with funds received from state or local taxes. The school district, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the cooperative educational service agency shall comply with all requirements of the federal department of health and human services for receiving federal financial participation.

2. 'Payment for school medical services administrative costs.' The department shall reimburse a school district or a cooperative educational service agency specified under subd. 1. and shall reimburse the department of public instruction on behalf of the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing for 90 percent of the federal share of allowable administrative costs, using time studies, beginning in fiscal year 1999−2000. A school district or a cooperative educational service agency may submit, and the department of health services shall allow, claims for administrative costs incurred during the period that is up to 24 months before the date of the claim, if allowable under federal law.

(bm) *Excess state share.* Any portion of the state share under this subsection in excess of $42,200,000 in fiscal year 2015−16 and in excess of $41,700,000 in fiscal year 2016−17 and each fiscal year thereafter shall be deposited in the Medical Assistance trust fund.

(c) *Certification and reporting requirements.* The department shall promulgate rules establishing specific certification and reporting requirements with respect to school medical services under this subsection.

(39m) STATE PLAN AMENDMENT FOR PHARMACIST REIMBURSEMENT. The department shall submit to the federal department of health and human services an amendment to the state Medical Assistance plan to permit Medical Assistance reimbursement to pharmacists who meet the training requirements specified by the department to administer vaccines, as determined by the department, to a person 6 to 18 years of age. The department shall provide Medical Assistance reimbursement under this subsection if the federal department of health and human services approves the amendment to the state Medical Assistance plan. A pharmacist or pharmacy shall enroll in the federal Vaccines for Children Program under 42 USC 1396s to be eligible for Medical Assistance reimbursement under this subsection.

(40) PERIODIC RECORD MATCHES. If the department contracts with the department of children and families under s. 49.197 (5), the department shall cooperate with the department of children

and families in matching records of medical assistance recipients under s. 49.32 (7).

(41) MENTAL HEALTH CRISIS INTERVENTION SERVICES. (a) In this subsection, "mental health crisis intervention services" means services that are provided by a mental health crisis intervention program operated by, or under contract with, a county, if the county is certified as a medical assistance provider.

(b) If a county elects to become certified as a provider of mental health crisis intervention services, the county may provide mental health crisis intervention services under this subsection in the county to medical assistance recipients through the medical assistance program. A county that elects to provide the services shall pay the amount of the allowable charges for the services under the medical assistance program that is not provided by the federal government. The department shall reimburse the county under this subsection only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

(42) PERSONAL CARE SERVICES. (c) The department may charge a fee to certify a provider of personal care services described under par. (d) 3. e., except that no fee may be imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44. Fees collected under this paragraph shall be credited to the appropriation account under s. 20.435 (6) (jm).

(d) Personal care services under s. 49.46 (2) (b) 6. j. provided to an individual are reimbursable under medical assistance only if all of the following conditions are met:

1. The provider of the personal care services receives prior authorization from the department for all personal care services that are provided to the individual in excess of 50 hours in a calendar year.

2. The individual is not eligible to receive home health services under medicare, as defined in sub. (3) (L) 1. b.

3. The provider of the personal care services is one of the following:

a. An independent living center meeting the criteria to receive a grant under s. 46.96.

b. A county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437.

c. A federally recognized American Indian tribe or band certified to provide services to medical assistance beneficiaries.

d. A home health agency licensed under s. 50.49.

e. Any other entity certified under sub. (2) (a) 11. to provide personal care services under s. 49.46 (2) (b) 6. j.

(42m) PHYSICAL AND OCCUPATIONAL THERAPY. (a) If, in authorizing the provision of physical or occupational therapy services under s. 49.46 (2) (b) 6. b. or 49.471 (11) (i), the department authorizes a reduced duration of services from the duration that the provider specifies in the authorization request, the department shall substantiate the reduction that the department made in the duration of the services if the provider of the services requests any additional authorizations for the provision of physical or occupational therapy services to the same individual.

(b) The division of the department that is responsible for health care financing shall monitor compliance with the requirement under par. (a) in concert with representatives of the Wisconsin Physical Therapy Association and the Wisconsin Occupational Therapy Association.

(43) CASE MANAGEMENT SERVICES FOR HIGH-COST RECIPIENTS. The department may establish a program to provide case management services for medical assistance recipients with high−cost chronic health conditions or high−cost catastrophic health conditions. If the department establishes a program to provide these case management services, the department shall provide reimbursement for providers of these case management services under the medical assistance program.

(44) PRENATAL, POSTPARTUM AND YOUNG CHILD CARE COORDINATION. Providers in Milwaukee County that are certified to provide care coordination services under s. 49.46 (2) (b) 12. may be certified to provide to medical assistance recipients prenatal and postpartum care coordination services and care coordination services for children who have not attained the age of 7. Providers in the city of Racine that are certified to provide care coordination services under s. 49.46 (2) (b) 12. and are participating in a program under s. 253.16 may be certified to provide to medical assistance recipients prenatal and postpartum care coordination services and care coordination services for children who have not attained the age of 2. A provider of those care coordination services shall provide to a person receiving those services the information relating to shaken baby syndrome and impacted babies required under s. 253.15 (6). The department shall provide reimbursement for those care coordination services only if at least one of the following conditions is met:

(a) The recipient is a resident of Milwaukee County or the city of Racine and has received services under s. 49.46 (2) (b) 12. and is pregnant or has given birth within 8 weeks after the individual ceased to receive services under s. 49.46 (2) (b) 12.

(b) The recipient is a resident of Milwaukee County or the city of Racine, is pregnant and has received a risk assessment approved by the department.

(c) The recipient is a resident of Milwaukee County or the city of Racine, has given birth within the 8 weeks immediately preceding the request for services under s. 49.46 (2) (b) 12m. and has received a risk assessment approved by the department.

(44m) EXTENSION OF PARENT ELIGIBILITY WHEN CHILD DIES. The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to extend the eligibility of a parent, for up to 90 days, under the Medical Assistance program under this subchapter or the Badger Care health care program under s. 49.665 if the parent's child dies while both the parent and the child are covered under the Medical Assistance program or the Badger Care health care program and the parent would lose eligibility solely due to the death of the child. The department shall implement any waiver that is granted.

(45) IN-HOME AND COMMUNITY MENTAL HEALTH AND ALCOHOL AND OTHER DRUG ABUSE SERVICES. (a) Services under s. 49.46 (2) (b) 6. fm. provided to an individual are reimbursable under the medical assistance program only if all of the following conditions are met:

1. Reimbursement for the services under s. 49.46 (2) (b) 6. fm. in the manner provided under this subsection is permitted pursuant to federal law or pursuant to a waiver from the secretary of the federal department of health and human services.

2. The county, city, town or village in which the individual resides elects to make the services under s. 49.46 (2) (b) 6. fm. available in the county, city, town or village through the medical assistance program.

(b) A county, city, town or village that elects to make the services under s. 49.46 (2) (b) 6. fm. available shall reimburse a provider of the services for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government. The department shall reimburse the provider only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

(47) ADULT DAY CARE CENTERS. (a) In this subsection, "adult day care center" means an entity that provides services for part of a day in a group setting to adults who need an enriched health−supportive or social experience and who may need assistance with activities of daily living, supervision or protection.

(b) No person may receive reimbursement under s. 46.27 (11) for the provision of services to clients in an adult day care center unless the adult day care center is certified by the department under sub. (2) (a) 11. as a provider of medical assistance.

(c) The biennial fee for the certification required under par. (b) of an adult day care center is $127. Fees collected under this para-

graph shall be credited to the appropriation account under s. 20.435 (6) (jm).

(d) The department, by rule, may increase any fee specified in par. (c).

(e) If the department takes enforcement action against an adult day care center for violating a certification requirement established under s. 49.45 (2) (a) 11., and the department subsequently conducts an on−site inspection of the adult day care center to review the adult day care center's action to correct the violation, the department may impose a $200 inspection fee on the adult day care center.

(48) PAYMENT OF MEDICARE PART B OUTPATIENT HOSPITAL SERVICES COINSURANCES. The department shall include in the state plan for medical assistance a methodology for payment of the medicare part B outpatient hospital services coinsurance amounts that are authorized under ss. 49.46 (2) (c) 2., 4., and 5m., 49.468 (1) (b), 49.47 (6) (a) 6. b., d., and f., and 49.471 (6) (j) 1.

(49) PRESCRIPTION DRUG PRIOR AUTHORIZATION. (a) The secretary shall exercise his or her authority under s. 15.04 (1) (c) to create a prescription drug prior authorization committee to advise the department on issues related to prior authorization decisions made concerning prescription drugs on behalf of medical assistance recipients. The secretary shall appoint as members at least all of the following:

1. Two physicians, as defined in s. 448.01 (5), who are currently in practice.

2. Two pharmacists, as defined in s. 450.01 (15).

3. One advocate for recipients of medical assistance who has sufficient medical background, as determined by the department, to evaluate a prescription drug's clinical effectiveness.

(b) The prescription drug prior authorization committee shall accept information or commentary from representatives of the pharmaceutical manufacturing industry in the committee's review of prior authorization policies.

(49g) BILLING FOR PRESCRIPTION DRUGS. (a) In this subsection:

1d. "Abortion" has the meaning given in s. 253.10 (2) (a).

1g. "Abortion provider" means a person that provides abortion services or is an affiliate of a person that provides abortion services.

1m. "Covered entity" has the meaning given in 42 USC 256b (a) (4) (C) and (K).

2. "Prescription drug" has the meaning given in s. 450.01 (20).

(b) When billing the Medical Assistance program under this subchapter for reimbursement for a prescription drug, a covered entity that is an abortion provider shall bill the actual acquisition cost of the prescription drug for which coverage is provided under s. 49.46 (2) (b) 6. h. and a dispensing fee that is equal to the dispensing fee permitted to be charged for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

(49m) PRESCRIPTION DRUG COST CONTROLS; PURCHASING AGREEMENTS. (a) In this section:

1. "Brand name" has the meaning given in s. 450.12 (1) (a).

2. "Generic name" has the meaning given in s. 450.12 (1) (b).

3. "Prescription drug" has the meaning given in s. 450.01 (20).

(b) The department may enter into a multi−state purchasing agreement with another state or a purchasing agreement with a purchaser of prescription drugs if the other state or purchaser agrees to participate in one or more of the activities specified in par. (c) 1. to 4.

(c) The department may design and implement a program to reduce the cost of prescription drugs and to maintain high quality in prescription drug therapies, which shall include all of the following:

1. A list of the prescription drugs that are included as a benefit under ss. 49.46 (2) (b) 6. h. and 49.471 (11) (a) that identifies preferred choices within therapeutic classes and includes prescription drugs that bear only generic names.

2. Establishing supplemental rebates under agreements with prescription drug manufacturers for prescription drugs provided to recipients under Medical Assistance and Badger Care and to eligible persons under s. 49.688 and, if it is possible to implement the program without adversely affecting supplemental rebates for Medical Assistance, Badger Care, and prescription drug assistance under s. 49.688, to beneficiaries of participants under par. (b).

3. Utilization management and fraud and abuse controls.

4. Any other activity to reduce the cost of or expenditures for prescription drugs and maintain high quality in prescription drug therapies.

(d) The department may enter into a contract with an entity to perform any of the duties and exercise any of the powers of the department under this subsection.

(50) DISEASE MANAGEMENT. (a) In this subsection, "disease management" means an integrated and systematic approach for managing the health care needs of patients who are at risk of or are diagnosed with a specific disease, using all of the following:

1. Best practices.

2. Prevention strategies.

3. Clinical practice improvement.

4. Clinical interventions and protocols.

5. Outcomes research, information, and technology.

6. Other tools and resources to reduce overall costs and improve measurable outcomes.

(b) The department may contract with an entity, under the department's request−for−proposal procedures, to engage in disease management activities on behalf of recipients of medical assistance.

(51) MEDICAL CARE TRANSPORTATION SERVICES. (a) By November 1 annually, the department shall provide to the department of revenue information concerning the estimated amounts of supplements payable from the appropriation accounts under s. 20.435 (4) (b) and (gm) to specific local governmental units for the provision of transportation for medical care, as specified under s. 49.46 (2) (b) 3., during the fiscal year. Beginning November 1, 2004, the information that the department provides under this paragraph shall include any adjustments necessary to reflect actual claims submitted by service providers in the previous fiscal year.

(b) On the date that is the 3rd Monday in November, the department shall annually pay to specific local governmental units the estimated net amounts specified in par. (a).

(52) PAYMENT ADJUSTMENTS; FEDERAL FUNDING FOR CERTAIN SERVICES. (a) 1. If the department provides the notice under par. (c) selecting the payment procedure in this paragraph, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payment adjustments to county departments under s. 46.215, 46.22, 46.23, 51.42, or 51.437 or to local health departments, as defined in s. 250.01 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16., except for services specified under s. 49.46 (2) (b) 6. b. and c. provided to children participating in the early intervention program under s. 51.44. Payment adjustments under this paragraph shall include the state share of the payments. The total of any payment adjustments under this paragraph and Medical Assistance payments made from appropriation accounts under s. 20.435 (4) (b), (gm), (o), and (w), may not exceed applicable limitations on payments under 42 USC 1396a (a) (30) (A).

2. The department may require a county department or local health department to submit a certified cost report that meets the

requirements of the federal department of health and human services for covered services described in subd. 1.

(b) If the department provides the notice under par. (c) selecting the payment procedure in this paragraph, all of the following apply:

1. Annually, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 shall submit a certified cost report that meets the requirements of the federal department of health and human services for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16., except for services specified under s. 49.46 (2) (b) 6. b. and c. provided to children participating in the early intervention program under s. 51.44.

2. For services described under subd. 1., the department shall base the amount of a claim for federal medical assistance funds on certified cost reports submitted by county departments under subd. 1. to the extent the reports comply with federal requirements.

3. The department shall pay county departments a percentage of the federal funds claimed under subd. 2. for services described under subd. 1., which percentage is established in the most recent biennial budget.

4. The department may pay a local health department, as defined in s. 250.01 (4), that submits certified cost reports for services described under subd. 1. a percentage of the federal funds claimed for those services, which percentage is established in the most recent biennial budget.

(c) The department shall select a payment procedure under either par. (a) or (b) and may change which procedure under par. (a) or (b) is selected. The department shall notify each county department and local health department, as applicable, of the selected payment procedure before the date on which payment for services is made under that selected or newly selected procedure.

(53) PAYMENTS FOR CERTAIN SERVICES. Beginning on January 1, 2003, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payments to providers for covered services under ss. 49.46 (2) (a) 4. d. and (b) 6. j. and m. and 49.471 (11) (f) that are provided before January 1, 2012.

(54) THERAPY FOR CHILDREN PARTICIPATING IN THE BIRTH TO 3 PROGRAM. (a) *Federal share for county expenditures.* If a county certifies to the department that the amount the county expended to provide services specified under s. 49.46 (2) (b) 6. b. and c. to children participating in the early intervention program under s. 51.44 exceeds the amount the county received as reimbursement under this section, based on reimbursement rates established by the department for those services, and the federal government pays the state the federal share of Medical Assistance for the amount by which the county expenditures exceed the reimbursement, the department may disburse the federal share to the county. A county that receives moneys under this paragraph shall expend the moneys for early intervention services under s. 51.44 or for services under the disabled children's long−term support program, as defined in s. 46.011 (1g).

(b) *Services provided by special educators.* If a county provides services to assess and promote skill acquisition to children who are participating in the early intervention program under s. 51.44 and the services are provided by a special educator who is a certified provider of medical assistance, the department shall reimburse the county the federal share of medical assistance for the county's allowable charges for providing the services. The county shall pay the remaining expenses for the services. The department shall promulgate rules establishing certification requirements for special educators who provide service under this paragraph, and requirements for county reporting of expenditures for services under this paragraph. A county that receives moneys under this paragraph shall expend the moneys for early intervention services under s. 51.44 or for services under the disabled children's long−term support program, as defined in s. 46.011 (1g).

(56) DISEASE MANAGEMENT PROGRAM. Based on the health conditions identified by the physical health risk assessments, if performed under sub. (57), the department shall develop and implement, for Medical Assistance recipients, disease management programs. These programs shall have at least the following characteristics:

(a) The use of information science to improve health care delivery by summarizing a patient's health status and providing reminders for preventive measures.

(b) Educating health care providers on health care process improvement by developing best practice models.

(c) The improvement and expansion of care management programs to assist in standardization of best practices, patient education, support systems, and information gathering.

(d) Establishment of a system of provider compensation that is aligned with clinical quality, practice management, and cost of care.

(e) Focus on patient care interventions for certain chronic conditions, to reduce hospital admissions.

(57) PHYSICAL HEALTH RISK ASSESSMENT. The department shall encourage each individual who is determined on or after October 27, 2007, to be eligible for Medical Assistance to receive a physical health risk assessment as part of the first physical examination the individual receives under Medical Assistance.

(58) PROGRAM FOR ALL−INCLUSIVE CARE FOR THE ELDERLY. The department may administer the program of all−inclusive care for the elderly under 42 USC 1396u−4.

(59) HEALTH MAINTENANCE ORGANIZATION PAYMENTS TO HOSPITALS. (a) The department shall, from the appropriation accounts under s. 20.435 (4) (xc) and (xe), pay each health maintenance organization with which it contracts to provide medical assistance a monthly amount that the health maintenance organization shall use to make payments to hospitals under par. (b).

(b) Health maintenance organizations shall pay all of the moneys they receive under par. (a) to eligible hospitals, as defined in s. 50.38 (1), within 15 days after receiving the moneys. The department shall specify in contracts with health maintenance organizations to provide medical assistance a method that health maintenance organizations shall use to allocate the amounts received under par. (a) among eligible hospitals based on the number of discharges from inpatient stays and the number of outpatient visits for which the health maintenance organization paid such a hospital in the previous month for enrollees who are recipients of medical assistance. Payments under this paragraph shall be in addition to any amount that a health maintenance organization is required by agreement between the health maintenance organization and a hospital to pay the hospital for providing services to the health maintenance organization's enrollees.

(c) Each health maintenance organization that provides medical assistance shall report to the department each month the amount it paid each hospital under par. (b) and the percentage of the total payments it made under par. (b) that it paid to each hospital.

(d) Each health maintenance organization that provides medical assistance shall report monthly to each hospital to which the health maintenance organization makes payments under par. (b) such information regarding the payments that the department specifies in its contract with the health maintenance organization to provide medical assistance.

(e) 1. If the department determines that a health maintenance organization has not complied with a requirement under pars. (b) to (d), the department shall order the health maintenance organization to comply with the requirement within 15 days after the department's determination of noncompliance.

2. The department may terminate a contract with a health maintenance organization to provide medical assistance if the health maintenance organization fails to comply with a requirement under pars. (b) to (d).

3. The department may audit a health maintenance organization to determine whether the health maintenance organization has complied with the requirements under pars. (b) to (d).

(f) The department shall specify in contracts with health maintenance organizations to provide medical assistance the method for adjusting payments under par. (b) to correct a health maintenance organization's inaccurate counting of inpatient discharges or outpatient visits in calculating a monthly payment to a hospital under par. (b).

(g) If a health maintenance organization and hospital do not agree on the amount of a monthly payment that the health maintenance organization is required to pay the hospital under par. (b), either the health maintenance organization or the hospital, within 6 months after the first day of the month in which the payment is due, may request that the department determine the amount of the payment. The department shall determine the amount of the payment within 60 days after the request for a determination is made. The health maintenance organization or hospital is, upon request, entitled to a contested case hearing under ch. 227 on the department's determination.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403, 3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441; 2007 a. 20 ss. 1513 to 1559h, 9121 (6) (a); 2007 a. 90, 97, 104, 141, 153; 2009 a. 2, 28, 113, 177, 180, 190, 221, 334, 342; 2011 a. 10, 32, 120, 126, 158, 192, 209, 258; 2011 a. 260 s. 81; 2013 a. 20, 92; 2013 a. 116 ss. 2, 3, 29, 30; 2013 a. 117 ss. 2, 4; 2013 a. 130; 2013 a. 165 s. 114; 2013 a. 226; 2015 a. 55, 152, 153, 172, 294.

Cross−reference: See also chs. HA 3 and DHS 35, 101, 102, 103, 104, 105, 106, 107, and 108, Wis. adm. code.

Wisconsin has no medical assistance plan independent of Medicaid. Non−residence under federal Medicaid regulations is determinative of medical assistance eligibility. Pope v. DHSS, 187 Wis. 2d 207, 522 N.W.2d 22 (Ct. App. 1994).

Section 49.89, not sub. (19) (a) 2., specifically addresses assignment of actions and subrogation of rights by a public assistance recipient who is injured and has a tort claim against a 3rd party. Ellsworth v. Schelbrock, 2000 WI 63, 235 Wis. 2d 678, 611 N.W.2d 764, 98−0294.

Sub. (7) (a) requires that a health care facility resident who is a recipient of certain funds apply those funds toward the cost of care in the health care facility. The agent who received funds from the Social Security Administration on behalf of the resident has an obligation to pay the funds to the health care facility and is subject to an action for conversion. Methodist Manor of Waukesha, Inc. v. Martin, 2002 WI App 130, 255 Wis. 2d 707, 647 N.W.2d 409, 01−2877.

Medical assistance eligibility is not a default position that the department must rebut, but a privilege for which the applicant must prove eligibility. An initial determination of eligibility does not preclude a later redetermination of that status. The state has an ongoing duty to ensure that a MA recipient is eligible and the recipient bears the ongoing burden of proving eligibility. Estate of Gonwa v. DHFS, 2003 WI App 152, 265 Wis. 2d 913, 668 N.W.2d 122, 02−2901.

Sub. (2) (a) 9. does not direct the department to promulgate rules regarding conditions of reimbursement, but instead to include those conditions in a contract with the provider. A department handbook provision requiring odometer readings was a condition of reimbursement, not an administrative rule requiring promulgation. Meda−Care Vans of Waukesha, Inc. v. Division of Hearings and Appeals, 2007 WI App 140, 302 Wis. 2d 499, 736 N.W.2d 147, 05−2979.

Medicaid reimbursement is governed by the "Methods of Implementation for Wisconsin Medicaid Nursing Home Payment Rates" adopted by the department under sub. (6m). Sub. (6m) (e) requires the department to establish an appeals mechanism within the department to review petitions for modifications to any payment under sub. (6m). The "Methods" provides that the nursing home appeals board is available for redress in the event a facility has extraordinary fiscal circumstances. The department does not have the authority to grant an increased reimbursement rate absent appeals board approval. Park Manor, Ltd. v. Department of Health and Family Services, 2007 WI App 176, 304 Wis. 2d 512, 737 N.W.2d 88, 06−2311.

A contract between the trustees of a nursing home and a medical clinic for exclusive medical services under the medical assistance act for residents of such home violates public policy of this state. 59 Atty. Gen. 68.

Poverty is not a constitutionally suspect classification. Encouraging childbirth except in the most urgent circumstances is rationally related to the legitimate governmental objective of protecting potential life. Medical assistance discussed. Harris v. McRae, 448 U.S. 297 (1980).

Medical Assistance & Divestment. Canellos. Wis. Law. Aug. 1991.

49.452 Counting promissory notes as assets for certain Medical Assistance programs. (1) In this section, "promissory note" means a written, unconditional agreement, given in return for goods, money loaned, or services rendered, under which one party promises to pay another party a specified sum of money at a specified time or on demand.

(2) If an individual's assets are counted when determining or redetermining the individual's financial eligibility for Medical Assistance, the department shall include a promissory note as a countable asset if all of the following apply:

(a) The individual applying for or receiving benefits under Medical Assistance or his or her spouse provided the goods, money loaned, or services rendered for the promissory note.

(b) The promissory note was entered into or purchased on or after July 14, 2015.

(c) The promissory note is negotiable, assignable, and enforceable and does not contain any terms making it unmarketable.

(3) A promissory note is presumed to be negotiable and its asset value is the outstanding principal balance at the time the individual applies for Medical Assistance or at the time the individual's eligibility for Medical Assistance is redetermined, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the asset value.

History: 2015 a. 55.

49.453 Divestment of assets. (1) DEFINITIONS. In this section and in s. 49.454:

(a) "Assets" has the meaning given in 42 USC 1396p (h) (1).

(am) "Covered individual" means an individual who is an institutionalized individual or a noninstitutionalized individual.

(ar) "Community spouse" means the spouse of either the institutionalized person or the noninstitutionalized person.

(b) "Disabled" has the meaning given in 42 USC 1382c (a) (3).

(c) "Expected value of the benefit" means the amount that an irrevocable annuity will pay to the annuitant during his or her expected lifetime as determined under sub. (4) (c).

(d) "Income" has the meaning given in 42 USC 1396p (h) (2).

(e) "Institutionalized individual" has the meaning given in 42 USC 1396p (h) (3).

(f) "Look−back date" means either of the following:

1m. For transfers made before February 8, 2006, the date that is 36 months before, or with respect to payments from a trust or portions of a trust that are treated as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the date that is 60 months before:

a. For a covered individual who is an institutionalized individual, the first date on which the covered individual is both an institutionalized individual and has applied for medical assistance.

b. For a covered individual who is a noninstitutionalized individual, the date on which the covered individual applies for medical assistance or, if later, the date on which the covered individual, his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transferred assets for less than fair market value.

2m. For all transfers made on or after February 8, 2006, the date that is 60 months before the dates specified in subd. 1m. a. and b.

(fm) "Noninstitutionalized individual" has the meaning given in 42 USC 1396p (h) (4).

(g) "Reasonable compensation" means the prevailing local market rate of compensation for the service or care provided.

(h) "Relative" means an individual who is related to another by blood, marriage or adoption.

(i) "Resources" has the meaning given in 42 USC 1396p (h) (5).

(j) "Trust" has the meaning given in 42 USC 1396p (d) (6).

(2) INELIGIBILITY FOR MEDICAL ASSISTANCE FOR CERTAIN SERVICES. (a) *Institutionalized individuals*. Except as provided in

sub. (8), if an institutionalized individual or his or her spouse, or another person acting on behalf of the institutionalized individual or his or her spouse, transfers assets for less than fair market value on or after the institutionalized individual's look−back date, the institutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

1. For nursing facility services.

2. For a level of care in a medical institution equivalent to that of a nursing facility.

3. For services under a waiver under 42 USC 1396n.

(b) *Noninstitutionalized individuals.* Except as provided in sub. (8), if a noninstitutionalized individual or his or her spouse, or another person acting on behalf of the noninstitutionalized individual or his or her spouse, transfers assets for less than fair market value on or after the noninstitutionalized individual's look−back date, the noninstitutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

1. Services that are described in 42 USC 1396d (a) (7), (22) or (24).

2. Other long−term care services specified by the department by rule.

(3) PERIOD OF INELIGIBILITY. (a) The period of ineligibility under this subsection begins on either of the following for an applicant for Medical Assistance:

1. In the case of a transfer of assets made before February 8, 2006, the first day of the first month beginning on or after the look−back date during or after which assets have been transferred for less than fair market value and that does not occur in any other periods of ineligibility under this subsection.

2. In the case of a transfer of assets made on or after February 8, 2006, the first day of a month beginning on or after the look−back date during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance and would otherwise be receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved application for the care but for the application of the penalty period, whichever is later, and that does not occur during any other period of ineligibility under this subsection.

(ag) The period of ineligibility under this subsection for a transfer of assets made at the time the individual is receiving long−term care services through Medical Assistance begins on the first day of the month following the month in which the individual receives advance notice of the period of ineligibility.

(b) Subject to par. (bc), the department shall determine the number of months of ineligibility as follows:

1. The department shall determine the total, cumulative uncompensated value of all assets transferred by the covered individual or his or her spouse on or after the look−back date.

2. The department shall determine the average monthly cost to a private patient of nursing facility services in the state at the time that the covered individual applied for medical assistance.

3. The number of months of ineligibility equals the number determined by dividing the amount determined under subd. 1. by the amount determined under subd. 2.

(bc) In determining the number of months of ineligibility under par. (b), with respect to asset transfers that occur after February 8, 2006, the department may not round down the quotient, or otherwise disregard any fraction of a month, obtained in the division under par. (b) 3.

(c) If the spouse of an individual makes a transfer of assets that results in a period of ineligibility under this section and otherwise becomes eligible for medical assistance, the department shall apportion the period of ineligibility between the individual and the spouse. The department shall promulgate rules establishing a reasonable methodology for apportioning a period of ineligibility under this paragraph.

(4) IRREVOCABLE ANNUITIES, PROMISSORY NOTES AND SIMILAR TRANSFERS. (ac) In this subsection, "transaction" means any action taken by an individual that changes the course of payments to be made under an annuity or the treatment of the income or principal of an annuity, including all of the following:

1. An addition of principal.

2. An elective withdrawal.

3. A request to change the distribution of the annuity.

4. An election to annuitize the contract.

5. A change in ownership.

(ag) For the purposes of sub. (2), whenever a covered individual or his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transfers assets to an irrevocable annuity, or transfers assets by promissory note or similar instrument, in an amount that exceeds the expected value of the benefit, the covered individual or his or her spouse transfers assets for less than fair market value. A transfer to an annuity, or a transfer by promissory note or similar instrument, is not in excess of the expected value only if all of the following are true:

1. The periodic payments back to the transferor include principal and interest that, at the time that the transfer is made, is at least at one of the following:

a. For an annuity, promissory note or similar instrument that is not specified under subd. 1. b. or par. (am), the applicable federal rate required under section 1274 (d) of the Internal Revenue Code, as defined in s. 71.01 (6).

b. For an annuity with a guaranteed life payment, the appropriate average of the applicable federal rates based on the expected length of the annuity minus 1.5 percent.

2. The terms of the instrument provide for a payment schedule that includes equal periodic payments, except that payments may be unequal if the interest payments are tied to an interest rate and the inequality is caused exclusively by fluctuations in that rate.

(am) Paragraph (ag) 1. does not apply to a variable annuity that is tied to a mutual fund that is registered with the federal securities and exchange commission.

(b) The amount of assets that is transferred for less than fair market value under par. (ag) is the amount by which the transferred amount exceeds the expected value of the benefit.

(c) The department shall promulgate rules specifying the method to be used in calculating the expected value of the benefit, based on 26 CFR 1.72−1 to 1.72−18, and specifying the criteria for adjusting the expected value of the benefit based on a medical condition diagnosed by a physician before the assets were transferred to the annuity, or transferred by promissory note or similar instrument. In calculating the amount of the divestment when a transfer to an annuity, or a transfer by promissory note or similar instrument, is made, payments made to the transferor in any year subsequent to the year in which the transfer was made shall be discounted to the year in which the transfer was made by the applicable federal rate specified under par. (ag) on the date of the transfer.

(cm) Paragraphs (ag) to (c) apply to annuities purchased before February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

(d) For purposes of sub. (2), the purchase of an annuity by an institutionalized individual or his or her community spouse, or anyone acting on their behalf, shall be treated as a transfer of assets for less than fair market value unless any of the following applies:

1. The state is designated as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual.

2. The state is named as a beneficiary in the 2nd position after the community spouse or a minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value.

3. The annuity satisfies the requirements under par. (e) 1. or 2.

(e) For purposes of sub. (2), the purchase of an annuity by or on behalf of an annuitant who has applied for medical assistance for nursing facility services or other long−term care services described in sub. (2) is a transfer of assets for less than fair market value unless either of the following applies:

1. The annuity is either an annuity described in section 408 (b) or (q) of the Internal Revenue Code of 1986 or purchased with proceeds from any of the following:

a. An account or trust described in section 408 (a), (c), or (p) of the Internal Revenue Code of 1986.

b. A simplified employee pension, within the meaning of section 408 (k) of the Internal Revenue Code of 1986.

c. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

2. All of the following apply with respect to the annuity:

a. The annuity is irrevocable and nonassignable.

b. The annuity is actuarily sound, as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration.

c. The annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(em) Paragraphs (d) and (e) apply to all of the following:

1. Annuities purchased on or after February 8, 2006.

2. Annuities purchased before February 8, 2006, for which a transaction has occurred on or after February 8, 2006.

(4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2), the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage after February 8, 2006, is a transfer of assets for less than fair market value unless all of the following apply with respect to the note, loan, or mortgage:

1. The repayment term is actuarially sound.

2. The payments are to be made in equal amounts during the term of the loan, with no deferral and no balloon payment.

3. Cancellation of the balance upon the death of the lender is prohibited.

(am) Notwithstanding par. (a), for purposes of sub. (2), the purchase of or entering into a promissory note by an individual or his or her spouse on or after July 14, 2015, is a transfer of assets for less than fair market value unless all of the following apply:

1. The promissory note satisfies the requirements under par. (a) 1. to 3.

2. The promissory note is negotiable, assignable, and enforceable and does not contain any terms making it unmarketable.

(b) 1. The value of a promissory note purchased before July 14, 2015, a loan, or a mortgage that does not satisfy the requirements under par. (a) 1. to 3. is the outstanding balance due on the date that the individual applies for medical assistance for nursing facility services or other long−term care services described in sub. (2).

2. The value of a promissory note purchased or entered into on or after July 14, 2015, that does not satisfy the requirements under par. (am) 1. and 2. is the outstanding balance due on the date that the individual applies for Medical Assistance for nursing facility services or other long−term care services described in sub. (2) or on the date that the individual's eligibility for Medical Assistance for nursing facility services or other long−term care services described in sub. (2) is redetermined.

(4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase by an individual or his or her spouse of a life estate in another individual's home after February 8, 2006, is a transfer of assets for less than fair market value unless the purchaser resides in the home for at least one year after the date of the purchase.

(5) CARE OR PERSONAL SERVICES. For the purposes of sub. (2), whenever a covered individual or his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transfers assets to a relative as payment for care or personal services that the relative provides to the covered individual, the covered individual or his or her spouse transfers assets for less than fair market value unless the care or services directly benefit the covered individual, the amount of the payment does not exceed reasonable compensation for the care or services that the relative performs and, if the amount of the payment exceeds 10 percent of the community spouse resource allowance limit specified in s. 49.455 (6) (b) 1., the agreement to pay the relative is specified in a notarized written agreement that exists at the time that the relative performs the care or services.

(6) COMMON OWNERSHIP. For purposes of sub. (2), if a covered individual holds an asset in common with another person in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, is considered to be transferred by the covered individual when an action is taken, either by the covered individual or by any other person, that reduces or eliminates the covered individual's ownership or control of the asset.

(7) CERTAIN AUTHORIZATIONS. For the purposes of sub. (2), if a covered individual or his or her spouse authorizes another person to transfer, encumber, lease, consume or otherwise act with respect to an asset as though the asset belonged to that other person; if that other person exercises the authority in a way that causes the asset to be unavailable for the support and maintenance of the covered individual or his or her spouse; and if the covered individual does not receive fair market value for the asset, then the covered individual or his or her spouse transfers assets for less than fair market value at the time that the other person exercises the authority.

(8) INAPPLICABILITY. (a) Subsections (2) and (3) do not apply to transfers of assets if any of the following applies:

1. The assets are exempt under 42 USC 1396p (c) (2) (A), (B), or (C). To make a satisfactory showing to the state under 42 USC 1396p (c) (2) (C) and adjust the ineligibility period under sub. (3), the individual shall demonstrate that all of the assets transferred for less than fair market value, or cash equal to the value of the assets transferred for less than fair market, have been returned to him or her.

2. The department determines under the process under par. (b) that application of this section would work an undue hardship.

(b) The department shall establish a hardship waiver process that includes all of the following:

1. The department determines that undue hardship exists if the application of subs. (2) and (3) would deprive the individual of medical care to the extent that the individual's health or life would be endangered, or would deprive the individual of food, clothing, shelter, or other necessities of life.

2. A facility in which an institutionalized individual who has transferred assets resides is permitted to file an application for undue hardship on behalf of the individual with the consent of the individual or the individual's authorized representative.

3. The department may, during the pendency of an undue hardship determination, pay the full payment rate under s. 49.45 (6m) for nursing facility services for up to 30 days for the individual who transferred assets, to hold a bed in the facility in which the individual resides.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185; 2007 a. 20; 2013 a. 20, 92; 2015 a. 55.

A wife's failure to assert a claim against her deceased husband's estate for her statutorily granted share of the estate constituted an act of divestment. Tannler v. DHSS, 211 Wis. 2d 179, 564 N.W.2d 735 (1997), 96−0118.

The grantor of an irrevocable trust that allowed the grantor to live in trust property for her life unless the grantor was found incompetent, in which case the trust could be terminated and the property distributed, did not divest an asset when she was found incompetent and the trustee distributed the residence pursuant to the trust document. Artac v. DHFS, 2000 WI App 88, 234 Wis. 2d 480, 610 N.W.2d 115, 99−1253.

Although this section has specific requirements with which an annuity must comply, the initial question is whether the transfer of assets to the annuity was made for less than fair market value under sub. (2) (a). Buettner v. DHFS, 2003 WI App 90, 264 Wis. 2d 700, 663 N.W.2d 282, 01−0981.

An administrative determination that a nursing home resident's purchase of a life estate in 66 percent of her son's residence was a sham transaction of no value by which

the purchaser divested herself of an annuity balloon payment was reasonable when she had entered a nursing home as permanent to the home, had lived there for 5 years with no realistic expectation of release, could not use the life estate at the time of purchase, and had no reasonable future expectation of being able to do so, and if the son sold the property, the life estate would be extinguished. Hagenstein v. DHFS, 2006 WI App 90, 292 Wis. 2d 697, 715 N.W.2d 645, 05−1303.

49.454 Treatment of trust amounts. (1) APPLICABILITY. (a) Except as provided in sub. (4), this section applies to an individual with respect to a trust if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust and if any of the following persons established the trust other than by will:

1. The individual.

2. The individual's spouse.

3. A person, including a court or administrative body with legal authority to act in place of or on behalf of the individual or the individual's spouse.

4. A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(b) If the corpus of a trust under par. (a) includes assets of a person other than the individual or the individual's spouse, this section applies only with respect to the portion of the trust attributable to the assets of the individual or the individual's spouse.

(2) TREATMENT OF REVOCABLE TRUST AMOUNTS. For purposes of determining an individual's eligibility for, or amount of benefits under, medical assistance:

(a) The corpus of a revocable trust is considered a resource available to the individual.

(b) Payments from a revocable trust to or for the benefit of the individual are considered income of the individual.

(c) Other payments from a revocable trust are considered transfers of assets by the individual subject to s. 49.453.

(3) TREATMENT OF IRREVOCABLE TRUST AMOUNTS. For purposes of determining an individual's eligibility for, or amount of benefits under, medical assistance:

(a) If there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to or for the benefit of the individual could be made is considered a resource available to the individual, and payments from that portion of the corpus or income:

1. To or for the benefit of the individual, are considered income of the individual.

2. For any other purpose, are considered transfers of assets by the individual subject to s. 49.453.

(b) Any portion of an irrevocable trust from which, or any income on the corpus from which, no payment could under any circumstances be made to or for the benefit of the individual, is considered to be an asset transferred by the individual subject to s. 49.453. The asset is considered to be transferred as of the date of the establishment of the trust, or, if later, the date on which payment to the individual was foreclosed. The value of the trust shall be determined for purposes of s. 49.453 by including the amount of any payments made from that portion of the trust after that date.

(4) INAPPLICABILITY. This section does not apply to any trust described in 42 USC 1396p (d) (4) or if the department determines, pursuant to procedures established by the department by rule, that the application of this section would work an undue hardship on an individual.

History: 1993 a. 437.

Transfer of a disabled ward's property to a newly−established "Medicaid Payback Trust" was in the ward's best interest and authorized by ss. 49.454 (4) and 880.19 (5) (b) [now s. 54.22]. Marjorie A. G. v. Dodge County Department of Human Services, 2003 WI App 52, 261 Wis. 2d 679, 659 N.W.2d 438, 02−1121.

Regardless of whether the asset held in an irrevocable trust is transferred as an annuity, it is nevertheless held in an irrevocable trust governed by s. 49.454, which specifically governs the treatment of trust amounts for purposes of MA eligibility. Estate of Gonwa v. DHFS, 2003 WI App 152, 265 Wis. 2d 913, 668 N.W.2d 122, 02−2901.

Sub. (1) (a) requires that the assets of the individual were used to form all or part of the corpus of the trust. Sub. (1) (a) 4. plainly brings within this section trusts that are not established directly by an applicant or person legally authorized to act on behalf of the applicant but are indirectly established by the applicant in that the applicant directs or requests another person to establish the trust using the individual's assets. Hedlund v. Department of Health Services, 2011 WI App 153, 337 Wis. 2d 634, 807 N.W.2d 672, 10−3070.

The documentary evidence in this case showed that a husband and wife transferred all of their property except for one checking account to their children, and, on the same day in the same document, the children transferred that property to the trust. The inference that the assets were transferred to the children for the purpose of establishing the trust for the parent's benefit is a reasonable inference from the evidence and satisfies the requirement in sub. (1) (a) 4. that the children created the trust at the direction or upon the request of the parents. Even if other benefits resulted from the trust, it does not follow that the trust was not established at the parent's direction or request. Hedlund v. Department of Health Services, 2011 WI App 153, 337 Wis. 2d 634, 807 N.W.2d 672, 10−3070.

49.455 Protection of income and resources of couple for maintenance of community spouse. (1) DEFINITIONS. In this section:

(a) "Community spouse" means an individual who is married to an institutionalized spouse.

(b) "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

(c) "Family member" means a minor or dependent child, dependent parent or dependent sibling of an institutionalized or community spouse who resides with the community spouse.

(d) "Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a waiver under 42 USC 1396n (c) or (d) and is married to an individual who is not in a medical institution or nursing facility and does not receive services under a waiver under 42 USC 1396n (c) or (d).

(e) "Resources" does not include items excluded under 42 USC 1382b (a) or (d) or items that would be excluded under 42 USC 1382b (a) (2) (A) but for the limitation on total value established under that provision.

(2) APPLICABILITY. The department shall use the provisions of this section in determining the eligibility for medical assistance under s. 49.46 or 49.47 and the required contribution toward care of an institutionalized spouse.

(3) ATTRIBUTION OF INCOME. (a) Except as provided in par. (b), no income of a spouse is considered to be available to the other spouse during any month in which that other spouse is an institutionalized spouse.

(b) Notwithstanding ch. 766, for the purposes of sub. (4), the following criteria apply in determining the income of an institutionalized spouse or a community spouse:

1. Except as determined under subd. 2. or 3., unless the instrument providing the income specifically provides otherwise:

a. Income paid solely in the name of one spouse is considered to be available only to that spouse.

b. Income paid in the names of both spouses is considered to be available one−half to each spouse.

c. Income paid in the name of either or both spouses and to one or more other persons is considered to be available to each spouse in proportion to the spouse's interest or, if payment is made to both spouses and each spouse's individual interest is not specified, one−half of the joint interest is considered to be available to each spouse.

2. Except as provided in subd. 3., if there is no trust or other instrument establishing ownership, income received by a couple is considered to be available one−half to each spouse.

3. Subdivisions 1. and 2. do not apply to income other than income from a trust if the institutionalized spouse establishes, by a preponderance of the evidence, that the ownership interests in the income are other than as provided in subds. 1. and 2.

(4) PROTECTING INCOME FOR COMMUNITY SPOUSE. (a) After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of that institutionalized spouse's income that must be applied monthly to payment for the

costs of care in the institution, the department shall deduct the following amounts in the following order from the institutionalized spouse's income:

1. The personal needs allowance under s. 49.45 (7) (a).

2. The community spouse monthly income allowance calculated under par. (b) or the amount of income of the institutionalized spouse that is actually made available to, or for the benefit of, the community spouse, whichever is less.

3. A family allowance for each family member equal to one−third of the amount by which the family member's monthly income is exceeded by the following:

a. Beginning on September 30, 1989, and ending on June 30, 1991, 122 percent of one−twelfth of the poverty line for a family of 2 persons.

b. Beginning on July 1, 1991, and ending on June 30, 1992, 133 percent of one−twelfth of the poverty line for a family of 2 persons.

c. Beginning on July 1, 1992, 150 percent of one−twelfth of the poverty line for a family of 2 persons.

4. The amount incurred as expenses for medical or remedial care for the institutionalized spouse.

(b) The community spouse monthly income allowance equals the greater of the following:

1. The minimum monthly maintenance needs allowance determined under par. (c) or the amount determined at a fair hearing under sub. (8) (c), if such an amount has been determined, minus the amount of monthly income otherwise available to the community spouse.

2. The amount of monthly support which a court orders the institutionalized spouse to pay for the support of the community spouse.

(c) 1. For any year, the minimum monthly maintenance needs allowance equals the lesser of the amount determined under subd. 2., or the sum of the following:

a. One−twelfth of 200 percent of the poverty line for a family of 2 persons.

b. Any excess shelter allowance under par. (d).

2. The minimum monthly maintenance needs allowance in a year may not exceed $1,500 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the year involved.

3. In making the calculation under subd. 1. a., when the poverty line is revised the department shall use the revised amount starting on the first day of the 2nd calendar quarter beginning after the date of publication of the revision.

(d) The excess shelter allowance equals the amount by which 30 percent of the amount determined under par. (c) 1. a. is exceeded by the sum of the following:

1. The community spouse's expenses for rent or mortgage principal and interest, taxes and insurance for his or her principal residence and, if the community spouse lives in a condominium, a cooperative, or an unincorporated cooperative association, any required maintenance charge.

2. The standard utility allowance established under 7 USC 2014 (e), except that if the community spouse lives in a condominium, a cooperative, or an unincorporated cooperative association for which the maintenance charge includes utility expenses, the standard utility allowance under 7 USC 2014 (e) is reduced by the amount of the utility expenses included in the maintenance charge.

(5) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY. (a) 1. The department shall determine the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse in resources as of the beginning of the first continuous period of institutionalization beginning after September 29, 1989. The spousal share of resources equals one−half of that total value.

2. At the beginning of the first continuous period of institutionalization beginning after September 29, 1989, upon the request of an institutionalized spouse or a community spouse and the receipt of necessary documentation, the department shall assess and document the total value of resources under subd. 1. and shall provide a copy of the assessment and documentation to each spouse and retain a copy for departmental use. If the request is not part of an application for medical assistance, the department may charge a fee not exceeding the reasonable expenses of providing and documenting the assessment. When the department provides a copy of an assessment, it shall provide notice that a spouse has the right to a fair hearing under sub. (8) after an application for medical assistance is filed.

(b) Notwithstanding ch. 766, in determining the resources of an institutionalized spouse at the time of application for medical assistance, the amount of resources considered to be available to the institutionalized spouse equals the value of all of the resources held by either or both spouses minus the greatest of the amounts determined under sub. (6) (b) 1. to 4.

(c) The amount of resources determined under par. (b) to be available for the cost of care does not cause an institutionalized spouse to be ineligible for medical assistance, if any of the following applies:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse.

2. The institutionalized spouse lacks the ability to execute an assignment under subd. 1. due to a physical or mental impairment but the state has the right to bring a support proceeding against the community spouse without an assignment.

3. The department determines that denial of eligibility would work an undue hardship.

(d) During a continuous period of institutionalization, after an institutionalized spouse is determined to be eligible for medical assistance, no resources of the community spouse are considered to be available to the institutionalized spouse, except that a transfer of those resources or other assets by the community spouse within the first 5 years of eligibility of the institutionalized spouse may result in a period of ineligibility under s. 49.453 (2) and (3) for the institutionalized spouse.

(e) The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.

(6) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE. (a) Notwithstanding s. 49.453 (2), an institutionalized spouse may transfer an amount of resources equal to the community spouse resource allowance determined under par. (b) to, or for the sole benefit of, the community spouse without becoming ineligible for medical assistance for the period of ineligibility under s. 49.453 (3) as a result of the transfer. The institutionalized spouse shall make the transfer as soon as practicable after the initial determination of eligibility for medical assistance, taking into account the amount of time that is necessary to obtain a court order under par. (c).

(b) The community spouse resource allowance equals the amount by which the amount of resources otherwise available to the community spouse is exceeded by the greatest of the following:

1. In any year, $12,000 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the calendar year involved.

1m. $50,000.

2. The lesser of the following:

a. The spousal share computed under sub. (5) (a) 1.

b. In any year, $60,000 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the year involved.

3. The amount established in a fair hearing under sub. (8) (d).

4. The amount transferred under a court order under par. (c).

(c) If a court has entered a support order against a community spouse, s. 49.453 does not apply to resources transferred under the order for the support of the community spouse or a family member.

(7) NOTICE. The department shall notify both spouses upon a determination of medical assistance eligibility of an institutionalized spouse, or shall notify the spouse making the request upon a request by either an institutionalized spouse or a community spouse, of all of the following:

(a) The amount of the community spouse monthly income allowance calculated under sub. (4) (b).

(b) The amount of any family allowances under sub. (4) (a) 3.

(c) The method for computing the amount of the community spouse resource allowance under sub. (6) (b).

(d) The spouse's right to a fair hearing under sub. (8) concerning ownership or availability of income or resources and the determination of the community spouse monthly income or resource allowance.

(8) FAIR HEARING. (a) An institutionalized spouse or a community spouse is entitled to a departmental fair hearing concerning any of the following:

1. The determination of the community spouse monthly income allowance under sub. (4) (b).

2. The determination of the amount of monthly income otherwise available to the community spouse used in the calculation under sub. (4) (b).

3. After an application for medical assistance benefits is filed, the computation of the spousal share of resources under sub. (5) (a) 1.

4. The attribution of resources under sub. (5) (b).

5. The determination of the community spouse resource allowance under sub. (6) (b).

(b) If the institutionalized spouse has made an application for medical assistance, and a fair hearing is requested under par. (a) concerning the determination of community spouse resource allowance, the department shall hold the hearing within 30 days after the request.

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4) (c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4) (b).

(d) 1. If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6) (b) 1. to 2. or 4. without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c), the department shall establish, under subd. 2., an amount to be used under sub. (6) (b) 3. that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c).

2. The department shall base the amount to be used under sub. (6) (b) 3. on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raises the community spouse's income to the minimum monthly maintenance needs allowance. Any resource, regardless of whether the resource generates income, may be transferred in an amount that, combined with the community spouse resource allowance calculated before the fair hearing, provides the community spouse with sufficient funds to purchase the annuity. The community spouse is not required to purchase an annuity to obtain this amount.

3. Except in exceptional cases which would result in financial duress for the community spouse, the department may not establish an amount to be used under sub. (6) (b) 3. unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if the institutionalized spouse does not have sufficient income to make available to the community spouse the maximum monthly income allowance permitted under sub. (4) (b), unless the institutionalized spouse makes all of his or her income, except for an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and the amount incurred as expenses for medical or remedial care for the institutionalized spouse under sub. (4) (a) 4., available to the community spouse as a community spouse monthly income allowance under sub. (4) (b).

History: 1989 a. 31, 81; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27; 2005 a. 441; 2013 a. 20.

Cross−reference: See also ch. DHS 103, Wis. adm. code.

An ineligible spouse's IRA is excluded in determining whether the applying spouse is eligible for medical assistance. Keip v. DHFS, 2000 WI App 13, 232 Wis. 2d 380, 606 N.W.2d 543, 99−0193.

Sub. (2) applies in determining eligibility for medical assistance and the required contribution to an institutionalized person's care. Sub. (3) (a) declares that the income of a community spouse is not available to the institutionalized spouse, when, with specific exceptions, a community spouse's income is paid solely to the spouse. In general s. 49.90 (1) (a) 1. obligates a spouse to support a dependent spouse who is unable to financially care for him or herself while residing in an institution, but must give way to the more specific terms of this section. Chippewa County Department of Human Services v. Bush, 2007 WI App 184, 305 Wis. 2d 181, 738 N.W.2d 562, 05−1113.

Sub. (8) (d) does not conflict with federal law. Federal law does not require an institutionalized spouse's income−producing assets to be shifted to the community spouse's minimum monthly maintenance needs allowance before his or her income is shifted to the community spouse. DHFS v. Blumer, 534 U.S. 473, 151 L. Ed 2d 935 (2002).

Medical Assistance & Divestment. Canellos. Wis. Law. Aug. 1991.

Wisconsin Department of Health and Family Services v. Blumer: A "Case" Study in Pragmatism and the Expansion of Judicial Deference to Agency Interpretations. Kindstrand. 2002 WLR 1467.

49.46 Medical assistance; recipients of social security aids. (1) ELIGIBILITY. (a) The following shall receive medical assistance under this section:

1. Notwithstanding s. 49.19 (20), any individual who, without regard to the individual's resources, would qualify for a grant of aid to families with dependent children under s. 49.19.

1g. Notwithstanding s. 49.19 (20), any individual who, without regard to the individual's resources, would qualify for a grant of aid to families with dependent children but who would not receive the aid solely because of the application of s. 49.19 (11) (a) 7.

1m. Any pregnant woman whose income does not exceed the standard of need under s. 49.19 (11) and whose pregnancy is medically verified. Eligibility continues to the last day of the month in which the 60th day after the last day of the pregnancy falls.

3. Any essential person.

4. Any person receiving benefits under s. 49.77 or federal Title XVI.

4m. Any child for whom a payment is made under s. 49.775.

5. Any child in an adoption assistance, foster care, or subsidized guardianship placement under ch. 48 or 938, as determined by the department.

6. Any person not described in pars. (c) to (e) who, without regard to the individual's resources, would be considered, under federal law, to be receiving aid to families with dependent children for the purpose of determining eligibility for medical assistance.

6m. Any person not described in pars. (c) to (e) who is considered, under federal law, to be receiving supplemental security

income for the purpose of determining eligibility for medical assistance.

9. Any pregnant woman not described under subd. 1., 1g., or 1m. whose family income does not exceed 133 percent of the poverty line for a family the size of the woman's family.

10. Any child not described under subd. 1. or 1g. who is under 6 years of age and whose family income does not exceed 133 percent of the poverty line for a family the size of the child's family.

11. If a waiver under s. 49.665 is granted and in effect, any child not described under subd. 1. or 1g. who has attained the age of 6 but has not attained the age of 19 and whose family income does not exceed 100 percent of the poverty line for a family the size of the child's family. If a waiver under s. 49.665 is not granted or in effect, any child not described in subd. 1. or 1g. who was born after September 30,1983, who has attained the age of 6 but has not attained the age of 19 and whose family income does not exceed 100 percent of the poverty line for a family the size of the child's family.

12. Any child not described under subd. 1. or 1g. who is under 19 years of age and whose income does not exceed the standard of need under s. 49.19 (11).

13. Any child who is under one year of age, whose mother was determined to be eligible under subd. 9. and who lives with his or her mother.

14. Any person who would meet the financial and other eligibility requirements for home or community−based services under s. 46.27 (11), 46.277, or 46.2785 but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3), if a waiver under s. 49.45 (38) is in effect or federal law permits federal financial participation for medical assistance coverage of the person and if funding is available for the person under s. 46.27 (11), 46.277, or 46.2785.

14m. Any person who would meet the financial and other eligibility requirements for home or community−based services under the family care benefit but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3), if a waiver under s. 46.281 (1d) is in effect or federal law permits federal financial participation for medical assistance coverage of the person and if funding is available for the person under the family care benefit.

15. Any individual who is infected with tuberculosis and meets the income and resource eligibility requirements for the federal Supplemental Security Income program under 42 USC 1381 to 1383d. For purposes of this subdivision, "income" has the meaning given for "family income" in s. 49.471 (1) (f).

16. Any child who is living with a relative who is eligible to receive payments under s. 48.57 (3m) or (3n) with respect to that child, if the department determines that no other insurance is available to the child.

(am) 1. If the change requested under subd. 2. in the approved state plan for services under 42 USC 1396 is approved by the federal department of health and human services, the department shall disregard income from the following individuals, in an amount sufficient for the individual to become eligible for medical assistance under this section:

a. A pregnant woman whose family income, before any income is disregarded under this paragraph, does not exceed, in state fiscal year 1994−95, 155 percent of the poverty line for a family the size of the woman's family; and, in each state fiscal year after the 1994−95 state fiscal year, 185 percent of the poverty line for a family the size of the woman's family.

b. A child who is under 6 years of age and whose family income, before any income is disregarded under this paragraph, does not exceed, in state fiscal year 1994−95, 155 percent of the poverty line for a family the size of the child's family; and, in each state fiscal year after the 1994−95 state fiscal year, 185 percent of the poverty line for a family the size of the child's family.

c. A child who is under one year of age, whose mother was determined to be eligible under subd. 1. a. and who lives with his or her mother.

2. The department shall request a change in the approved state plan for services under 42 USC 1396 to allow, pursuant to the authority granted under 42 USC 1396a (r) (2), the use of federal matching funds to provide medical assistance coverage to individuals under subd. 1., beginning on July 1, 1994.

(b) Any person shall be considered a recipient of aid for 3 months prior to the month of application if the proper agency determines eligibility existed during such prior month.

(c) Except as provided under par. (cr), a family that becomes ineligible for aid to families with dependent children under s. 49.19 because of increased income from employment or increased hours of employment shall receive medical assistance for 4 calendar months, or, if required under federal law, up to 12 months, following the month in which a parent, caretaker, or dependent child of the family becomes ineligible for aid to families with dependent children if all of the following apply:

1g. The family is eligible for aid to families with dependent children for at least 3 of the 6 months immediately preceding the month in which the family becomes ineligible.

1r. The family continues to include a child who is, or would be if needy, a dependent child under s. 49.19.

(cg) Except as provided under par. (cr), medical assistance shall be provided to a dependent child, a relative with whom the child is living or the spouse of the relative, if the spouse meets the requirements of s. 49.19 (1) (c) 2. a. or b., for 4 calendar months beginning with the month in which the child, relative or spouse is ineligible for aid to families with dependent children because of the collection or increased collection of maintenance or support, if the child, relative or spouse received aid to families with dependent children in 3 or more of the 6 months immediately preceding the month in which that ineligibility begins.

(cr) To the extent approved by the federal department of health and human services, an individual or family described in par. (c) or (cg) is not eligible for Medical Assistance if the federal department of health and human services approves a request from the department to deny all or some transitional Medical Assistance benefits to that individual or family, if approval is required. The department shall allow individuals who are receiving transitional Medical Assistance benefits on December 31, 2013, to continue to receive those benefits until their 12−month period ends, if required under federal law. If the federal department of health and human services approves the department's request to charge a premium to recipients of continued transitional Medical Assistance benefits, the department may charge a premium to any recipient of continued transitional Medical Assistance benefits whose income exceeds 100 percent of the poverty line.

(d) For the purposes of this section:

1. Children who are placed in licensed foster homes by the department and who would be eligible for payment of aid to families with dependent children in foster homes except that their placement is not made by a county department under s. 46.215, 46.22, or 46.23 will be considered as recipients of aid to families with dependent children.

2. Any accommodated person or any patient in a public medical institution shall be considered a recipient for purposes of this section if such person or patient would have inadequate means to meet his or her need for care and services if living in his or her usual living arrangement.

3. Any child adopted under s. 48.48 (12) shall be considered a recipient for any medical condition which exists at the time of the adoption or develops subsequent to the adoption.

4. A child who meets the conditions under 42 USC 1396a (e) (3) shall be considered a recipient of benefits under s. 49.77 or federal Title XVI.

(e) If an application under s. 49.47 (3) shows that the individual meets the income limits under s. 49.19 or meets the income and resource requirements under federal Title XVI or s. 49.77, or that the individual is an essential person, an accommodated person, or a patient in a public medical institution, the individual shall be granted the benefits enumerated under sub. (2) whether or not the individual requests or receives a grant of any of such aids.

(j) An individual determined to be eligible for benefits under par. (a) 9. remains eligible for benefits under par. (a) 9. for the balance of the pregnancy and to the last day of the month in which the 60th day after the last day of the pregnancy falls without regard to any change in the individual's family income.

(k) 1. If a child eligible for benefits under par. (a) 10. is receiving inpatient services covered under sub. (2) on the day before the birthday on which the child attains the age of 6 and, but for attaining that age, the child would remain eligible for benefits under par. (a) 10., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.

2. If a child eligible for benefits under par. (a) 11. is receiving inpatient services covered under sub. (2) on the day before the birthday on which the child attains the age of 19 and, but for attaining that age, the child would remain eligible for benefits under par. (a) 11., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.

(L) For the purposes of par. (a) 9. to 12., "income" includes income that would be used in determining eligibility for aid to families with dependent children under s. 49.19, except to the extent that that determination is inconsistent with 42 USC 1396a (a) 17., and excludes income that would be excluded in determining eligibility for aid to families with dependent children under s. 49.19. For the purposes of par. (am), "income" shall be determined in accordance with the approved state plan for services under 42 USC 1396.

(m) 1. Except as provided in subd. 2., any individual who is otherwise eligible under this subsection and who is eligible for enrollment in a group health plan shall, as a condition of eligibility for medical assistance and if the department determines it is cost−effective to do so, apply for enrollment in the group health plan, except that, for a minor, the parent of the minor shall apply on the minor's behalf.

2. If a parent of a minor fails to enroll the minor in a group health plan in accordance with subd. 1., the failure does not affect the minor's eligibility under this subsection.

(1m) PILOT PROJECT FOR WORKING RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME OR SOCIAL SECURITY DISABILITY INCOME. The department shall request that the secretary of the federal department of health and human services and the commissioner of the federal social security administration waive the income and asset requirements for recipients of benefits under federal Title II or XVI to allow the department to conduct a pilot project to allow those recipients to work without losing eligibility for benefits under federal Title II or XVI or for medical assistance or medicare, as defined in s. 49.45 (3) (L) 1. b. If the request is approved, the department may implement the program and may require participants in the program to pay, on a sliding scale, a copayment for the cost of the program.

(1p) DEMONSTRATION PROJECT FOR PERSONS WITH HIV. The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to provide under this section coverage of services specified under sub. (2) for persons who have HIV infection, as defined in s. 252.01 (2). If a waiver is granted and in effect, the department shall provide coverage for the services specified under sub. (2) for persons who qualify under the terms of the waiver.

(2) BENEFITS. (a) Except as provided in par. (be), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following federally mandated benefits:

1. Physicians' services, excluding services provided under par. (b) 6. f.

2. Early and periodic screening and diagnosis, including case management services, of persons under 21 years of age and all medical treatment and dentists' services found necessary by this screening and diagnosis.

3. Rural health clinic services.

4. The following medical services if prescribed by a physician:

a. Inpatient hospital services other than services in an institution for mental diseases, including psychiatric and alcohol or other drug abuse treatment services.

b. Services specified in this paragraph, provided by any hospital on an outpatient basis.

c. Skilled nursing home services other than in an institution for mental diseases, except as limited under s. 49.45 (6c) and (30m) (b) and (c).

d. Home health services, subject to the limitation under s. 49.45 (8), or, if a home health agency is unavailable, nursing services.

e. Laboratory and X−ray services.

f. Services and supplies for family planning, as defined in s. 253.07 (1) (a).

4m. Nurse−midwifery services.

6. Premiums, deductibles and coinsurance and other cost−sharing obligations for items and services otherwise paid under this subsection that are required for enrollment in a group health plan, as specified in sub. (1) (m), except that, if enrollment in the group health plan requires enrollment of family members who are not eligible under this subsection, the department shall pay, if it is cost−effective, for an ineligible family member only the premium that is required for enrollment in the group health plan.

(b) Except as provided in pars. (be) and (dc), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following services:

1. Dentists' services, limited to basic services within each of the following categories:

a. Diagnostic services.

b. Preventive services.

c. Restorative services.

d. Endodontic services.

e. Periodontic services.

f. Oral and maxillofacial surgery services.

g. Emergency treatment of dental pain.

hm. Removable prosthodontic services.

im. Fixed prosthodontic services.

2. Optometrists' or opticians' services.

3. Transportation by emergency medical vehicle to obtain emergency medical care, transportation by specialized medical vehicle to obtain medical care including the unloaded travel of the specialized medical vehicle necessary to provide that transportation, or transportation by common carrier or private motor vehicle to obtain medical care.

4. Chiropractors' services.

5. Eyeglasses.

6. The following services that, other than under subd. 6. f., fm., k., and Lr., are prescribed by a physician:

a. Intermediate care facility services other than in an institution for mental diseases, except as limited under s. 49.45 (30m) (b) and (c).

b. Physical and occupational therapy.

c. Speech, hearing and language disorder services.

d. Medical supplies and equipment.

e. Subject to the limitation under s. 49.45 (30r), inpatient hospital, skilled nursing facility and intermediate care facility services for patients of any institution for mental diseases who are under 21 years of age, are under 22 years of age and who were receiving these services immediately prior to reaching age 21, or are 65 years of age or older.

f. Medical day treatment services, mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist.

fm. Subject to the limitations under s. 49.45 (45), mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist, to an individual who is 21 years of age or older in the individual's home or in the community.

g. Nursing services, including services performed by a nurse practitioner, as defined in rules that the department shall promulgate.

h. Legend drugs, as listed in the Wisconsin medical assistance drug index.

i. Over−the−counter drugs listed by the department in the Wisconsin medical assistance drug index.

j. Personal care services, subject to the limitation under s. 49.45 (42).

k. Alcohol and other drug abuse day treatment services.

L. Mental health and psychosocial rehabilitative services, including case management services, provided by the staff of a community support program certified under s. 49.45 (2) (a) 11.

Lm. Subject to the limitations under s. 49.45 (30e), psychosocial services, including case management services, provided by the staff of a community−based psychosocial service program.

Lo. Subject to the limitations under s. 49.45 (30g), community recovery services.

Lr. Psychotherapy and alcohol and other drug abuse services, as specified under s. 49.45 (30f).

m. Respiratory care services for ventilator−dependent individuals.

8. Home or community−based services, if provided under s. 46.27 (11), 46.275, 46.277, 46.278, 46.2785, 46.99, or under the family care benefit if a waiver is in effect under s. 46.281 (1d), or under the disabled children's long−term support program, as defined in s. 46.011 (1g).

9. Case management services, as specified under s. 49.45 (24) or (25).

10. Hospice care as defined in 42 USC 1396d (o) (1).

11. Podiatrists' services.

12. Care coordination for women with high−risk pregnancies.

12m. Prenatal, postpartum and young child care coordination services under s. 49.45 (44).

12t. Subject to the limitations under s. 49.45 (30x), licensed midwife services provided by a certified professional midwife licensed under s. 440.982.

13. Care coordination and follow−up, including lead investigations, as defined in s. 254.11 (8s), of persons having lead poisoning or lead exposure, as defined in s. 254.11 (9).

14. School medical services under s. 49.45 (39).

14m. Subject to par. (bt), substance abuse treatment services provided by a medically monitored treatment service or a transitional residential treatment service.

15. Mental health crisis intervention services under s. 49.45 (41).

16. Case management services for recipients with high−cost chronic health conditions or high−cost catastrophic health conditions, if the department operates a program under s. 49.45 (43).

17. Services under s. 49.45 (54) (b) for children participating in the early intervention program under s. 51.44, that are provided by a special educator.

18. Care coordination, as specified under s. 49.45 (25g).

19. Subject to par. (br), services provided by early intervention teachers, home trainers, parent−to−parent mentors, and developmental specialists to children in the benchmark plan under par. (br).

20. Subject to s. 49.45 (24j), any additional services, as determined by the department, that are targeted to a population enrolled in a medical home initiative under s. 49.45 (24j).

(bc) Subject to s. 49.45 (24j), the department may provide any of the services described in par. (a) or (b) through a medical home initiative under s. 49.45 (24j).

(be) Benefits for an individual eligible under sub. (1) (a) 9. are limited to those services under par. (a) or (b) that are related to pregnancy, including postpartum services and family planning services, as defined in s. 253.07 (1) (b), or related to other conditions which may complicate pregnancy.

(bm) Benefits for an individual who is eligible for medical assistance only under sub. (1) (a) 15. are limited to those services related to tuberculosis that are described in 42 USC 1396a (z) (2).

(br) If the federal department of health and human services approves the department's request to offer a benchmark plan under this paragraph, the department may enroll any child who is receiving services through the early intervention program under s. 51.44 in a benchmark plan under this paragraph. The department may not require a child who is receiving services through the early intervention program under s. 51.44 to enroll in a benchmark plan offered under this paragraph. The department may not charge a copayment to a child who is enrolled in the benchmark plan under this paragraph for services described in par. (b) 19.

(bt) 1. For the purposes of par. (b) 14m., a "medically monitored treatment service" is a 24−hour, community−based service providing observation, monitoring, and treatment by a multidisciplinary team under supervision of a physician, with a minimum of 12 hours of counseling provided per week for each patient.

2. For the purposes of par. (b) 14m., a "transitional residential treatment service" is a clinically supervised, peer−supported, therapeutic environment with clinical involvement providing substance abuse treatment in the form of counseling for 3 to 11 hours provided per week for each patient.

3. If approval by the federal department of health and human services of a state plan amendment or waiver request is necessary for federal reimbursement of the services under par. (b) 14m., the department is not required to pay for services described in par. (b) 14m. if the department does not receive the necessary approval.

4. The department may not provide reimbursement for services under par. (b) 14m. that are provided before July 1, 2016, or before the date of approval of the state plan amendment or waiver request described under subd. 3., whichever is later.

(c) 1. In this paragraph and par. (cm):

a. "Entitled to coverage under part A of medicare" means eligible for and enrolled in part A of medicare under 42 USC 1395c to 1395f.

b. "Entitled to coverage under part B of medicare" means eligible for and enrolled in part B of medicare under 42 USC 1395j to 1395L.

2. For an individual who is entitled to coverage under Part A of Medicare, entitled to coverage under Part B of Medicare, meets the eligibility criteria under sub. (1), and meets the limitation on income under subd. 6., Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395zz that are not paid under 42 USC 1395 to 1395zz, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums payable under 42 USC 1395v; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty, if applicable, for premiums under Part A of Medicare. Payment of coinsurance for a service under Part

B of Medicare under 42 USC 1395j to 1395w and payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

3. For an individual who is only entitled to coverage under Part A of Medicare, meets the eligibility criteria under sub. (1), and meets the limitation on income under subd. 6., Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395i that are not paid under 42 USC 1395 to 1395i, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty, if applicable, for premiums under Part A of Medicare. Payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

4. For an individual who is entitled to coverage under Part A of Medicare, entitled to coverage under Part B of Medicare, and meets the eligibility criteria for Medical Assistance under sub. (1), but does not meet the limitation on income under subd. 6., Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395zz that are not paid under 42 USC 1395 to 1395zz, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under Part B of Medicare under 42 USC 1395j to 1395w and payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

5. For an individual who is only entitled to coverage under Part A of Medicare and meets the eligibility criteria for Medical Assistance under sub. (1), but does not meet the limitation on income under subd. 6., Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395i that are not paid under 42 USC 1395 to 1395i, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

5m. For an individual who is only entitled to coverage under Part B of Medicare and meets the eligibility criteria under sub. (1), but does not meet the limitation on income under subd. 6., Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395j to 1395w, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under Part B of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

6. The income limitation under this paragraph is income that is equal to or less than 100 percent of the poverty line, as established under 42 USC 9902 (2).

(cm) 1. Beginning on January 1, 1993, for an individual who is entitled to coverage under part A of medicare, is entitled to coverage under part B of medicare, meets the eligibility criteria under sub. (1) and meets the limitation on income under subd. 2., medical assistance shall pay the monthly premiums under 42 USC 1395r.

2. Benefits under subd. 1. are available for an individual whose income is greater than 100 percent of the poverty line but less than 120 percent of the poverty line.

(d) Benefits authorized under this subsection may not include payment for that part of any service payable through 3rd−party liability or any federal, state, county, municipal or private benefit system to which the beneficiary is entitled. "Benefit system" does not include any public assistance program such as, but not limited to, Hill−Burton benefits under 42 USC 291c (e), in effect on April 30, 1980, or relief funded by a relief block grant.

(dc) For an individual who is eligible for medical assistance and who is eligible for coverage under Part D of Medicare under 42 USC 1395w−101 et seq., benefits under par. (b) 6. h. do not include payment for any Part D drug, as defined in 42 CFR 423.100, regardless of whether the individual is enrolled in Part D of Medicare or whether, if the individual is enrolled, his or her Part D plan, as defined in 42 CFR 423.4, covers the Part D drug.

(dm) Benefits under this section may not include payment for services to individuals aged 21 to 64 who are residents of an institution for mental diseases and who are otherwise eligible for medical assistance, except for individuals under 22 years of age who were receiving these services immediately prior to reaching age 21 and continuously thereafter and except for services to individuals who are on convalescent leave or are conditionally released from the institution for mental diseases. For purposes of this paragraph, the department shall define "convalescent leave" and "conditional release" by rule.

(f) Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122, 173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 253; 2007 a. 20, 91; 2009 a. 28, 221; 2011 a. 10, 32; 2013 a. 20; 2013 a. 116 s. 29; 2013 a. 117 s. 2, 3; 2015 a. 55.

Cross−reference: See also chs. DHS 102, 103, and 107, Wis. adm. code.

A categorically needy person applying for assistance under this section was not required to comply with divestment requirements. Sinclair v. DHSS, 77 Wis. 2d 322, 253 N.W.2d 245 (1977).

Sub. (1) (b) and s. 49.47 (6) (d) limit retroactive medical assistance payments to services received not more than 3 months prior to the date the application was submitted. St. Paul Ramsey Medical Center v. DHSS, 186 Wis. 2d 37, 519 N.W.2d 706 (Ct. App. 1994).

States need not fund nontherapeutic abortions. Beal v. Doe, 432 U.S. 438.

49.465 Presumptive medical assistance eligibility. **(1)** In this section, "qualified provider" means a provider which satisfies the requirements under 42 USC 1396r−1 (b) (2), as determined by the department.

(2) A pregnant woman is eligible for medical assistance benefits, as provided under sub. (3), during the period beginning on the day on which a qualified provider determines, on the basis of preliminary information, that the woman's family income does not exceed the highest level for eligibility for benefits under s. 49.46 (1) or 49.47 (4) (am) or (c) 1. and ending as follows:

(a) If the woman applies for benefits under s. 49.46 or 49.47 within the time required under sub. (4), the day on which the department or the county department under s. 46.215, 46.22 or 46.23 determines whether the woman is eligible for benefits under s. 49.46 or 49.47.

(c) If the woman does not apply for benefits under s. 49.46 or 49.47 within the time required under sub. (4), the last day of the month following the month in which the provider makes the determination under this subsection.

(3) The department shall audit and pay allowable charges to a provider certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a recipient under this section only for ambulatory prenatal care covered under s. 49.46 (2).

(4) A woman who is determined to be eligible under this section shall apply for benefits under s. 49.46 or 49.47 on or before the last day of the month following the month in which the qualified provider makes that determination.

(5) A qualified provider which determines that a woman is eligible under this section shall do all of the following:

(a) Notify the department of that determination within 5 working days after the day the determination is made.

(b) Notify the woman of the requirement under sub. (4).

(6) The department shall provide qualified providers with application forms for medical assistance under ss. 49.46 and 49.47 and information on how to assist women in completing the forms.

History: 1987 a. 27, 307, 413; 1989 a. 9; 1989 a. 31 ss. 1460p, 2909g, 2909i; 1991 a. 269; 1995 a. 289; 1997 a. 27; 2011 a. 10, 32.

49.468 Expanded medicare buy−in. (1) (a) In this subsection and sub. (1m):

1. "Disabled" means blind, as defined under 42 USC 1382c (a) (2) and disabled, as defined under 42 USC 1382c (a) (3).

2. "Elderly" means 65 years of age or older.

3. "Entitled to coverage under part A of medicare" means eligible for and enrolled in part A of medicare under 42 USC 1395c to 1395f.

4. "Entitled to coverage under part B of medicare" means eligible for and enrolled in part B of medicare under 42 USC 1395j to 1395L.

(b) For an elderly or disabled individual who is entitled to coverage under Part A of Medicare, entitled to coverage under Part B of Medicare, and who does not meet the eligibility criteria for Medical Assistance under s. 49.46 (1), 49.465, 49.47 (4), or 49.471 but meets the limitations on income and resources under par. (d), Medical Assistance shall pay the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395zz that are not paid under 42 USC 1395 to 1395zz, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums payable under 42 USC 1395v; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty, if applicable, for premiums under Part A of Medicare. Payment of coinsurance for a service under Part B of Medicare under 42 USC 1395j to 1395w and payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

(c) For an elderly or disabled individual who is only entitled to coverage under Part A of Medicare and who does not meet the eligibility criteria for Medical Assistance under s. 49.46 (1), 49.465, 49.47 (4), or 49.471 but meets the limitations on income and resources under par. (d), Medical Assistance shall pay the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395i that are not paid under 42 USC 1395 to 1395i, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty for premiums under Part A of Medicare, if applicable. Payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

(d) Benefits under par. (b) or (c) are available for an individual who has resources that are equal to or less than 200 percent of the allowable resources as determined under 42 USC 1381 to 1385 and income that is equal to or less than 100 percent of the poverty line.

(e) In determining under this subsection the income of an individual who is entitled to a monthly social security benefit under 42 USC 401 to 433, the department shall exclude, from December until the month after the month in which the annual revision of the poverty line is published, the amount of the social security benefit attributable to a cost−of−living increase under 42 USC 415 (i).

(1m) (a) Beginning on January 1, 1993, for an elderly or disabled individual who is entitled to coverage under part A of medicare and is entitled to coverage under part B of medicare, does not meet the eligibility criteria for medical assistance under s. 49.46 (1), 49.465, 49.47 (4), or 49.471 but meets the limitations on income and resources under par. (b), medical assistance shall pay the monthly premiums under 42 USC 1395r.

(b) Benefits under par. (a) are available for an individual who has resources that are equal to or less than 200 percent of the allowable resources determined under 42 USC 1381 to 1385 and income that is greater than 100 percent of the poverty line but less than 120 percent of the poverty line.

(2) (a) Beginning on January 1, 1991, for a disabled working individual who is entitled under P.L. 101−239, section 6012 (a), to coverage under part A of medicare and who does not meet the eligibility criteria for medical assistance under s. 49.46 (1), 49.465, 49.47 (4), or 49.471 but meets the limitations on income and resources under par. (b), medical assistance shall pay the monthly premiums for the coverage under part A of medicare, including late enrollment fees, if applicable.

(b) Benefits under par. (a) are available for an individual who has resources that are equal to or less than 200 percent of the allowable resources under 42 USC 1381 to 1385 and income that is equal to or less than 200 percent of the poverty line.

History: 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16; 2001 a. 16; 2007 a. 20; 2011 a. 32.

49.47 Medical assistance; medically indigent. (1) PURPOSE. Medical assistance as set forth herein shall be provided to persons over 65, if eligible under this section, all disabled children under 18, if eligible under this section, and persons who are blind or disabled, if eligible under this section.

(2) DEFINITIONS. As used in this section, unless the context indicates otherwise:

(a) "Beneficiary" means a person eligible for, and a recipient of, medical assistance under this section.

(b) "Illness" means a bodily disorder, bodily injury, disease or mental disease. All illnesses existing simultaneously which are due to the same or related causes shall be considered "one illness." Successive periods of illness less than 6 months apart, which are due to the same or related causes, shall also be considered "one illness."

(3) APPLICATION. (a) At any time any resident of this state who believes himself or herself medically indigent and qualified for aid under this section may make application, on forms prescribed by the department. If eligibility is questionable by reason of the information contained on the application or is incomplete, further investigation shall be made to determine eligibility.

(b) The agency shall promptly review the application and shall issue a certificate to the individual showing eligibility when eligibility has been established.

(c) The department shall simplify applications for benefits for pregnant women and children under sub. (4) and shall make the simplified applications available in the offices of health care providers.

(4) ELIGIBILITY. (a) Any individual who meets the limitations on income and resources under pars. (b) to (c) and who complies with pars. (cm) and (cr) shall be eligible for medical assistance under this section if such individual is:

1. Under 21 years of age and resides in an intermediate care facility, skilled nursing facility, or inpatient psychiatric hospital. The department shall apply the definition of family income in s. 49.471 (1) (f) to make determinations of income under this subdivision.

3. 65 years of age or older.

4. Blind or totally and permanently disabled as defined under federal Title XVI.

(ag) Any individual whose income does not exceed the limits under par. (c) and who complies with par. (cm) is eligible for medical assistance under this section if the individual is one of the following:

1. Under the age of 18.

2. Pregnant and the woman's pregnancy is medically verified Eligibility continues to the last day of the month in which the 60th day after the last day of the pregnancy falls.

(am) An individual who does not meet the limitation on income in par. (c) is eligible for medical assistance under this section if the individual is one of the following:

1. A pregnant woman whose family income does not exceed 155 percent of the poverty line for a family the size of the woman's family, except that if a waiver under par. (j) or a change in the approved state plan under s. 49.46 (1) (am) 2. is in effect, the income limit is 185 percent of the poverty line for a family the size of the woman's family in each state fiscal year after the 1994−95 state fiscal year.

2. A child who is under 6 years of age and whose family income does not exceed 155 percent of the poverty line for a family the size of the child's family, except that if a waiver under par. (j) or a change in the approved state plan under s. 49.46 (1) (am) 2. is in effect, the income limit is 185 percent of the poverty line for a family the size of the child's family in each state fiscal year after the 1994−95 state fiscal year.

3. A child who is under one year of age, whose mother was determined to be eligible under subd. 1. and who lives with his or her mother.

(as) A person is eligible for benefits under this section if all of the following apply:

1. The person would meet the financial and other eligibility requirements for home or community−based services under s. 46.27 (11), 46.277, or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1d) but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3).

2. A waiver under s. 49.45 (38) is in effect or federal law authorizes federal financial participation for medical assistance coverage of the person.

3. Funding is available for the person under s. 46.27 (11), 46.277, or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1d).

(av) 1. In this paragraph, "migrant worker" means any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state. "Migrant worker" does not include any of the following:

a. A person who is employed only by a state resident if the resident or the resident's spouse is related to the person as the child, parent, grandchild, grandparent, brother, sister, aunt, uncle, niece, nephew, or the spouse of any such relative.

b. A student who is enrolled or, during the past 6 months has been enrolled, in any school, college or university unless the student is a member of a family or household which contains a migrant worker.

c. Any other person qualifying for an exemption under rules promulgated by the department.

2. The department shall request a waiver from the secretary of the federal department of health and human services to allow the application of subd. 3. The waiver shall also seek a waiver from those federal quality control standards under the medical assistance program that the department determines to be necessary in order to make the application of subd. 3. feasible. Subdivision 3. applies only while the waiver under this subdivision is in effect.

3. In determining the eligibility for a migrant worker and his or her dependents for medical assistance under this section, the department shall do all of the following:

a. Grant the migrant worker and his or her dependents eligibility for medical assistance in this state, if the migrant worker and his or her dependents have a valid medical assistance identification card issued in another state and the migrant worker completes a Wisconsin medical assistance application provided by the department. Eligibility under this subd. 3. a. continues for the period specified on the identification card issued in the other state. The department shall notify the other state that the migrant worker and his or her dependents are eligible for medical assistance in Wisconsin.

b. Determine medical assistance eligibility using an income−averaging method described in the waiver under subd. 2., if the migrant worker and his or her dependents do not meet the income limitations under par. (c) using prospective budgeting.

(b) Eligibility exists if the applicant's property, subject to the exclusion of any amounts under the Long−Term Care Partnership Program established under s. 49.45 (31), any amounts in an independence account, as defined in s. 49.472 (1) (c), or any retirement assets that accrued from employment while the applicant was eligible for the community options program under s. 46.27 (11), or any other Medical Assistance program, including deferred compensation or the value of retirement accounts in the Wisconsin Retirement System or under the federal Social Security Act, does not exceed the following:

1. Subject to par. (bc), a home and the land used and operated in connection therewith or in lieu thereof a manufactured home or mobile home if the home, manufactured home, or mobile home is used as the person's or his or her family's place of abode.

2. Household and personal possessions.

2m. One or more motor vehicles as specified in this subdivision.

a. For persons who are eligible under par. (a) 1., one vehicle is exempt from consideration as an asset. A 2nd vehicle is exempt from consideration as an asset only if the department determines that it is necessary for the purpose of employment or to obtain medical care. The equity value of any nonexempt vehicles owned by the applicant is an asset for the purposes of determining eligibility for medical assistance under this section.

b. For persons who are eligible under par. (a) 3. or 4., motor vehicles are exempt from consideration as an asset to the same extent as provided under 42 USC 1381 to 1385.

2r. For a person who is eligible under par. (a) 3. or 4., the value of any burial space or agreement representing the purchase of a burial space held for the purpose of providing a place for the burial of the person or any member of his or her immediate family.

2w. For a person who is eligible under par. (a) 3. or 4., life insurance with cash surrender values if the total face value of all life insurance policies, including riders and other attachments, is not more than $1,500.

3. For a person who is eligible under par. (a) 3. or 4., funds set aside to meet the burial and related expenses of the person and his or her spouse in an amount not to exceed $1,500 each, minus the sum of the cash value of any life insurance excluded under subd. 2w. and the amount in any irrevocable burial trust under s. 445.125 (1) (a).

3g. Liquid assets for a single person limited to:

a. In 1985, $1,600.

b. In 1986, $1,700.

c. In 1987, $1,800.

d. In 1988, $1,900.

e. After December 31, 1988, $2,000.

3m. Liquid assets for a family of 2, limited to:

a. In 1985, $2,400.

b. In 1986, $2,550.

c. In 1987, $2,700.

d. In 1988, $2,850.

e. In 1989, $3,000.

3r. Liquid assets limited to $300 for each legal dependent in addition to a family of 2.

4. Additional tangible personal property of reasonable value, considering the number of members in the family group, used in the production of income.

(bc) 1. Subject to subd. 2., a person shall be ineligible under this section for medical assistance for nursing facility services or other long−term care services described in s. 49. 453 (2) if the equity in his or her home and the land used and operated in connection with the home exceeds $750,000. This subdivision does not apply if any of the following persons lawfully resides in the home:

a. The person's spouse.

b. The person's child who is under age 21 or who is disabled, as defined in s. 49.468 (1) (a) 1.

2. Subdivision 1. applies to all of the following:

a. At the time of application, to a person who applies for medical assistance for nursing facility services or other long−term care services described in s. 49.453 (2) after February 1, 2008.

b. At the time of the person's first recertification after February 1, 2008, to a person not specified in subd. 2. a. who applied for medical assistance for nursing facility services or other long−term care services described in s. 49.453 (2) on or after January 1, 2006, and who was eligible for medical assistance for those services on February 1, 2008.

(bm) For purposes of determining eligibility or benefits amount for a person described in par. (a) 3. or 4. who resides in a continuing care retirement community or a life care community, any entrance fee paid on admission to the community shall be considered a resource available to the person to the extent that all of the following apply:

1. The person has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care if the person's other resources or income are insufficient to pay for the care.

2. The person is eligible for a refund of any remaining entrance fee when the person dies or terminates the continuing care retirement community or life care community contract and leaves the community.

3. The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

(c) 1. Except as provided in par. (am), eligibility exists if income does not exceed 133 1/3 percent of the maximum aid to families with dependent children payment under s. 49.19 (11) for the applicant's family size or the combined benefit amount available under supplemental security income under 42 USC 1381 to 1383c and state supplemental aid under s. 49.77 whichever is lower. In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled under 42 USC 1381 to 1385. "Income" does not include earned or unearned income which would be excluded in determining eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled individual under 42 USC 1381 to 1385.

2. Whenever an applicant has excess income under subd. 1. or par. (am), no certification may be issued until the excess income above the applicable limits has been obligated or expended for medical care or for any other type of remedial care recognized under state law or for personal health insurance premiums or both.

(cm) 1. Except as provided in subd. 2., any individual who is otherwise eligible under this subsection and who is eligible for enrollment in a group health plan shall, as a condition of eligibility for medical assistance and if the department determines it is cost−effective to do so, apply for enrollment in the group health plan, except that, for a minor, the parent of the minor shall apply on the minor's behalf.

2. If a parent of a minor fails to enroll the minor in a group health plan in accordance with subd. 1., the failure does not affect the minor's eligibility under this subsection.

3. An individual who is otherwise eligible under this subsection and who has set aside funds in an irrevocable burial trust under s. 445.125 (1) (a) 2. shall, as a condition of eligibility for medical assistance, specify the state as a secondary beneficiary of the trust with respect to all funds in the trust that exceed the burial costs but do not exceed the amount of medical assistance paid on behalf of the individual.

(cr) 1. As a condition of receiving medical assistance for long−term care services described in s. 49.453 (2) (a), an applicant for or recipient of the long−term care services shall disclose on the application or recertification form a description of any interest the individual or his or her community spouse, as defined in s. 49.453 (1) (ar), has in an annuity, regardless of whether the annuity is irrevocable or is treated as an asset. The application or recertification form shall include a statement that the state becomes a remainder beneficiary under any annuity in which the individual or his or her spouse has an interest by virtue of the provision of the medical assistance. The applicant or recipient shall, no later than 30 days after the department receives the application or recertification form, take any action required by the annuity issuer to make the state a remainder beneficiary.

2. The department shall notify the issuer of an annuity disclosed under subd. 1. of the state's right as a remainder beneficiary and shall request that the issuer notify the department of any changes to or payments made under the annuity contract.

3. This paragraph applies to all of the following:

a. Annuities purchased on or after February 8, 2006.

b. Annuities purchased before February 8, 2006, for which a transaction, as defined in s. 49.453 (4) (ac), has occurred on or after February 8, 2006.

(d) An individual is eligible for medical assistance under this section for 3 months prior to the month of application if the individual met the eligibility criteria under this section during those months.

(e) Temporary absence of a resident from the state shall not be grounds for denying the certificate or for the cancellation of an existing certificate.

(f) An individual determined to be eligible for benefits under par. (am) 1. remains eligible for benefits under par. (am) 1. for the balance of the pregnancy and to the last day of the first month which ends at least 60 days after the last day of the pregnancy without regard to any change in the individual's family income.

(g) If a child eligible for benefits under par. (am) 2. is receiving inpatient services covered under sub. (6) on the day before the birthday on which the child attains the age of 6 and, but for attaining that age, the child would remain eligible for benefits under par. (am) 2., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.

(h) For the purposes of par. (am), "income" includes income that would be used in determining eligibility for aid to families with dependent children under s. 49.19 and excludes income that would be excluded in determining eligibility for aid to families with dependent children under s. 49.19.

(i) 1. The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of subd. 2. The waiver shall request approval to implement the waiver on a statewide basis, unless the department of health services determines that statewide implementation of the waiver would present an obstacle to the approval of the waiver by the secretary of the federal department of health and human services, in which case the waiver shall request approval to implement the waiver in 48 pilot counties to be selected by the department of health services. Within 30 days after August 12, 1993, the department of safety and professional services shall notify funeral directors licensed under ch. 445, cemetery associations, as defined in s. 157.061 (1r), and cemetery authorities, as defined in s. 157.061 (2), of the terms of the waiver required to be requested under this subdivision. If the waiver is approved by the secretary of the federal department of health and human services and if the waiver remains in effect, subd. 2. shall apply.

2. Notwithstanding par. (b) 2r. and 3., a person who is described in par. (a) 3. or 4. is not eligible for benefits under this section if any of the following criteria is met:

a. For the person or his or her spouse, the sum of the following, less the cash value of any life insurance excluded under par. (b) 2w. that was obtained after July 1, 1993, exceeds $8,000: the value of any burial space or agreement described in par. (b) 2r. that was acquired after July 1, 1993; the amount in any irrevocable burial trust under s. 445.125 (1) (a) that was acquired after July 1, 1993; and any funds set aside after July 1, 1993, to meet the burial and related expenses under par. (b) 3.

b. The value of any burial space or agreement described in par. (b) 2r. that is held for any other member of the person's immediate family and that was acquired after July 1, 1993, exceeds $8,000.

c. For the person or his or her spouse, the value of amounts set aside under par. (b) 3. for cemetery property and fees to open and close grave sites, including mausoleum spaces, exceeds $1,000.

(j) If the change in the approved state plan under s. 49.46 (1) (am) 2. is denied, the department shall request a waiver from the secretary of the federal department of health and human services to allow the use of federal matching funds to provide medical assistance coverage under par. (am) 1. and 2. to individuals whose family incomes do not exceed 185 percent of the poverty line in each state fiscal year after the 1994−95 state fiscal year.

(k) Notwithstanding par. (b) 3. and s. 445.125 (1) (a), no later than 60 days after July 1, 2013, the department shall seek approval from the federal Centers for Medicare and Medicaid Services to permit any individual receiving medical assistance under this section to contribute funds to an irrevocable burial trust for the individual, up to a total irrevocable trust amount of $4,500, without the individual losing eligibility for medical assistance under this section. If the federal Centers for Medicare and Medicaid Services approves the request, the department shall implement the change under this section within 60 days after receiving approval.

(5) INVESTIGATION BY DEPARTMENT. The department may make additional investigation of eligibility at any of the following times:

(a) When there is reasonable ground for belief that an applicant may not be eligible or that the beneficiary may have received benefits to which the beneficiary is not entitled.

(b) Upon the request of the secretary of the U.S. department of health and human services.

(6) BENEFITS. (a) The department shall audit and pay charges to certified providers for medical assistance on behalf of the following:

1. Except as provided in subds. 6. to 7., all beneficiaries, for all services under s. 49.46 (2) (a) and (b), subject to s. 49.46 (2) (dc).

6. a. In this subdivision,"entitled to coverage under part A of medicare" means eligible for and enrolled in part A of medicare under 42 USC 1395c to 1395f.

ag. In this subdivision,"entitled to coverage under part B of medicare" means eligible for and enrolled in part B of medicare under 42 USC 1395j to 1395L.

ar. In this subdivision,"income limitation" means income that is equal to or less than 100 percent of the poverty line, as established under 42 USC 9902 (2).

b. An individual who is entitled to coverage under Part A of Medicare, entitled to coverage under Part B of Medicare, meets the eligibility criteria under sub. (4) (a), and meets the income limitation, the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395zz that are not paid under 42 USC 1395 to 1395zz, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums payable under 42 USC 1395v; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty, if applicable, for premiums under Part A of Medicare. Payment of coinsurance for a service under Part B of Medicare under 42 USC 1395j to 1395w and payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

c. An individual who is only entitled to coverage under Part A of Medicare, meets the eligibility criteria under sub. (4) (a), and meets the income limitation, the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395i that are not paid under 42 USC 1395 to 1395i, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums, if applicable, under 42 USC 1395i−2 (d); and the late enrollment penalty, if applicable, for premiums under Part A of Medicare. Payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

d. An individual who is entitled to coverage under Part A of Medicare, entitled to coverage under Part B of Medicare, and meets the eligibility criteria for Medical Assistance under sub. (4) (a), but does not meet the income limitation, the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395zz that are not paid under 42 USC 1395 to 1395zz, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under Part B of Medicare under 42 USC 1395j to 1395w and payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

e. An individual who is only entitled to coverage under Part A of Medicare and meets the eligibility criteria for Medical Assistance under sub. (4) (a), but does not meet the income limitation, the deductible and coinsurance portions of Medicare services under 42 USC 1395 to 1395i, including those services that are not included in the approved state plan for services under 42 USC 1396. Payment of deductibles and coinsurance for inpatient hospital services under Part A of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

f. For an individual who is only entitled to coverage under Part B of Medicare and meets the eligibility criteria under sub. (4), but does not meet the income limitation, Medical Assistance shall include payment of the deductible and coinsurance portions of Medicare services under 42 USC 1395j to 1395w, including those Medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under Part B of Medicare may not exceed the allowable charge for the service under Medical Assistance minus the Medicare payment.

6m. An individual who is entitled to coverage under part A of medicare, as defined in subd. 6. a. is entitled to coverage under part B of medicare, as defined in subd. 6. ag. and meets the eligibility criteria under sub. (4) (a) and whose income is greater than 100 percent of the poverty line but less than 120 percent of the poverty line for the monthly premiums under 42 USC 1395r.

7. Beneficiaries eligible under sub. (4) (ag) 2. or (am) 1., for services under s. 49.46 (2) (a) and (b) that are related to pregnancy, including postpartum services and family planning services, as defined in s. 253.07 (1) (b), or related to other conditions which may complicate pregnancy.

(b) In no event may payments be made for medical assistance rendered during a period when the beneficiary would not have been eligible for benefits under this section.

(c) Benefits shall not include any payment with respect to:

1. Care or services in any private or public institution, unless the institution has been approved by a standard−setting authority responsible by law for establishing and maintaining standards for such institution.

2. That part of any service otherwise authorized under this section which is payable through 3rd−party liability or any federal, state, county, municipal or private benefit systems, to which the beneficiary may otherwise be entitled.

3. Care or services for an individual who is an inmate of a public institution, except as a patient in a medical institution or a resident in an intermediate care facility.

4. Services to individuals aged 21 to 64 who are residents of an institution for mental diseases and who are otherwise eligible for medical assistance, except for individuals under 22 years of age who were receiving these services immediately prior to reaching age 21 and continuously thereafter and except for services to individuals who are on convalescent leave or are conditionally released from the institution for mental diseases. For purposes of this subdivision, the department shall define "convalescent leave" and "conditional release" by rule.

(d) No payment under this subsection may include care for services rendered earlier than 3 months preceding the month of application.

(7) REDUCTION OF BENEFITS. If the funds appropriated become or are estimated to be insufficient to make full payment of benefits provided under this section, all charges for service so authorized shall be prorated on the basis of funds available or by limiting the benefits provided.

(8) ENROLLMENT FEE. As long as an enrollment fee or premium is required for persons receiving benefits under Title XIX of the social security act, the department shall charge the minimum enrollment fee or premium required under federal law. The fee or premium so charged shall be related to the beneficiary's income, in accordance with guidelines established by the secretary of the U.S. department of health and human services.

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253; 2007 a. 11, a. 20 ss. 1596 to 1604, 9121 (6) (a); 2009 a. 28, 180; 2011 a. 10, 32; 2013 a. 20; 2013 a. 116 ss. 29, 30; 2013 a. 117 s. 2, 3.

Cross−reference: See also chs. DHS 102, 103, and 107, Wis. adm. code.

Compliance of state spend−down requirements with federal requirements are discussed. Swanson v. DHSS, 105 Wis. 2d 78, 312 N.W.2d 833 (Ct. App. 1981).

Evaluating disability claims requires determining whether the claimant: 1) is working; 2) has significant impairments that significantly limit physical or mental ability to work; 3) has impairments that are federal "listed impairments;" 4) does not have "listed impairments" and can return to prior work; 5) cannot return to prior work but can perform other work. Clauer v. DHSS, 174 Wis. 2d 344, 497 N.W.2d 738 (Ct. App. 1993).

Section 49.46 (1) (b) and sub. (6) (d) limit retroactive medical assistance payments to services received not more than three months prior to the date the application was submitted. St. Paul Ramsey Medical Center v. DHSS, 186 Wis. 2d 37, 519 N.W.2d 706 (Ct. App. 1994).

A regulation that "deemed" resources of one spouse to be "available" to the other was valid. Schweiker v. Gray Panthers, 453 U.S. 34 (1981).

49.471 BadgerCare Plus. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "BadgerCare Plus" means the Medical Assistance program described in this section.

(b) "Caretaker relative" means an individual who is maintaining a residence as a child's home, who exercises primary responsibility for the child's care and control, including making plans for the child, and who is any of the following with respect to the child:

1. A blood relative, including those of half−blood, and including first cousins, nephews, nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great−great.

2. A stepfather, stepmother, stepbrother, or stepsister.

3. An individual who is the adoptive parent of the child's parent, a natural or legally adopted child of such individual, or a relative of an adoptive parent.

4. A spouse of any individual named in this paragraph even if the marriage is terminated by death or divorce.

(c) "Child" means an individual who is under the age of 19 years. "Child" includes an unborn child.

(cm) "Disabled" means, when referring to an adult, meeting the disability standard for eligibility for federal supplemental security income under 42 USC 1382c (a) (3).

(d) "Essential person" means an individual who satisfies all of the following:

1. Is related to an individual receiving benefits under this section.

2. Is otherwise nonfinancially eligible, except that the individual need not have a minor child under his or her care.

3. Provides at least one of the following to an individual receiving benefits under this section:

a. Child care that enables a caretaker to work outside the home for at least 30 hours per week for pay, to receive training for at least 30 hours per week, or to attend, on a full−time basis as defined by the school, high school or a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation under s. 115.29 (4).

b. Care for anyone who is incapacitated.

(e) "Family" means all children for whom assistance is requested, their minor siblings, including half brothers, half sisters, stepbrothers, and stepsisters, and any parents of these minors and their spouses.

(f) "Family income" has the meaning given for "household income" under 42 CFR 435.603 (d).

(g) "Group health plan" has the meaning given in 42 USC 300gg−91 (a) (1).

(h) "Health insurance coverage" has the meaning given in 42 USC 300gg−91 (b) (1), and also includes any arrangement under which a 3rd party agrees to pay for the health care costs of the individual.

(i) "Parent" has the meaning given in s. 49.141 (1) (j).

(j) "Recipient" means an individual receiving benefits under this section.

(k) "Unborn child" means an individual from conception until he or she is born alive for whom all of the following requirements are met:

1. The unborn child's mother is not eligible for medical assistance under this subchapter, except that she may be eligible for benefits under s. 49.45 (27).

2. The income of the unborn child's mother, mother and her spouse, or mother and her family, whichever is applicable, does not exceed 300 percent of the poverty line.

3. Each of the following applicable persons who is employed provides verification from his or her employer, in the manner specified by the department, of his or her earnings:

a. The unborn child's mother.

b. The spouse of the unborn child's mother.

c. Members of the unborn child's mother's family.

4. The unborn child's mother provides medical verification of her pregnancy, in the manner specified by the department. An unborn child's eligibility for coverage under this section does not begin before the first day of the month in which the unborn child's mother provides the medical verification.

5. The unborn child and the mother of the unborn child meet all other applicable eligibility requirements under this chapter or established by the department by rule except for any of the following:

a. The mother is not a U.S. citizen or an alien qualifying for Medicaid under 8 USC 1612.

b. The mother is an inmate of a public institution.

c. The mother does not provide a social security number, but only if subd. 5. a. applies.

(2) WAIVER AND STATE PLAN AMENDMENTS. The department shall request a waiver from, and submit amendments to the state Medical Assistance plan to, the secretary of the federal department of health and human services to implement BadgerCare Plus. If the state plan amendments are approved and a waiver that is substantially consistent with the provisions of this section, excluding sub. (2m), is granted and in effect, the department shall implement BadgerCare Plus beginning on January 1, 2008, the effective date of the state plan amendments, or the effective date of the waiver, whichever is latest. If the state plan amendments are not approved or if a waiver that is substantially consistent with the provisions of this section, excluding sub. (2m), is not granted, BadgerCare Plus may not be implemented. If the state plan amendments are approved but approval is not continued or if a waiver that is substantially consistent with the provisions of this section, excluding sub. (2m), is granted but not continued in effect, BadgerCare Plus shall be discontinued.

(2m) APPROVAL TO QUALIFY AS A HEALTH COVERAGE TAX CREDIT PLAN. The department shall seek any necessary federal approvals to ensure that BadgerCare Plus is qualified health insurance under 26 USC 35 (e). Notwithstanding subs. (4) and (5), if BadgerCare Plus is determined to be qualified health insurance under 26 USC 35 (e), the department shall expand eligibility under BadgerCare Plus to include individuals who are eligible individuals under 26 USC 35 (c). Notwithstanding sub. (10) (a) and (b) 1. to 4., individuals who are eligible for coverage under BadgerCare Plus under this subsection shall pay premiums that are equal to the capitation payments that the department would make on behalf of similar individuals with coverage under BadgerCare Plus, or the full per member per month cost of coverage, whichever is appropriate.

(3) INELIGIBILITY FOR OTHER MEDICAL ASSISTANCE BENEFITS. (a) 1. Notwithstanding ss. 49.46 (1), 49.465, 49.47 (4), and 49.665 (4), if the amendments to the state plan under sub. (2) are approved and a waiver under sub. (2) that is substantially consistent with the provisions of this section, excluding sub. (2m), is granted and in effect, an individual described in sub. (4) (a) or (5) is not eligible under s. 49.46, 49.465, 49.47, or 49.665 for Medical Assistance or BadgerCare health program benefits. The eligibility of an individual described in sub. (4) (a) or (5) for Medical Assistance benefits shall be determined under this section.

2. Notwithstanding subd. 1., an individual who is eligible for medical assistance under s. 49.46 (1) (a) 3. or 4. may not receive benefits under this section.

3. Notwithstanding subd. 1., an individual described in sub. (4) (a) or (5) who is eligible for medical assistance under s. 49.46 (1) (a) 5., 6m., 14., 14m., or 15. or (d) or 49.47 (4) (a) or (as) may receive medical assistance benefits under this section or under s. 49.46 or 49.47.

(b) 1. If an individual over 18 years of age who is eligible for and receiving Medical Assistance benefits under s. 49.46, 49.47, or 49.665 in the month before BadgerCare Plus is implemented loses that eligibility solely due to the implementation of BadgerCare Plus and, because of his or her income, is not eligible for BadgerCare Plus, the individual shall continue receiving for 12 consecutive months the medical assistance he or she was receiving before the implementation of BadgerCare Plus if all of the following are satisfied:

a. The individual's eligibility for the Medical Assistance benefits in the month before the implementation of BadgerCare Plus was based on an application filed before the implementation of BadgerCare Plus.

b. The individual continues to pay any premium that he or she was required to pay for the Medical Assistance coverage in the same amount as the amount that was due in the month before the implementation of BadgerCare Plus.

c. The individual meets all nonfinancial eligibility requirements under this section.

d. The individual continues to be ineligible for BadgerCare Plus because of his or her income.

2. Notwithstanding subd. 1., if at any time during an individual's 12−month eligibility extension under subd. 1. any criterion under subd. 1. a. to d. is not satisfied, the individual's eligibility for the extended coverage is terminated and any time remaining in the eligibility period is lost.

(4) GENERAL ELIGIBILITY CRITERIA; APPLICABLE BENEFITS. (a) Except as otherwise provided in this section, all of the following individuals are eligible for the benefits described in s. 49.46 (2) (a) and (b), subject to sub. (6) (k) and s. 49.45 (24j):

1. A pregnant woman whose family income does not exceed 200 percent of the poverty line.

1g. A pregnant woman whose family income exceeds 200 percent but does not exceed 300 percent of the poverty line.

1m. A pregnant woman who obtains eligibility under sub. (7) (b) 1.

2. A child who is under one year of age, whose mother was, on the day the child was born, eligible for and receiving medical assistance under subd. 1. or 5. or s. 49.46 or 49.47, and who lives with his or her mother in this state.

2m. A child who is under one year of age, whose mother was determined to be eligible under subd. 1g., and who lives with his or her mother in this state.

3. A child whose family income does not exceed 200 percent of the poverty line. For a child under this subdivision who is an unborn child, benefits are limited to prenatal care.

3g. A child whose family income exceeds 200 percent but does not exceed 300 percent of the poverty line. For a child under this subdivision who is an unborn child, benefits are limited to prenatal care.

3m. A child who obtains eligibility under sub. (7) (b) 2.

4. An individual who satisfies all of the following criteria:

a. The individual is a parent or caretaker relative of a dependent child who is living in the home with the parent or caretaker relative or who is temporarily absent from the home for not more than 6 months or, if the dependent child has been removed from the home for more than 6 months, the parent or caretaker relative is working toward unifying the family by complying with a permanency plan under s. 48.38 or 938.38. For purposes of this subdivision, a "dependent child" means an individual who is under the age of 18 or an individual who is age 18 and a full−time student in secondary school or equivalent vocational or technical training if before attaining the age of 19 the individual is reasonably expected to complete the school or training.

b. The individual's family income does not exceed 100 percent of the poverty line before application of the 5 percent income disregard under 42 CFR 435.603 (d).

5. An individual who, regardless of family income, was born on or after January 1, 1988, and who, on his or her 18th birthday, was in a foster care placement under the responsibility of this state, or at the option of the department, under the responsibility of another state, and enrolled in Medical Assistance under this subchapter or a Medicaid program, as determined by the department. The coverage for an individual under this subdivision ends on the last day of the month in which the individual becomes 26 years of age, unless he or she otherwise loses eligibility sooner.

6. Migrant workers and their dependents who are determined eligible under sub. (6) (f).

7. Individuals who qualify for a medical assistance eligibility extension under s. 49.46 (1) (c) or (cg) when their income increases above the poverty line, except as provided in s. 49.46 (1) (cr).

(d) An individual is eligible to purchase coverage of the benefits described in sub. (11) for himself or herself and for his or her

spouse and dependent children, at the full per member per month cost of coverage, if all of the following apply:

1. The individual lost his or her employer−sponsored health care coverage as a result of his or her employer's or former employer's bankruptcy.

2. After losing his or her employer−sponsored health care coverage, the individual received health care coverage through a voluntary employment benefit association that was established before August 2006.

3. The individual is not otherwise eligible for coverage under this section.

4. The individual is under 65 years of age.

(e) If the department obtains approval from the federal department of health and human services to provide an alternate benchmark plan under sub. (11r), to the extent the federal department of health and human services approves, the department may enroll in the alternate benchmark plan under sub. (11r) any individual whose family income exceeds 100 percent of the poverty line, who is either an adult who is not pregnant or a child, and who applies and is otherwise eligible to receive benefits under this section, except that the department shall enroll a child who has a parent who is enrolled in a plan under this section in the same plan as his or her parent.

(5) PRESUMPTIVE ELIGIBILITY. (a) In this subsection:

1. "Qualified entity" means an entity that satisfies the requirements under 42 USC 1396r−1a (b) (3) (A), as determined by the department.

2. "Qualified provider" means a provider that satisfies the requirements under 42 USC 1396r−1 (b) (2), as determined by the department.

(b) 1. Except as provided in sub. (6) (a) 1., a pregnant woman is eligible for the benefits specified in par. (c) during the period beginning on the day on which a qualified provider determines, on the basis of preliminary information, that the woman's family income does not exceed 300 percent of the poverty line and ending on the applicable day specified in subd. 3.

2. Except as provided in sub. (6) (a) 2., a child who is not an unborn child is eligible for the benefits described in s. 49.46 (2) (a) and (b) during the period beginning on the day on which a qualified entity determines, on the basis of preliminary information, that the child's family income does not exceed any of the following and ending on the applicable day specified in subd. 3., unless the federal department of health and human services approves the department's request to not extend eligibility to children during this period:

a. 150 percent of the poverty line for a child who is 6 years of age or older but has not yet attained the age of 19.

b. 185 percent of the poverty line for a child who is one year of age or older but has not yet attained the age of 6.

c. 300 percent of the poverty line for a child who is under one year of age.

3. a. If the woman or child applies for benefits under sub. (4) within the time required under par. (d), the benefits specified in subd. 1. or 2., whichever is applicable, end on the day on which the department or the county department under s. 46.215, 46.22, or 46.23 determines whether the woman or child is eligible for benefits under sub. (4), except that a child who is not an unborn child is not eligible for benefits described in s. 49.46 (2) (a) and (b) during that time if the federal department of health and human services approves the department's request not to provide those benefits during that time.

b. If the woman or child does not apply for benefits under sub. (4) within the time required under par. (d), the benefits specified in subd. 1. or 2., whichever is applicable, end on the last day of the month following the month in which the provider or entity makes the determination under this paragraph.

(c) 1. On behalf of a woman under par. (b) 1. whose family income does not exceed 200 percent of the poverty line, the department shall audit and pay allowable charges to a provider certified under s. 49.45 (2) (a) 11. only for ambulatory prenatal care services under the benefits described in s. 49.46 (2) (a) and (b).

2. On behalf of a woman under par. (b) 1. whose family income exceeds 200 percent of the poverty line, the department shall audit and pay allowable charges to a provider certified under s. 49.45 (2) (a) 11. only for ambulatory prenatal care services under the benefits under sub. (11).

(d) A woman or child who is determined to be eligible under par. (b) shall apply for benefits under sub. (4) on or before the last day of the month following the month in which the qualified provider or entity makes the eligibility determination.

(e) A qualified provider or entity that determines that a woman or child is eligible under par. (b) shall do all of the following:

1. Notify the department of that determination within 5 working days after the day on which the determination is made.

2. Notify the woman or child of the requirement under par. (d) at the time of the determination.

(f) The department shall provide qualified providers and qualified entities with application forms for the benefits under sub. (4) and information on how to assist women and children in completing the forms.

(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS. (a) 1. Except as provided in subd. 4., any pregnant woman, including a pregnant woman under sub. (5) (b) 1., is eligible for medical assistance under this section for any of the 3 months prior to the month of application if she met the eligibility criteria under this section in that month.

2. Except as provided in subd. 3. or 4., any child who is not an unborn child, including a child under sub. (5) (b) 2., parent, or caretaker relative whose family income is less than 150 percent of the poverty line is eligible for medical assistance under this section for any of the 3 months prior to the month of application if the individual met the eligibility criteria under this section and had a family income of less than 150 percent of the poverty line in that month.

3. Any individual described in subd. 2. who is not disabled, not elderly, and not pregnant, who is an adult, and whose family income exceeds 133 percent of the federal poverty level is not eligible for medical assistance under this section for any of the 3 months before the month of application for medical assistance benefits.

4. To the extent allowed by the federal department of health and human services, any individual described in subd. 1. or 2. who is not disabled is not eligible for medical assistance under this section for any of the 3 months before the month of application for medical assistance benefits.

(b) A pregnant woman who is determined to be eligible for benefits under sub. (4) remains eligible for benefits under sub. (4) for the balance of the pregnancy and to the last day of the month in which the 60th day after the last day of the pregnancy falls without regard to any change in the woman's family income.

(c) If a child who is eligible for benefits under sub. (4) is receiving inpatient services covered under sub. (4) on the day before his or her 19th birthday and, but for attaining 19 years of age, the child would remain eligible for benefits under sub. (4), the child remains eligible for benefits until the end of the stay for which the inpatient services are being furnished.

(d) If an application under this section shows that an individual is an essential person, the individual shall be provided the benefits specified under sub. (4) (a).

(f) The medical assistance eligibility provisions for migrant workers and their dependents under s. 49.47 (4) (av) apply to BadgerCare Plus.

(g) 1. Except as provided in subd. 2., as a condition of eligibility for coverage under this section, an individual with income shall provide verification, as determined by the department, of that income.

2. Subdivision 1. does not apply to an individual under sub. (4) (a) 5. or a child under the age of 18.

(h) Within 10 days after the change occurs, a recipient shall report to the department any change that might affect his or her eligibility or any change that might require premium payment by a recipient who was not required to pay premiums before the change.

(i) For purposes of determining eligibility and family income, the department shall include a family member who is temporarily absent from the home for not more than 6 months, as determined by the department.

(j) All of the following apply to BadgerCare Plus in the same respect as they apply under s. 49.46:

1. Section 49.46 (2) (c) and (cm), relating to benefits for individuals who are eligible for Medicare.

2. Section 49.46 (2) (d), relating to prohibiting payments for any part of any service payable through 3rd−party liability or any governmental or private benefit system.

3. Section 49.46 (2) (dm), relating to prohibiting payment for services to residents of institutions for mental diseases.

4. Section 49.46 (2) (f), relating to prohibiting payment for gastric bypass or stapling surgery.

(k) For an individual who is eligible for medical assistance under this section and who is eligible for coverage under Part D of Medicare under 42 USC 1395w−101 et seq., benefits under sub. (11) (a) or s. 49.46 (2) (b) 6. h. do not include payment for any Part D drug, as defined in 42 CFR 423.100, regardless of whether the individual is enrolled in Part D of Medicare or whether, if the individual is enrolled, his or her Part D plan, as defined in 42 CFR 423.4, covers the Part D drug.

(7) SPECIAL INCOME PROVISIONS. (b) 1. A pregnant woman whose family income exceeds 300 percent of the poverty line may become eligible for coverage under this section if the difference between the pregnant woman's family income and the applicable income limit under sub. (4) (a) is obligated or expended for any member of the pregnant woman's family for medical care or any other type of remedial care recognized under state law or for personal health insurance premiums or for both. Eligibility obtained under this subdivision continues without regard to any change in family income for the balance of the pregnancy and to the last day of the month in which the 60th day after the last day of the woman's pregnancy falls. Eligibility obtained by a pregnant woman under this subdivision extends to all pregnant women in the pregnant woman's family.

2. A child who is not an unborn child, whose family income exceeds 150 percent of the poverty line, and who is ineligible under this section solely because of sub. (8) (b), or whose family income exceeds 300 percent of the poverty line, may obtain eligibility under this section if the difference between the child's family income and 150 percent of the poverty line is obligated or expended on behalf of the child or any member of the child's family for medical care or any other type of remedial care recognized under state law or for personal health insurance premiums or for both. Eligibility obtained under this subdivision during any 6−month period, as determined by the department, continues for the remainder of the 6−month period and extends to all children in the family.

3. For a pregnant woman to obtain eligibility under subd. 1., the amount that must be obligated or expended in any 6−month period is equal to the sum of the differences in each of those 6 months between the pregnant woman's monthly family income and the monthly family income that is 300 percent of the poverty line. For a child to obtain eligibility under subd. 2., the amount that must be obligated or expended in any 6−month period is equal to the sum of the differences in each of those 6 months between the child's monthly family income and the monthly family income that is 150 percent of the poverty line.

(d) In addition to applying other income counting requirements the department shall do all of the following:

1. When calculating the family income of a member of a household who is not disabled, include the income of all adults residing in the home for at least 60 consecutive days but exclude the income of a grandparent in a household containing 3 generations, unless the grandparent applies for or receives benefits as a parent or caretaker relative under this section.

2. When determining the size of a family for purposes of determining income eligibility, exclude from family size an adult whose income is included in a calculation of family income solely under subd. 1.

3. Apply this paragraph only to the extent the federal department of health and human services approves the income eligibility calculation methods, if approval is required.

(e) For the purpose of determining family income, the department shall apply the regulations defining a household under 42 CFR 435.603 (f). To determine the family size for a pregnant woman, the department shall include the pregnant woman and the number of babies she is expecting.

(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY. (a) 1. Except as provided in subd. 2., any individual who is otherwise eligible under this section and who is eligible for enrollment in a group health plan shall, as a condition of eligibility for BadgerCare Plus and if the department determines that it is cost−effective to do so, apply for enrollment in the group health plan, except that, for a minor, the parent of the minor shall apply on the minor's behalf.

2. If a parent of a minor fails to enroll the minor in a group health plan in accordance with subd. 1., the failure does not affect the minor's eligibility under this section.

(b) Except as provided in pars. (c), (cg), (cr), (ct), and (d), an individual whose family income exceeds 150 percent of the poverty line is not eligible for BadgerCare Plus if any of the following applies:

1. The individual has individual or family health insurance coverage that is any of the following:

a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.

b. Coverage under the state employee health plan under s. 40.51 (6).

2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1.

3. The individual could be covered under the health insurance coverage specified in subd. 1. if the coverage is applied for, and the coverage could become available to the individual in the month in which the individual applies for benefits under this section or in any of the next 3 calendar months.

(c) An unborn child, regardless of family income, is not eligible for BadgerCare Plus if any of the following applies:

1. The unborn child or the unborn child's mother has individual or family health insurance coverage.

2. The unborn child or the unborn child's mother, in the 12 months before applying, had access to the health insurance coverage specified in par. (b) 1.

3. The unborn child or the unborn child's mother could be covered under individual or family health insurance coverage if the coverage is applied for, and the coverage could become available to the unborn child or the unborn child's mother in the month in which the unborn child applies for benefits under this section or in any of the next 3 calendar months.

(cg) An individual who is not disabled and not pregnant, who is over 18 years of age, and whose family income exceeds 133 per-

cent of the poverty line is not eligible for BadgerCare Plus if all of the following apply:

1. The individual has any of the following:

a. Access to individual or family health coverage provided by an employer in which the monthly premium that an employee would pay for an employee−only policy does not exceed 9.5 percent of the family's monthly income.

b. Access to individual or family health coverage under the state employee health plan.

2. The individual has access to any coverage described in subd. 1. during any of the following times:

a. The 12 months before the first day of the month in which an individual applies for and the month in which an individual applies for BadgerCare Plus.

b. The 3 months after the last day of the month in which the individual applies for BadgerCare Plus.

c. The month including the date of the annual determination of the individual's eligibility for Medical Assistance.

3. The individual does not have as a reason for not obtaining health insurance any of the good cause reasons under par. (d) 2. a. to e.

(cr) 1. Subject to subd. 4., an individual who is any of the following is not eligible for BadgerCare Plus if the criteria under par. (cg) 1. and 2. apply to that individual:

a. An individual who is not disabled and who is a child, or unborn child, of an individual whose family income is at a level determined by the department but no lower than 133 percent of the poverty line.

b. A parent or caretaker relative who is not disabled, not pregnant, and an adult and whose family income is at a level determined by the department but no lower than 100 percent of the poverty line.

c. An adult, including a pregnant individual, who is not disabled, who is under 26 years of age; who is eligible to be covered under coverage a parent receives from an employer; and whose family income is at a level determined by the department but no lower than 100 percent of the poverty line.

2. An individual under subd. 1. is not ineligible if any of the good cause reasons described in par. (d) 2. a. to e. is the reason that the individual did not obtain health insurance coverage.

3. An individual under subd. 1. c. is not ineligible if any of the following good cause reasons is the reason the individual did not obtain health insurance coverage:

a. The parent of the individual is no longer employed by the employer through which the parent was eligible for coverage, and the parent does not have current coverage.

b. The employer of the parent of the individual discontinued providing health benefits to all employees.

4. The department may apply this paragraph to eligibility determinations for BadgerCare Plus only if the federal department of health and human services approves of the conditions to make that individual ineligible, if approval is required.

(ct) 1. If the federal department of health and human services approves the department's request to add private major medical insurance as a type of coverage which causes ineligibility, an individual who is not disabled and not pregnant, who is over 18 years of age, whose family income exceeds 133 percent of the poverty line, and who has coverage provided by private major medical insurance in which the monthly premium does not exceed 9.5 percent of the family's monthly income is not eligible for BadgerCare Plus.

2. If the federal department of health and human services approves of the conditions to make that individual ineligible for BadgerCare Plus, an individual who is any of the following is not eligible for BadgerCare Plus if he or she has the major medical insurance coverage described under subd. 1.:

a. An individual who is not disabled and who is a child, or unborn child, of an individual whose family income is at a level determined by the department but no lower than 133 percent of the poverty line.

b. A parent or caretaker relative who is not disabled, not pregnant, and an adult and whose family income is at a level determined by the department but no lower than 100 percent of the poverty line.

(d) 1. None of the following is ineligible for BadgerCare Plus by reason of having health insurance coverage or access to health insurance coverage:

a. A pregnant woman, except as provided in par. (cr) 1. c.

b. A child described in sub. (4) (a) 2. or 2m.

c. Except as provided in par. (c), a child who has health insurance coverage, or access to health insurance coverage, as a dependent of an absent parent but who resides outside of the service area of the absent parent's plan.

d. An individual described in sub. (4) (a) 5.

e. A child who obtains eligibility under sub. (7) (b) 2., but only for the remainder of the child's eligibility period under sub. (7) (b) 2.

f. An individual described in sub. (4) (a) 7.

g. An adult who is disabled.

2. An individual under par. (b) 2., or an individual who is an unborn child or an unborn child's mother under par. (c) 2., is not ineligible if any of the following good cause reasons is the reason that the individual did not obtain the health insurance coverage under par. (b) 1. to which they had access:

a. The individual's employment ended.

b. The individual's employer discontinued health insurance coverage for all employees.

c. One or more members of the individual's family were eligible for other health insurance coverage or Medical Assistance under s. 49.46 or 49.47 at the time the employee failed to enroll in the health insurance coverage under par. (b) 1. and no member of the family was eligible for coverage under this section at that time or, if one or more members of the individual's family were eligible for coverage under this section at that time, family income did not exceed 150 percent of the poverty line or the individual qualified for a medical assistance eligibility extension as provided in sub. (4) (a) 7.

d. The individual's access to health insurance coverage has ended due to the death or change in marital status of the subscriber.

dg. The insurance is owned by someone not residing with the family and continuation of the coverage is beyond the family's control.

dr. The insurance only covers services provided in a service area that is beyond a reasonable driving distance.

e. Any other reason that the department determines is a good cause reason.

(e) If a pregnant woman has health insurance coverage and her family income exceeds 200 percent of the poverty line, the woman is required, as a condition of eligibility, to maintain the health insurance coverage.

(9) EMPLOYER VERIFICATION OF INSURANCE COVERAGE. (a) 1. Except as provided in subd. 2., for an applicant or recipient with a family income that exceeds 150 percent of the poverty line, the department shall verify insurance coverage and access information directly with the employer through which the applicant or recipient may have health insurance coverage or access to coverage.

2. Subdivision 1. does not apply to any of the following:

a. A pregnant woman.

b. A child described in sub. (4) (a) 2. or 2m.

c. An individual described in sub. (4) (a) 5.

(b) An employer that receives a request from the department for insurance coverage and access to coverage information shall supply the information requested by the department in the format specified by the department within 30 calendar days after receiving the request.

(c) 1. Subject to subds. 2. and 3., an employer that does not comply with the requirements under par. (b) shall be required to pay, within 45 days after the requested information was due, a penalty equal to the full per member per month cost of coverage under BadgerCare Plus for the individual about whom the information is requested, and for each of the individual's family members with coverage under BadgerCare Plus, for each month in which the individual and the individual's family members are covered before the employer provides the information.

2. An employer with fewer than 250 employees may not be required to pay more than $1,000 in penalties under this paragraph that are attributable to any 6−month period. An employer with 250 or more employees may not be required to pay more than $15,000 in penalties under this paragraph that are attributable to any 6−month period.

3. Notwithstanding subd. 1., an employer shall not be subject to any penalties if the employer, at least once per year, timely provides to the department, in the manner and format specified by the department, information from which the department may determine whether the employer provides its employees with access to health insurance coverage.

4. All penalty assessments collected under this paragraph shall be credited to the appropriation accounts under s. 20.435 (4) (jw) and (jz).

(d) An employer may contest a penalty assessment under par. (c) by sending a written request for hearing to the division of hearings and appeals in the department of administration. Proceedings before the division are governed by ch. 227.

(10) COST SHARING. (a) *Copayments*. Except as provided in s. 49.45 (18) (am) 2. and (b) 2., all cost−sharing provisions under s. 49.45 (18) apply to a recipient with coverage of the benefits described in s. 49.46 (2) (a) and (b) to the same extent as they apply to a person eligible for medical assistance under s. 49.46, 49.468, or 49.47.

(b) *Premiums*. 1. Except as provided in subds. 1m. and 4., a recipient who is an adult, who is not a pregnant woman, and whose family income is greater than 150 percent but not greater than 200 percent of the poverty line shall pay a premium for coverage under BadgerCare Plus that does not exceed 5 percent of his or her family income.

1m. Except as provided in subd. 4., a recipient who is an adult parent or adult caretaker relative; who is not disabled, pregnant, or American Indian; and whose family income exceeds 133 percent of the federal poverty line shall pay a premium for coverage under BadgerCare Plus in an amount determined by the department that is based on a formula in which costs decrease for those with lower family incomes and that is no less than 3 percent of family income but no greater than 9.5 percent of family income. If the recipient has self−employment income and is eligible under sub. (4) (b) 4., the premium may not exceed 5 percent of family income calculated before depreciation was deducted. If the department intends to impose a premium under this subdivision after December 31, 2013, the department shall request from the federal department of health and human services any necessary approval to continue imposing premiums under this subdivision.

NOTE: Sub. (4) (b) 4. was repealed eff. 2−1−14 by 2013 Wis. Act 20, as affected by 2013 Wis. Acts 116 and 117.

2. Except as provided in subds. 3m. and 4., a recipient who is a child whose family income is greater than 200 percent of the poverty line shall pay a premium for coverage of the benefits described in sub. (11) that does not exceed the full per member per month cost of coverage for a child with a family income of 300 percent of the poverty line.

3m. A recipient who is a child, who is not disabled, and whose family income is at a level determined by the department that is at least 150 percent of the poverty line shall pay a premium in an amount determined by the department. The department may apply this subdivision only to the extent the federal department of health and human services approves applying a premium to those individuals, if approval is required.

4. None of the following shall pay a premium, except as provided in subd. 3m.:

a. A child who is a Native American or an Alaskan Native with a family income that does not exceed 300 percent of the poverty line.

b. A child who is eligible under sub. (4) (a) 2. or 2m.

c. A child whose family income does not exceed 200 percent of the poverty line.

d. A pregnant woman whose family income does not exceed 200 percent of the poverty line.

e. A child who obtains eligibility under sub. (7) (b) 2.

f. An individual who is eligible under sub. (4) (a) 5.

g. An individual described in sub. (4) (a) 7.

5. If a recipient who is required to pay a premium under this paragraph or under sub. (2m) either does not pay a premium when due or requests that his or her coverage under this section be terminated, the recipient's coverage terminates. If the recipient is an adult, the recipient is not eligible for BadgerCare Plus for 12 consecutive calendar months following the date on which the recipient's coverage terminated, except for any month during that 12−month period when the recipient's family income does not exceed 133 percent of the poverty line. If the recipient is a child, the recipient is not eligible for BadgerCare Plus for 3 consecutive calendar months, or up to 12 consecutive calendar months if the federal department of health and human services approves, following the date on which the recipient's coverage terminated, except for any month during that period when the recipient's family income does not exceed 150 percent of the poverty line. This period of ineligibility for a child does not apply to any child who has paid the outstanding premiums.

(11) BENCHMARK PLAN BENEFITS AND COPAYMENTS. Except as provided in sub. (11r) and s. 49.45 (24j), recipients who are not eligible for the benefits described in s. 49.46 (2) (a) and (b) shall have coverage of the following benefits and pay the following copayments:

(a) Subject to sub. (6) (k), prescription drugs bearing only a generic name, as defined in s. 450.12 (1) (b), with a copayment of no more than $5 per prescription.

(b) Physicians' services, including one annual routine physical examination, with a copayment of no more than $15 per visit.

(c) Inpatient hospital services as medically necessary, subject to coinsurance payment per inpatient stay of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided and a copayment of no more than $50 per admission for psychiatric services.

(d) Outpatient hospital services, subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided, except that use of emergency room services for treatment of a condition that is not an emergency medical condition, as defined in s. 632.85 (1) (a), shall require a copayment of no more than $75.

(e) Laboratory and X−ray services, including mammography.

(f) Home health services, limited to 60 visits per year.

(g) Skilled nursing home services, limited to 30 days per year, and subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided.

(h) Inpatient rehabilitation services, limited to 60 days per year, and subject to coinsurance payment of no more than 10 per-

cent of the allowable payment rates under s. 49.46 (2) for the services provided.

(i) Physical, occupational, speech, and pulmonary therapy, limited to 20 visits per year for each type of therapy, and subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided.

(j) Cardiac rehabilitation, limited to 36 visits per year and subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided.

(k) Inpatient, outpatient, and transitional treatment for nervous or mental disorders and alcoholism and other drug abuse problems, with a copayment of no more than $15 per visit and coverage limits that are the same as those under the state employee health plan under s. 40.51 (6).

(L) Durable medical equipment, limited to $2,500 per year, and subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the articles provided.

(m) Transportation to obtain medical care, as medically necessary, and, to the extent permitted under federal law, subject to coinsurance payment of no more than 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided.

(n) One refractive eye examination every 2 years, with a copayment of no more than $15 per visit.

(o) Fifty percent of allowable charges for preventive and basic dental services, including services for accidental injury and for the diagnosis and treatment of temporomandibular disorders. The coverage under this paragraph is limited to $750 per year, applies only to pregnant women and children under 19 years of age, and requires an annual deductible of $200 and a copayment of no more than $15 per visit.

(p) Early childhood developmental services, for children under 6 years of age.

(q) Smoking cessation treatment, for pregnant women only.

(r) Prenatal care coordination, for pregnant women at high risk only.

(s) Early and periodic screening and diagnosis, and all services included in the definition of "medical assistance" under 42 USC 1396d (a) that are found necessary by this screening and diagnosis, for recipients under 21 years of age.

(11m) PROVIDER PAYMENTS AND REQUIREMENTS. The provider of a service or equipment under sub. (11) shall collect the specified or allowable copayment or coinsurance, unless the provider determines that the cost of collecting the copayment or coinsurance exceeds the amount to be collected. The department shall reduce payments for services or equipment under sub. (11) by the amount of the specified or allowable copayment or coinsurance. A provider may deny care or services or equipment under sub. (11) if the recipient does not pay the specified or allowable copayment or coinsurance. If a provider provides care or services or equipment under sub. (11) to a recipient who is unable to share costs as specified in sub. (11), the recipient is not relieved of liability for those costs.

(11r) ALTERNATE BENCHMARK PLAN BENEFITS AND COPAYMENTS. (a) If the department chooses to provide the alternate benchmark plan under this subsection, the department shall provide to the recipients described under sub. (4) (e) coverage for benefits similar to those in a commercial, major medical insurance policy.

(b) The department may charge copayments to recipients receiving coverage under the alternate benchmark plan under this subsection that are higher than copayments charged to recipients receiving coverage under the standard plan under s. 49.46 (2). The department may not charge to a recipient of coverage under the alternate benchmark plan under this subsection whose family income is at or below 150 percent of the poverty line a copayment that exceeds 5 percent of the individual's family income for all members of the family.

(c) 1. The department may only provide coverage under the alternate benchmark plan under this subsection to the extent the alternate benchmark plan is approved by the federal department of health and human services.

2. If the department is providing coverage under the alternate benchmark plan under this subsection the department may discontinue coverage under the benchmark plan under sub. (11) for those individuals eligible for the alternate benchmark plan under this subsection.

3. The department may provide services to individuals enrolled in the alternate benchmark plan under this subsection through a medical home initiative similar to an initiative described under s. 49.45 (24j).

(12) RULES; NOTICE OF EFFECTIVE DATE. (a) 1. The department may promulgate any rules necessary for and consistent with its administrative responsibilities under this section, including additional eligibility criteria.

2. The department may promulgate emergency rules under s. 227.24 for the administration of this section for the period before the effective date of any permanent rules promulgated under subd. 1., but not to exceed the period authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subdivision.

(b) If the amendments to the state plan submitted under sub. (2) are approved and a waiver that is substantially consistent with the provisions of this section is granted and in effect, the department shall publish a notice in the Wisconsin Administrative Register that states the date on which BadgerCare Plus is implemented.

History: 2007 a. 20; 2009 a. 28, 180, 219; 2011 a. 10, 32; 2013 a. 20; 2013 a. 116 ss. 4, 5, 29 to 31, 33; 2013 a. 117 ss. 2 to 5; 2015 a. 55.

49.472 Medical assistance purchase plan. (1) DEFINITIONS. In this section:

(a) "Earned income" has the meaning given in 42 USC 1382a (a) (1).

(am) "Family" means an individual, the individual's spouse and any dependent child, as defined in s. 49.141 (1) (c), of the individual.

(b) "Health insurance" means surgical, medical, hospital, major medical or other health service coverage, including a self−insured health plan, but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits.

(c) "Independence account" means an account approved by the department that consists solely of savings, and dividends or other gains derived from those savings, from income earned from paid employment after the initial date on which an individual began receiving medical assistance under this section.

(d) "Medical assistance purchase plan" means medical assistance, eligibility for which is determined under this section.

(e) "Unearned income" has the meaning given in 42 USC 1382a (a) (2).

(2) WAIVERS AND AMENDMENTS. The department shall submit to the federal department of health and human services an amendment to the state medical assistance plan, and shall request any necessary waivers from the secretary of the federal department of health and human services, to permit the department to expand medical assistance eligibility as provided in this section. If the state plan amendment and all necessary waivers are approved and in effect, the department shall implement the medical assistance eligibility expansion under this section not later than Janu-

ary 1, 2000, or 3 months after full federal approval, whichever is later.

(3) ELIGIBILITY. Except as provided in sub. (6) (a), an individual is eligible for and shall receive medical assistance under this section if all of the following conditions are met:

(a) The individual's family's net income is less than 250 percent of the poverty line for a family the size of the individual's family. In calculating the net income, the department shall apply all of the exclusions specified under 42 USC 1382a (b).

(b) The individual's assets do not exceed $15,000. In determining assets, the department may not include assets that are excluded from the resource calculation under 42 USC 1382b (a) or assets accumulated in an independence account. The department may exclude, in whole or in part, the value of a vehicle used by the individual for transportation to paid employment.

(c) The individual would be eligible for supplemental security income for purposes of receiving medical assistance but for evidence of work, attainment of the substantial gainful activity level, earned income and unearned income in excess of the limit established under 42 USC 1396d (q) (2) (B) and (D).

(e) The individual is legally able to work in all employment settings without a permit under s. 103.70.

(f) The individual maintains premium payments calculated by the department in accordance with sub. (4), unless the individual is exempted from premium payments under sub. (4) (b) or (5).

(g) The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.

(h) The individual meets all other requirements established by the department by rule.

(4) PREMIUMS. (a) Except as provided in par. (b) and sub. (5), an individual who is eligible for medical assistance under sub. (3) and receives medical assistance shall pay a monthly premium to the department. The department shall establish the monthly premiums by rule in accordance with the following guidelines:

1. The premium for any individual may not exceed the sum of the following:

a. Three and one−half percent of the individual's earned income after the disregards specified in subd. 2m.

b. One hundred percent of the individual's unearned income after the deductions specified in subd. 2.

2. In determining an individual's unearned income under subd. 1., the department shall disregard all of the following:

a. A maintenance allowance established by the department by rule. The maintenance allowance may not be less than the sum of $20, the federal supplemental security income payment level determined under 42 USC 1382 (b) and the state supplemental payment determined under s. 49.77 (2m).

b. Medical and remedial expenses and impairment−related work expenses.

2m. If the disregards under subd. 2. exceed the unearned income against which they are applied, the department shall disregard the remainder in calculating the individual's earned income.

3. The department may reduce the premium by 25 percent for an individual who is covered by private health insurance.

(b) The department may waive monthly premiums that are calculated to be below $10 per month. The department may not assess a monthly premium for any individual whose income level, after adding the individual's earned income and unearned income, is below 150 percent of the poverty line.

(5) COMMUNITY OPTIONS PARTICIPANTS. From the appropriation under s. 20.435 (4) (bd), the department may pay all or a portion of the monthly premium calculated under sub. (4) (a) for an individual who is a participant in the community options program under s. 46.27 (11).

(6) INSURED PERSONS. (a) Notwithstanding sub. (4) (a) 3., from the appropriation accounts under s. 20.435 (4) (b), (gm), or (w), the department shall, on the part of an individual who is eligible for medical assistance under sub. (3), pay premiums for or purchase individual coverage offered by the individual's employer if the department determines that paying the premiums for or purchasing the coverage will not be more costly than providing medical assistance.

(b) If federal financial participation is available, from the appropriation accounts under s. 20.435 (4) (b), (gm), or (w), the department may pay medicare Part A and Part B premiums for individuals who are eligible for medicare and for medical assistance under sub. (3).

(7) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Determine eligibility, or contract with a county department, as defined in s. 49.45 (6c) (a) 3., or with a tribal governing body to determine eligibility, of individuals for the medical assistance purchase plan in accordance with sub. (3).

(b) Ensure, to the extent practicable, continuity of care for a medical assistance recipient under this section who is engaged in paid employment, or is enrolled in a home−based or community−based waiver program under section 1915 (c) of the Social Security Act, and who becomes ineligible for medical assistance.

History: 1999 a. 9, 185; 2001 a. 16; 2003 a. 33; 2009 a. 2; 2011 a. 10, 32; 2015 a. 55; 2015 a. 197 s. 51.

Cross−reference: See also chs. DHS 103 and 107 and s. DHS 103.087, Wis. adm. code.

49.473 Medical assistance; women diagnosed with breast or cervical cancer or precancerous conditions. **(1)** In this section:

(a) "County department" means a county department under s. 46.215, 46.22, or 46.23.

(b) "Qualified entity" has the meaning given in 42 USC 1396r−1b (b) (2).

(2) A woman is eligible for medical assistance as provided under sub. (5) if, after applying to the department or a county department, the department or a county department determines that she meets all of the following requirements:

(a) The woman is not eligible for medical assistance under ss. 49.46 (1) and (1m), 49.465, 49.468, 49.47, 49.471, and 49.472, and is not eligible for health care coverage under s. 49.665.

(b) The woman is under 65 years of age.

(c) The woman is not eligible for health care coverage that qualifies as creditable coverage in 42 USC 300gg (c), excluding the coverage specified in 42 USC 300gg (c) (1) (F).

(d) The woman has been screened for breast or cervical cancer under a breast and cervical cancer early detection program that is authorized under a grant received under 42 USC 300k.

(e) The woman requires treatment for breast or cervical cancer or for a precancerous condition of the breast or cervix.

(3) Prior to applying to the department or a county department for medical assistance, a woman is eligible for medical assistance as provided under sub. (5) beginning on the date on which a qualified entity determines, on the basis of preliminary information, that the woman meets the requirements specified in sub. (2) and ending on one of the following dates:

(a) If the woman applies to the department or a county department for medical assistance within the time limit required under sub. (4), the day on which the department or county department determines whether the woman meets the requirements under sub. (2).

(b) If the woman does not apply to the department or county department for medical assistance within the time limit required under sub. (4), the last day of the month following the month in which the qualified entity determines that the woman is eligible for medical assistance.

(4) A woman who a qualified entity determines under sub. (3) is eligible for medical assistance shall apply to the department or county department no later than the last day of the month following the month in which the qualified entity determines that the woman is eligible for medical assistance.

(5) The department shall audit and pay, from the appropriation accounts under s. 20.435 (4) (b), (gm), and (o), allowable charges to a provider who is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who meets the requirements under sub. (2) for all benefits and services specified under s. 49.46 (2).

(6) A qualified entity that determines under sub. (3) that a woman is eligible for medical assistance as provided under sub. (5) shall do all of the following:

(a) Notify the department of the determination no later than 5 days after the date on which the determination is made.

(b) Inform the woman at the time of the determination that she is required to apply to the department or a county department for medical assistance no later than the last day of the month following the month in which the qualified entity determines that the woman is eligible for medical assistance.

(7) The department shall provide qualified entities with application forms for medical assistance and information on how to assist women in completing the form.

History: 2001 a. 16, 104; 2003 a. 33; 2007 a. 20; 2009 a. 2; 2011 a. 10, 32.

49.475 Information about assistance program beneficiaries; electronic submission of claims. (1) DEFINITIONS. In this section:

(ar) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

(b) "Insurer" has the meaning given in s. 600.03 (27).

(c) "Pharmacy benefits management" means the administration or management of prescription drug benefits provided by an insurer or other 3rd party, including the performance of any of the following services:

1. Dispensation of prescription drugs by mail.

2. Claims processing, retail network management, or payment of claims to pharmacies for prescription drugs dispensed to individuals.

3. Clinical formulary development and management services.

4. Rebate contracting and administration.

5. Conduct of patient compliance, therapeutic intervention, generic substitution, and disease management programs.

(d) "Pharmacy benefits manager" means an entity that performs pharmacy benefits management.

(e) "Recipient" means an individual or his or her spouse or dependent who has been or is one of the following:

1. A recipient of medical assistance or of a program administered under medical assistance under a waiver of federal Medicaid laws.

2. An enrollee of family care.

3. A recipient of the Badger Care health care program.

4. An individual who receives benefits under s. 49.68, 49.683, or 49.685.

5. A participant in the program of prescription drug assistance for elderly persons under s. 49.688.

6. A woman who receives services that are reimbursed under s. 255.06.

(f) "Third party" means an entity that by statute, rule, contract, or agreement is responsible for payment of a claim for a health care item or service, including any of the following:

1. An insurer.

2. An employee benefit plan, as defined in 29 USC 1002 (3).

3. A service benefit plan, as defined in 5 USC 8903 (1).

4. A pharmacy benefits manager.

5. A group health plan, as defined in 29 USC 1191b (a) (1), including a self−insured plan.

6. The issuer of a disability insurance policy.

7. An entity that administers benefits on behalf of another risk−bearing 3rd party, including a 3rd−party administrator, a fiscal intermediary, or a managed care contractor.

(2) REQUIREMENTS OF 3RD PARTIES. (ac) As a condition of doing business in this state, a 3rd party shall do all of the following:

1. Upon the department's request and in the manner prescribed by the department, provide information to the department necessary for the department to ascertain all of the following with respect to a recipient:

a. Whether the recipient is being or has been provided coverage or a benefit or service by a 3rd party.

b. If subd. 1. a. applies, the nature and period of time of any coverage, benefit, or service provided, including the name, address, and identifying number of any applicable coverage plan.

2. Accept assignment to the department of a right of a recipient to receive 3rd−party payment for an item or service for which payment under medical assistance has been made and accept the department's right to recover any 3rd−party payment made for which assignment has not been accepted.

3. Respond to an inquiry by the department concerning a claim for payment of a health care item or service if the department submits the inquiry less than 36 months after the date on which the health care item or service was provided.

4. If all of the following apply, agree not to deny a claim submitted by the department under subd. 2. solely because of the claim's submission date, the type or format of the claim form, or failure by a recipient to present proper documentation at the time of delivery of the service, benefit, or item that is the basis of the claim:

a. The department submits the claim less than 36 months after the date on which the health care item or service was provided.

b. Action by the department to enforce the department's rights under this section with respect to the claim is commenced less than 72 months after the department submits the claim.

(bc) A 3rd party shall accept the submission of claims from the department under par. (ac) 2. in electronic form and shall timely pay the claims in the manner provided in s. 628.46 (1) and (2). For purposes of timely payment of claims under this paragraph, "written notice" under s. 628.46 (1) includes receipt of a claim in electronic form.

(2m) LIMITS ON INFORMATION TO BE PROVIDED. (a) The information that the department may request under this section is limited to the information specified in sub. (2) (ac) 1. and does not include an employer's name unless that information is necessary for the department or a provider to obtain 3rd−party payment for an item or service.

(b) If information under sub. (2) (ac) 1. may be available from more than one source that includes an employer operating a self−insured plan, the department shall seek the information first from a 3rd−party administrator or other entity identified in sub. (1) (f) 7. or pharmacy benefits manager before seeking the information from the employer.

(c) Information obtained under this section may be used only for the purposes specified in this section and in federal law on 3rd−party liability in Medical Assistance programs.

(3) WRITTEN AGREEMENT. Upon requesting a 3rd party to provide the information under sub. (2) (ac) 1., the department and the 3rd party shall enter into a written agreement that satisfies all of the following:

(a) Identifies the detailed format of the information to be provided to the department.

(b) Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.

(c) Specifies how the 3rd party's reimbursable costs under sub. (5) will be determined and specifies the manner of payment.

(4) DEADLINE FOR RESPONSE; ENFORCEMENT. (a) A 3rd party shall provide the information requested under sub. (2) (ac) 1. within 180 days after receiving the department's request if it is the first time that the department has requested the 3rd party to disclose information under this section.

(b) A 3rd party shall provide the information requested under sub. (2) (ac) 1. within 30 days after receiving the department's request if the department has previously requested the 3rd party to disclose information under this section.

(c) If an insurer fails to comply with par. (a) or (b), the department may notify the commissioner of insurance, and the commissioner of insurance may initiate enforcement proceedings against the insurer under s. 601.41 (4) (a).

(d) If a 3rd party other than an insurer fails to comply with par. (a) or (b), the department may so notify the attorney general.

(5) REIMBURSEMENT OF COSTS. From the appropriations under s. 20.435 (4) (bm) and (pa), the department shall reimburse a 3rd party that provides information under sub. (2) (ac) 1. for the 3rd party's reasonable costs incurred in providing the requested information, including its reasonable costs, if any, to develop and operate automated systems specifically for the disclosure of the information.

(6) SHARING INFORMATION. The department of health services shall provide to the department of children and families, for purposes of the medical support liability program under s. 49.22, any information that the department of health services receives under this section. The department of children and families may allow a county child support agency under s. 59.53 (5) or a tribal child support agency access to the information, subject to the use and disclosure restrictions under s. 49.83, and shall consult with the department of health services regarding procedures and methods to adequately safeguard the confidentiality of the information provided under this subsection.

History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a); 2011 a. 189; 2013 a. 20.

49.48 Denial, nonrenewal and suspension of certification of service providers based on certain delinquency in payment. (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, as a condition of issuing or renewing a certification under s. 49.45 (2) (a) 11. as an eligible provider of services.

(1m) If an individual who applies for or to renew a certification under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of children and families for the purpose of making certifications required under s. 49.857.

(3) The department shall deny an application for the issuance or renewal of a certification specified in sub. (1), shall suspend a certification specified in sub. (1) or may, under a memorandum of understanding under s. 49.857 (2), restrict a certification specified in sub. (1) if the department of children and families certifies under s. 49.857 that the applicant for or holder of the certificate is delinquent in the payment of court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

History: 1997 a. 191; 1999 a. 9; 2007 a. 20.

49.485 False claims. Whoever knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance shall forfeit not less than $5,000 nor more than $10,000, plus 3 times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The attorney general may bring an action on behalf of the state to recover any forfeiture incurred under this section.

History: 2007 a. 20.

49.49 Medical assistance offenses. (1d) DAMAGES. If any person is convicted under s. 946.91 (2), the state shall have a cause of action for relief against such person in an amount 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under s. 946.91 (2) in a civil action shall be conclusive regarding the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages shall consist of the total amount of excess payments, any part of which is paid by state funds. In any such civil action the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

(3p) PROHIBITED PROVIDER CHARGES. No provider may knowingly violate s. 609.91 (2).

(4m) PROHIBITED CONDUCT; FORFEITURES. (a) No person, in connection with medical assistance, may:

1. Knowingly make or cause to be made any false statement or representation of a material fact in any application for a benefit or payment.

2. Knowingly make or cause to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment.

3. Knowingly conceal or fail to disclose any event of which the person has knowledge that affects his or her initial or continued right to a benefit or payment or affects the initial or continued right to a benefit or payment of any other person in whose behalf he or she has applied for or is receiving a benefit or payment.

(b) A person who violates this subsection may be required to forfeit not less than $100 nor more than $15,000 for each statement, representation, concealment or failure.

(5) COUNTY COLLECTION. Any county may retain 15 percent of state Medical Assistance funds that are recovered due to the efforts of a county employee or officer or, if the county initiates action by the department of justice, due to the efforts of the department of justice under s. 49.846. This subsection applies only to recovery of medical assistance that was provided as a result of fraudulent activity by a recipient or by a provider.

(6) RECOVERY. In addition to other remedies available under this section, the court may award the department of justice the reasonable and necessary costs of investigation, an amount reasonably necessary to remedy the harmful effects of the violation and the reasonable and necessary expenses of prosecution, including attorney fees, from any person who violates this section. The department of justice shall deposit in the state treasury for deposit in the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

(7) OPERATION OF NURSING HOME OR INTERMEDIATE CARE FACILITY BY COMMISSION NOT PROHIBITED. (a) In this subsection:

1. "Commission" means an entity that is created by contract between 2 or more political subdivisions under s. 66.0301 to operate a nursing home or intermediate care facility and to which all of the following apply:

a. The entity is the named licensee for the nursing home or intermediate care facility.

b. The entity is the certified provider under s. 49.45 (2) (a) 11. for the nursing home or intermediate care facility and is the recipient of medical assistance reimbursement for services provided by the nursing home or intermediate care facility.

c. The entity owns or leases the building in which the nursing home or intermediate care facility is located.

d. The entity provides or contracts for provision of nursing home or intermediate care facility services.

e. The entity controls admissions and discharges from the nursing home or intermediate care facility.

f. The entity allocates the costs of operating the nursing home or intermediate care facility, and of providing services to residents of the nursing home or intermediate care facility, among the political subdivisions that are parties to the contract and assesses each political subdivision that is a party to the contract the portion of the costs allocated to that political subdivision.

2. "Member" means a political subdivision that is a party to a contract to create a commission.

3. "Political subdivision" means a county, city, village, or town.

(b) A commission's imposition of an assessment on a member for the costs incurred by the commission to operate the nursing home or intermediate care facility and to provide services to residents of the nursing home or intermediate care facility is a charge internal to the commission and does not constitute billing a 3rd party for services provided on behalf of an individual.

(c) A member's payment of an assessment described under par. (b) is a transfer of funds internal to the commission and does not constitute a purchase of services on behalf of an individual, regardless of whether the payment is made from the member's general fund, made pursuant to a purchase of services agreement between a member's human services department or other department and the commission, or by a combination of these payment methods.

(d) A commission's imposition of an assessment described under par. (b), a member's payment of the assessment as described under par. (c), and acceptance of the payment by the commission do not constitute conduct prohibited under s. 946.91 (6) or prohibited under s. DHS 106.04 (3), Wis. Adm. Code, in effect on May 26, 2010. It is the intent of the legislature to create a mechanism whereby 2 or more political subdivisions may share in the operation, use, and funding of a nursing home or intermediate care facility without violating 42 USC 1320a−7b (d) or 42 USC 1396a (a) (25) (C).

History: 1977 c. 418; 1979 c. 89; 1981 c. 317; 1985 a. 29 s. 3202 (23); 1985 a. 269; 1989 a. 23, 31; 1995 a. 27; 1997 a. 283; 2001 a. 109; 2003 a. 309; 2007 a. 20; 2009 a. 283; 2013 a. 226; 2015 a. 195 s. 83.

The only state of mind requirement for a violation of sub. (1) (a) 1. is the intentional making or causing the making of a false statement that appears in an application; that anyone actually received a medical assistance benefit need not be proved. State v. Williams, 179 Wis. 2d 80, 505 N.W.2d 468 (Ct. App. 1993).

Sub. (3m) and related rules require medical assistance providers to refund only the amount paid by the medical assistance program on behalf of retroactively eligible persons. A private pay patient subsequently found retroactively eligible does not have a federally protected right to reimbursement from a medical assistance provider for the amount originally paid by the patient in excess of the medical assistance reimbursement. Keup v. DHFS, 2004 WI 16, 269 Wis. 2d 59, 675 N.W.2d 755, 02−0456.

The State had a constitutional right to a jury trial on its claim under sub. (4m). State v. Abbott Laboratories, 2012 WI 62, 341 Wis. 2d 510, 816 N.W.2d 145, 10−0232.

Nursing home guarantor agreements may violate sub. (4) after a resident becomes certified Medicaid eligible. 76 Atty. Gen. 295.

When the defendant hospital did not send bills directly to Medical Assistance patients, but rather filed liens against the patients' potential settlements with a tortfeasor's insurer, the liens did not constitute "direct charges upon" the patients and were therefore permissible under the plain language of the second prohibition in sub. (3m) (a). Gister v. American Family Mutual Ins. Co. 2012 WI 86, 342 Wis. 2d 496, 818 N.W.2d 880, 09−2795.

Sub. (6) permits recovery of attorney fees for private counsel hired by the state. State v. Abbott Laboratories, 2013 WI App 31, 346 Wis. 2d 565, 829 N.W.2d 753, 10−0232.

Sub. (4m) (a) 2. unambiguously applies to the amount of payment as well as the right to be paid. State v. Abbott Laboratories, 2013 WI App 31, 346 Wis. 2d 565, 829 N.W.2d 753, 10−0232.

49.493 Benefits under uninsured health plans. (1) In this section:

(a) "Department or contract provider" means the department, the county providing the medical benefits or assistance or a health maintenance organization that has contracted with the department to provide the medical benefits or assistance.

(b) "Medical benefits or assistance" means medical benefits under s. 49.02 or 253.05 or medical assistance.

(c) "Uninsured health plan" means a partially or wholly uninsured plan, including a plan that is subject to 29 USC 1001 to 1461, providing health care benefits.

(2) The providing of medical benefits or assistance constitutes an assignment to the department or contract provider, to the extent of the medical benefits or assistance provided, for benefits to which the recipient would be entitled under any uninsured health plan.

(3) An uninsured health plan may not do any of the following:

(a) Exclude a person or a person's dependent from coverage under the uninsured health plan because the person or the dependent is eligible for medical assistance.

(b) Terminate its coverage of a person or a person's dependent because the person or the dependent is eligible for medical assistance.

(c) Provide different benefits of coverage to a person or the person's dependent because the person or the dependent is eligible for medical assistance than it provides to persons and their dependents who are not eligible for medical assistance.

(d) Impose on the department or contract provider, as assignee of a person or a person's dependent who is covered under the uninsured health plan and who is eligible for medical benefits or assistance, requirements that are different from those imposed on any other agent or assignee of a person who is covered under the uninsured health plan.

(4) Benefits provided by an uninsured health plan shall be primary to medical benefits or assistance.

History: 1991 a. 178, 214; 1993 a. 481; 1995 a. 27, 407; 1999 a. 32.

49.496 Recovery of correct medical assistance payments. (1) DEFINITIONS. In this section:

(af) "Decedent" means a deceased recipient or a deceased nonrecipient surviving spouse, whichever is applicable.

(ah) "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

(b) "Home" means property in which a person has an ownership interest consisting of the person's dwelling and the land used and operated in connection with the dwelling.

(bk) "Long−term care program" means any of the following:

1. The family care program providing the benefit under s. 46.286.

2. The self−directed services option that operates under a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (c) in which an enrolled individual selects his or her own services and service providers.

3. The family care partnership program that is an integrated health and long−term care program operated under an amendment to the state medical assistance plan under 42 USC 1396u−2 and a waiver under 42 USC 1396n (c).

4. The program for all−inclusive care for the elderly under 42 USC 1396u−4.

5. Any program that provides long−term care services and is operated by the department under an amendment to the state medical assistance plan under 42 USC 1396n (i) or 42 USC 1396u−2; a waiver of medical assistance laws under 42 USC 1396n (c), 42 USC 1396n (b) and (c), or 42 USC 1396u; or a demonstration project under 42 USC 1315 or 42 USC 1396n (c).

(bw) "Nonrecipient surviving spouse" means any person who was married to a recipient while the recipient was receiving ser-

vices for which the cost may be recovered under sub. (3) (a) and who survived the recipient.

(c) "Nursing home" has the meaning given in s. 50.01 (3).

(cm) "Property of a decedent" means all real and personal property to which the recipient held any legal title or in which the recipient had any legal interest immediately before death, to the extent of that title or interest, including assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust, or any other arrangement, excluding an irrevocable trust.

(d) "Recipient" means a person who receives or received medical assistance.

(2) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS AT HOSPITALS. (a) Except as provided in par. (b), the department may obtain a lien on a recipient's home if the recipient resides in a nursing home, or if the recipient resides in a hospital and is required to contribute to the cost of care, and the recipient cannot reasonably be expected to be discharged from the nursing home or hospital and return home. The lien is for the amount of medical assistance paid on behalf of the recipient that is recoverable under sub. (3) (a).

(b) The department may not obtain a lien under this subsection if any of the following persons lawfully reside in the home:

1. The recipient's spouse.

2. The recipient's child who is under age 21 or is disabled.

3. The recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the recipient was admitted to the nursing home or hospital.

(c) Before obtaining a lien on a recipient's home under this subsection, the department shall do all of the following:

1. Notify the recipient in writing of its determination that the recipient cannot reasonably be expected to be discharged from the nursing home or hospital, its intent to impose a lien on the recipient's home and the recipient's right to a hearing on whether the requirements for the imposition of a lien are satisfied.

2. Provide the recipient with a hearing if he or she requests one.

(d) The department shall obtain a lien under this subsection by recording a lien claim in the office of the register of deeds of the county in which the home is located.

(e) The department may not enforce a lien under this subsection while the recipient lives unless the recipient sells the home and does not have a living child who is under age 21 or disabled or a living spouse.

(f) The department may not enforce a lien under this subsection after the death of the recipient as long as any of the following survive the recipient:

1. A spouse.

2. A child who is under age 21 or disabled.

3. A child of any age who resides in the home, if that child resided in the home for at least 24 months before the recipient was admitted to the nursing home or hospital and provided care to the recipient that delayed the recipient's admission to the nursing home or hospital.

4. A sibling who resides in the home, if the sibling resided in the home for at least 12 months before the recipient was admitted to the nursing home or hospital.

(g) The department may enforce a lien imposed under this subsection by foreclosure in the same manner as a mortgage on real property.

(h) The department shall file a release of a lien imposed under this subsection if the recipient is discharged from the nursing home or hospital and returns to live in the home.

(3) RECOVERY FROM ESTATES. (a) Except as provided in par. (b), the department shall file a claim against the estate of a recipient, and against the estate of a nonrecipient surviving spouse, for all of the following, subject to the exclusion of any amounts under the Long−Term Care Partnership Program established under s. 49.45 (31), unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a hospital and was required to contribute to the cost of care.

2. The following medical assistance services paid on behalf of the recipient after the recipient attained 55 years of age:

a. Home−based or community−based services under 42 USC 1396d (a) (7) and (8).

am. All services provided to an individual while the individual is participating in a long−term care program.

d. Personal care services under s. 49.46 (2) (b) 6. j.

(ad) The amount the department may claim against an estate of a recipient, or an estate of a nonrecipient surviving spouse, for services that are described under par. (a) 2. am. and that are provided by a managed long−term care program funded by capitated payments is equal to the amount of the capitated payment for the recipient.

(ag) The affidavit of a person designated by the secretary to administer this subsection is evidence of the amount of the claim.

(aj) 1. Property that is subject to the department's claim under par. (a) in the estate of a recipient or in the estate of a nonrecipient surviving spouse is all property of a decedent that is included in the estate.

2. There is a presumption, consistent with s. 766.31, which may be rebutted, that all property in the estate of a nonrecipient surviving spouse was marital property held with the recipient and that 100 percent of the property in the estate of the nonrecipient surviving spouse is subject to the department's claim under par. (a).

(am) The court shall reduce the amount of a claim under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the decedent's heirs or the beneficiaries of the decedent's will to retain the following personal property:

1. The decedent's wearing apparel and jewelry held for personal use.

2. Household furniture, furnishings and appliances.

3. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33 (1) (a) 4.

(b) A claim under par. (a) is not allowable if the decedent has a surviving child who is under age 21 or disabled or a surviving spouse.

(c) 1. If the department's claim is not allowable because of par. (b) and the estate includes an interest in any real property, including a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the real property subject to a lien in favor of the department for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

2. If the department's claim is not allowable because of par. (b), the estate includes an interest in any real property, including a home, and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the real property is assigned subject to a lien in favor of the department for the amount described in par. (a). The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgment.

(d) The department may not enforce a lien under par. (c) as long as any of the following survive the decedent:

1. A spouse.

2. A child who is under age 21 or disabled.

(dm) All of the following apply to a lien under par. (c) that the department may not enforce because of par. (d):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.849 (4) (c) 2.

(e) The department may enforce a lien under par. (c) by foreclosure in the same manner as a mortgage on real property.

(f) The department may contract with or employ an attorney to probate estates to recover under this subsection the costs of care.

(4) ADMINISTRATION. (a) The department may require a county department under s. 46.215, 46.22, or 46.23 or the governing body of a federally recognized American Indian tribe administering medical assistance to gather and provide the department with information needed to recover medical assistance under this section. Except as provided in par. (b), the department shall pay to a county department or tribal governing body an amount equal to 5 percent of the recovery collected by the department relating to a beneficiary for whom the county department or tribal governing body made the last determination of medical assistance eligibility. A county department or tribal governing body may use funds received under this paragraph only to pay costs incurred under this paragraph and, if any amount remains, to pay for improvements to functions required under s. 49.78 (2). The department may withhold payments under this paragraph for failure to comply with the department's requirements under this paragraph. The department shall treat payments made under this paragraph as costs of administration of the Medical Assistance program.

(b) The department shall credit to the appropriation account under s. 20.435 (4) (im) any amount that the department would otherwise pay under par. (a) to a county department under s. 46.215 for any recovery collected by a department employee or officer, or by a county employee or officer under the management of the department.

(5) USE OF FUNDS. From the appropriation under s. 20.435 (4) (im), the department shall pay the amount of the payments under sub. (4) (a) that is not paid from federal funds, shall pay to the federal government the amount of the funds recovered under this section equal to the amount of federal funds used to pay the benefits recovered under this section, and shall spend the remainder of the funds recovered under this section for medical assistance benefits under this subchapter.

(6) APPLICABILITY. (a) The department may recover amounts under this section for medical assistance benefits paid on and after August 15, 1991.

(b) The department may file a claim under sub. (3) only with respect to a recipient who dies after September 30, 1991.

(6m) WAIVER DUE TO HARDSHIP. The department shall promulgate rules establishing standards for determining whether the application of this section would work an undue hardship in individual cases. If the department determines that the application of this section would work an undue hardship in a particular case, the department shall waive application of this section in that case.

(7) INSTALLMENT PAYMENTS. If a recovery under sub. (3) does not work an undue hardship on the heirs of the estate, and if the heirs wish to satisfy the recovery claim without selling a nonliquid asset that is subject to recovery, the department may establish a reasonable payment schedule subject to reasonable interest.

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2007 a. 20; 2009 a. 15; 2013 a. 20, 92, 151.

Preserving the Homestead of the Small Estate: Wisconsin's Medical Recovery Law. Gilbert. Wis. Law. July 1992.

49.497 Recovery of incorrect Medical Assistance or Badger Care payments and of unpaid employer penalties. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost−sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. The county department under s. 46.215 or 46.22 or the governing body of a federally recognized American Indian tribe administering Medical Assistance or Badger Care shall begin recovery actions on behalf of the department according to rules promulgated by the department.

(1m) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

(b) If any recipient, or parent of a minor recipient, named in an order to compel payment issued under par. (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The sworn statement of the secretary shall be evidence of the incorrect payment. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this paragraph shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(c) The recovery procedure under this subsection is in addition to any other recovery procedure authorized by law.

(1r) (a) The department may recover any penalty assessment not paid under s. 49.471 (9) (c) from the employer against which the penalty was assessed. If, after notice that payment of a penalty is overdue, the employer who is liable fails to pay the penalty amount, or enter into or comply with an agreement for payment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not paid the penalty or entered into, or complied with, an agreement for payment.

(b) If any employer named in an order to compel payment issued under par. (a) fails to pay the department any amount due

under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The sworn statement of the secretary shall be evidence of the failure to pay the penalty. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this paragraph shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(c) The recovery procedure under this subsection is in addition to any other recovery procedure authorized by law.

(2) (a) Except as provided in par. (b), a county or governing body of a federally recognized American Indian tribe may retain 15 percent of benefits provided under this subchapter or s. 49.665 that are recovered under this section due to the efforts of an employee or officer of the county or tribe.

(b) Any amount that Milwaukee County would otherwise be entitled to retain under par. (a) for benefits recovered due to the efforts of a department employee or officer, or a county employee or officer under the management of the department, shall be credited to the appropriation account under s. 20.435 (4) (L).

(3) Cash assets of medical assistance recipients that exceed asset limitations shall be applied against the cost of medical assistance benefits provided.

(4) The department may appear for the state in any and all collection matters under this section, and may commence suit in the name of the department to recover an incorrect payment from the recipient to whom or on whose behalf it was made or to recover an unpaid penalty from the employer against which the penalty was assessed.

(5) The department may make an agreement with a recipient, or parent of a minor recipient, who is liable under sub. (1), providing for repayment of an incorrect payment at a specified rate or amount.

History: 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359; 2005 a. 25, 254; 2007 a. 20, 97; 2009 a. 15.

There is no statutory authority to order a mother to repay lying−in expenses paid by medical assistance. In re Paternity of N.L.M. 166 Wis. 2d 306, 479 N.W.2d 237 (Ct. App. 1991).

49.498 Requirements for skilled nursing facilities. **(1)** DEFINITIONS. In this section:

(a) "Active treatment for developmental disability" means a continuous program for an individual who has a developmental disability that includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services, that is directed toward the individual's acquiring behaviors necessary for him or her to function with as much self−determination and independence as possible and that is directed toward preventing or decelerating regression or loss of the individual's current optimal functional status. "Active treatment for developmental disability" does not include services to maintain generally independent individuals with developmental disability who are able to function with little supervision or in the absence of active treatment for developmental disability.

(b) "Active treatment for mental illness" means the implementation of an individualized plan of care for an individual with mental illness that is developed under and supervised by a physician licensed under ch. 448 and other qualified mental health care providers and that prescribes specific therapies and activities for the treatment of the individual while the individual experiences an acute episode of severe mental illness which necessitates supervision by trained mental health care providers.

(c) "Developmental disability" means any of the following:

1. Significantly subaverage general intellectual functioning that is concurrent with an individual's deficits in adaptive behavior and that manifested during the individual's developmental period.

2. A severe, chronic disability that meets all of the conditions for individuals with related conditions as specified in 42 CFR 435.1009.

(d) "Licensed health professional" has the meaning given under 42 USC 1396r (b) (5) (G).

(e) "Managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the facility.

(f) "Medicare" means coverage under part A or part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz.

(g) "Mental illness" has the meaning given under 42 USC 1396r (e) (7) (G) (i).

(h) "Nurse aide" has the meaning given under 42 USC 1396r (b) (5) (F).

(i) "Nursing facility" has the meaning given under 42 USC 1396r (a).

(j) "Physician" has the meaning given under s. 448.01 (5).

(k) "Psychopharmacologic drugs" means drugs that modify psychological functions and mental states.

(L) "Registered professional nurse" means a registered nurse who is licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (j).

(m) "Resident" means an individual who resides in a nursing facility.

(2) REQUIREMENTS RELATING TO PROVISION OF SERVICES. (a) 1. A nursing facility shall care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

2. A nursing facility shall maintain a quality assessment and assurance committee that consists of the director of nursing services, a physician who is designated by the nursing facility and at least 3 other members of the nursing facility staff and that shall do all of the following:

a. Meet at least every 3 months to identify issues with respect to which quality assessment and assurance activities are necessary.

b. Develop and implement appropriate plans of action to correct identified quality deficiencies.

3. A quality assessment and assurance committee described under subd. 2. may establish written guidelines or procedures for making therapeutic alternate drug selections for the purposes of s. 450.01 (16) (hm) if the committee members include a pharmacist, as defined in s. 450.01 (15).

(b) A nursing facility shall provide services to attain or maintain the highest practicable physical, mental and psychosocial well−being of each resident in accordance with a written plan of care for each resident which:

1. Describes the medical, nursing and psychosocial needs of the resident and how the needs shall be met;

2. Is initially prepared, with participation to the extent practicable of the resident or the resident's family or legal counsel, by a team which includes the resident's attending physician and a registered professional nurse who has responsibility for the resident; and

3. Is periodically reviewed and revised by the team in subd. 2. after the conduct of an assessment under par. (c).

(c) 1. A nursing facility shall conduct a comprehensive, accurate, standardized reproducible assessment of each resident's functional capacity that:

a. Describes the resident's capability to perform daily life functions and significant impairments in the resident's functional capacity.

b. Is based on a uniform minimum data set of core elements and common definitions specified as required under 42 USC 1395i−3 (f) (6) (A).

c. Uses an instrument which shall be specified by the department by rule.

d. Includes identification of the resident's medical problems.

2. A registered professional nurse shall conduct or coordinate with the appropriate participation of health professionals, sign and certify the completion of an assessment under subd. 1. Each individual who completes a portion of the assessment shall sign and certify as to the accuracy of that portion of the assessment.

3. No individual may willfully and knowingly certify under subd. 2. a material and false statement in an assessment.

4. No individual may willfully and knowingly cause another individual to certify under subd. 2. a material and false statement in an assessment.

5. If the department determines by survey of a nursing facility or otherwise that an individual has knowingly and willfully certified a false assessment under subd. 2., the department may require that individuals who are independent of the nursing facility and are approved by the department conduct and certify assessments under this paragraph.

6. A nursing facility shall:

a. Conduct an assessment under subd. 1. no later than 4 days after the admission of an individual admitted after September 30, 1990.

b. Conduct all of the assessments under subd. 1. for a resident of the nursing facility by October 1, 1991, for a resident who resides in the facility on that date; promptly after a significant change in a resident's physical or mental condition; and, for every resident, no less often than once every 12 months.

c. Examine a resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment under subd. 1. to assure the assessment's continuing accuracy.

7. The assessment conducted under subd. 1. shall be used in developing, reviewing and revising a nursing facility resident's plan of care under par. (b).

8. A nursing facility shall coordinate an assessment conducted under this paragraph with the conduct of preadmission screening under s. 49.45 (6c) (b) to the maximum extent practicable in order to avoid duplicative testing and effort.

(d) 1. To the extent needed to fulfill the plans of care required under par. (b), a nursing facility shall provide or arrange for the provision of all of the following, which shall meet professional standards of quality:

a. Nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental and psychosocial well−being of each resident.

b. Medically related social services to attain or maintain the highest practicable physical, mental and psychosocial well−being of each resident.

c. Pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals, to meet the needs of each resident.

d. Dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident.

e. An ongoing program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental and psychosocial well−being of each resident.

f. Routine dental services to the extent covered under the approved state medicaid plan and emergency dental services to meet the needs of each resident.

2. Services specified under subd. 1. a. to d. and f. shall be provided to a resident by qualified persons in accordance with the resident's written plan of care under par. (b).

3. Unless waived under subd. 4., a nursing facility shall:

a. Provide 24−hour per day licensed nursing services which are sufficient to meet the nursing needs of its residents; and

b. Shall use the services of a registered professional nurse at least 8 consecutive hours per day, 7 days per week.

4. Subject to subd. 5., the department may waive the requirement under subd. 3. a. or b. if all of the following apply:

a. The nursing facility demonstrates to the satisfaction of the department that the nursing facility has been unable, despite diligent efforts including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel.

b. The department determines that a waiver of the requirement will not endanger the health or safety of nursing facility residents.

c. The department finds that a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the nursing facility for any periods in which licensed nursing services are not available.

5. A waiver under subd. 4. is subject to annual review by the department and to review by the secretary of the federal department of health and human services. The department may, in granting or reviewing a waiver, require the nursing facility to employ other qualified, licensed personnel.

(e) Except as otherwise provided in s. 146.40, all of the following apply:

2. A nursing facility may not use the individual as a nurse aide unless the nursing facility has inquired of the department concerning information about the individual in the registry under s. 146.40 (4g).

3. A nursing facility shall provide the regular performance review and regular in−service education that assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals to provide nursing and nursing−related services to nursing facility residents with cognitive impairments.

(f) A nursing facility shall do all of the following:

1. Require that the health care of every nursing facility resident be provided under the supervision of a physician.

2. Provide for the availability of a physician to furnish necessary medical care in case of emergency.

3. Maintain clinical records on all nursing facility residents which include all of the following:

a. Written plans of care, as required under par. (b).

b. Assessments, as required under par. (c).

c. Results of any preadmission screening conducted under s. 49.45 (6c) (b).

(g) A nursing facility with more than 120 beds shall employ full−time at least one social worker with at least a bachelor's degree in social work or similar professional qualifications to provide or assure the provision of social services.

(3) RESIDENT'S RIGHTS; GENERAL RIGHTS. (a) A nursing facility shall protect and promote the rights of each resident, including each of the following rights:

1. The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well−being, and, except with respect to a resident who is adjudicated incompetent, to participate in planning care and treatment or changes in care and treatment.

2. The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed:

a. To ensure the physical safety of the resident or other residents; and

b. Upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except in emergency circumstances until the order could reasonably be obtained.

3. The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and

meetings of family and of resident groups, except that this subdivision may not be construed to require provision of a private room.

4. The right to confidentiality of personal and clinical records.

5. The rights:

a. To reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered; and

b. To receive notice before the room or roommate of the resident in the nursing facility is changed.

6. The right to voice grievances with respect to treatment or care that is or is not furnished, without discrimination or reprisal for voicing the grievances, and the right to prompt efforts by the nursing facility to resolve grievances that the resident may have, including those with respect to the behavior of other residents.

7. The right of the resident to organize and participate in resident groups in the nursing facility and the right of the resident's family to meet in the nursing facility with the families of other residents in the nursing facility.

8. The right of the resident to participate in social, religious and community activities that do not interfere with the rights of other residents in the nursing facility.

9. The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the federal department of health and human services or the department with respect to the nursing facility and any plan of correction in effect with respect to the nursing facility.

10. Any other right specified in rules that the department shall promulgate in conformity with federal regulations.

(b) Except as provided in par. (c), a nursing facility shall do all of the following:

1. Inform each resident, orally and in writing at the time of admission to the nursing facility, of the resident's legal rights during the stay at the nursing facility, including a description of the protection of personal funds under sub. (8) and a statement that a resident may file a complaint with the department under s. 146.40 (4r) (a) concerning misappropriation of property or neglect or abuse of a resident.

2. Make available to each resident, upon reasonable request, a written statement of the rights specified in subd. 1. which is updated upon changes in nursing rights.

3. Inform each resident who is entitled to medical assistance:

a. At the time of admission to the nursing facility or, if later, at the time the resident becomes eligible for medical assistance, of the items and services that are included in nursing facility services under the approved state medicaid plan and for which the resident may not be charged, except as permitted, and of other items and services that the nursing facility offers and for which the resident may be charged and the amount of the charges for the items and services; and

b. Of changes in the items and services described in subd. 3. a. and of changes in the charges imposed for items and services described in subd. 3. a.

4. Inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the nursing facility and of related charges for the services, including any charges for services not covered under medicare or by the nursing facility's basic per diem charge.

(c) For a resident who is adjudicated incompetent in this state, the rights of a resident under this subsection devolve upon and, to the extent determined necessary by a court of competent jurisdiction, are exercised by the resident's guardian.

(d) Psychopharmacologic drugs may be administered to a resident only on the orders of a physician and only as part of a plan included in the written plan of care under par. (b) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving the pharmacologic drugs.

(4) RESIDENT'S RIGHTS; TRANSFER AND DISCHARGE RIGHTS. (a) A nursing facility shall permit a resident to remain in the nursing facility and may not transfer or discharge the resident from the nursing facility unless one of the following applies:

1. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the nursing facility, as documented by the resident's physician in the resident's clinical record.

2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility, as documented by the resident's physician in the resident's clinical record.

3. The safety of individuals in the nursing facility is endangered, as documented in the resident's clinical record.

4. The health of individuals in the nursing facility would otherwise be endangered, as documented by a physician in the resident's clinical record.

5. The resident has failed, after reasonable and appropriate notice, to pay or have paid on his or her behalf under medical assistance or under medicare for a stay at the nursing facility. If a resident becomes eligible for medical assistance after admission to the nursing facility, only charges that may be imposed under medical assistance may be allowed in enforcement of this subdivision.

6. The nursing facility ceases to operate.

(b) 1. Before effecting a transfer or discharge of a resident a nursing facility shall note in the resident's record and notify the resident and, if known, an immediate family member of the resident or the resident's legal counsel concerning the transfer or discharge and the reasons for it, at least 30 days in advance of the resident's transfer or discharge, except that the nursing facility shall notify as soon as practicable in the circumstances specified in par. (a) 3. or 4.; in the circumstance specified in par. (a) 2. in which the resident's health improves sufficiently to permit a more immediate transfer or discharge; in the circumstances specified in par. (a) 1. in which a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or in the instance in which a resident has resided in the nursing facility fewer than 30 days.

2. Each notice under subd. 1. shall include all of the following:

a. For transfers or discharges effected after September 30, 1990, notice of the resident's right to appeal the transfer or discharge under a mechanism for hearing the appeals that is established by the department by rule.

b. The name, mailing address and telephone number of the long−term care ombudsman program under s. 16.009 (2) (b).

c. For a resident with developmental disability or mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a).

(c) A nursing facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing facility.

(d) 1. Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility shall provide written information to the resident and an immediate family member or legal counsel concerning all of the following:

a. The provisions of the approved state medicaid plan concerning the period, if any, during which the resident is permitted to return and resume residence in the nursing facility.

b. The policies of the nursing facility regarding subd. 1. a., which shall be consistent with subd. 1. a.

2. At the time of a resident's transfer to a hospital for therapeutic leave, a nursing facility shall provide written notice to the resi-

dent and an immediate family member or legal counsel of the duration of the period, if any, specified in subd. 1. a.

3. A nursing facility shall establish and follow a written policy under which a resident, who is eligible for medical assistance for nursing facility services, who is transferred from the nursing facility for hospitalization or therapeutic leave and whose hospitalization or therapeutic leave exceeds a period paid for by medical assistance for the resident, shall be permitted to be readmitted to the nursing facility immediately upon the first availability of a bed in a semiprivate room in the nursing facility, if at the time of readmission the resident requires the services provided by the nursing facility.

(5) RESIDENT'S RIGHTS; ACCESS AND VISITATION RIGHTS. A nursing facility shall do all of the following:

(a) Permit immediate access to a resident by the department, by any representative of the secretary of the federal department of health and human services, by a representative of the board on aging and long−term care, by a representative of the protection and advocacy agency designated under s. 51.62 (2) (a) or by the resident's attending physician.

(b) Permit immediate access to a resident by immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) Permit immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(d) Permit reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(e) Permit a designated representative of the long−term care ombudsman under s. 16.009 (4), with the permission of the resident or the resident's legal counsel, and in accordance with s. 16.009 (4) (b) 1. d., to examine a resident's clinical records.

(6) EQUAL ACCESS TO QUALITY CARE. (a) A nursing facility shall establish and maintain identical policies and practices regarding transfer, discharge and the provision of services required under the approved state medicaid plan for all individuals regardless of payment.

(b) Paragraph (a) may not be construed to prohibit a nursing facility from charging any amount for services furnished, consistent with the notice required under sub. (3) (b) 3.

(c) Paragraph (a) may not be construed to require the department to provide additional services on behalf of a resident than are otherwise provided under the approved state medicaid plan.

(7) ADMISSIONS POLICY. (a) Except as provided in par. (b), with respect to admissions practices of a nursing facility:

1. A nursing facility may not require individuals applying to reside or residing in the facility to waive their rights to benefits under medical assistance or under medicare.

2. A nursing facility may not require oral or written assurance that individuals applying to reside or residing in the nursing facility are ineligible for or will not apply for medical assistance or medicare.

3. A nursing facility shall prominently display written information in the nursing facility and provide oral and written information to individuals applying to reside or residing in the nursing facility concerning how to apply for and use benefits under medical assistance and how to receive refunds for previous payments covered by these benefits.

4. A nursing facility may not require a 3rd−party guarantee of payment to the nursing facility as a condition of admission or expedited admission to or continued stay in the nursing facility.

5. With respect to an individual who is entitled to medical assistance for nursing facility services, a nursing facility may not charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under the approved state medicaid plan, a gift, money, donation or other consideration as a precondition of admitting or expediting the admission of an individual to the nursing facility or as a requirement for the individual's continued stay in the facility.

(b) Paragraph (a) may not be construed to do any of the following:

1. Prevent the department from prohibiting discrimination against individuals who are entitled to medical assistance under the approved state medicaid plan with respect to admissions practices of nursing facilities.

1m. Permit a county, city, town or village to implement nursing facility admissions policies that conflict with state law.

2. Prevent a nursing facility from requiring an individual who has legal access to a resident's income or resources available to pay for care in the nursing facility, to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources for care in the nursing facility.

3. Prevent a nursing facility from charging a resident who is eligible for medical assistance for items or services that the resident has requested and received and that are not included in the approved state medicaid plan.

4. Prohibit a nursing facility from soliciting, accepting or receiving a charitable, religious or philanthropic contribution from an organization or from a person who is unrelated to the resident or potential resident, but only to the extent that the contribution is not a condition of admission, expediting admission or continued stay in the nursing facility.

(8) PROTECTION OF RESIDENT FUNDS. (a) A nursing facility:

1. May not require a resident to deposit his or her personal funds with the nursing facility.

2. Upon the written authorization of a resident, shall hold, safeguard and account for the resident's personal funds under a system established and maintained by the nursing facility that is in accordance with par. (b).

(b) Upon written authorization of a resident under par. (a), the nursing facility shall manage and account for the resident's personal funds deposited with the nursing facility as follows:

1. The nursing facility shall deposit any amount of a resident's personal funds in excess of $50 in an interest−bearing account that is separate from any of the nursing facility's operating accounts and credits all interest earned on the separate account to the account. The nursing facility shall maintain a resident's personal funds that do not exceed $50 in a noninterest−bearing account or petty cash fund.

2. The nursing facility shall assure a full and complete separate accounting of the personal funds of each resident for whom the facility has written authorization, maintain a written record of all financial transactions involving the personal funds of the resident deposited with the nursing facility and afford the resident or the resident's legal representative with reasonable access to the record.

3. The nursing facility shall notify each resident receiving medical assistance of all of the following:

a. When the amount in the resident's account is $200 less than the dollar amount permitted under 42 USC 1381 to 1385.

b. That if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the amount under 42 USC 1382 (a) (3) (B) the resident may lose eligibility for medical assistance or for supplemental security income benefits.

4. Upon the death of a resident with an account under subd. 1., the nursing facility shall promptly convey the resident's personal funds and a final accounting of the funds to the individual administering the resident's estate.

5. The nursing facility shall purchase a surety bond or otherwise provide satisfactory assurance of the security of all personal funds of residents that are deposited with the nursing facility.

6. The nursing facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made by medical assistance or medicare.

(8m) POSTING OF SURVEY RESULTS. A nursing facility shall post in a place that is readily accessible to residents, residents' family members and residents' legal representatives, the results of the most recent survey of the facility conducted under sub. (13).

(9) ADMINISTRATION REQUIREMENTS. (a) A nursing facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well−being of each resident, consistent with federal regulations.

(b) If a change occurs in any of the following, the nursing facility shall provide notice to the department, at the time of the change, of the change and the identity of each new person or company under the change:

1. The persons with an ownership or control interest in the nursing facility.

2. The persons who are officers, directors, agents or managing employees of the nursing facility.

3. The corporation, association or other company responsible for the management of the nursing facility.

4. The individual who is the administrator or director of the nursing facility.

(c) The administrator of a nursing facility shall meet standards established under 42 USC 1396r (f) (4).

(10) LICENSING REQUIREMENTS. (a) A nursing facility shall be licensed under s. 50.03 (1).

(b) Except as waived under 42 USC 1396r (d) (2) (B) (i) or found under 42 USC 1396r (d) (2) (B) (ii), a nursing facility shall meet the provisions that are applicable to nursing homes of the edition of the life safety code of the national fire protection association specified in federal regulations.

(11) INFECTION CONTROL. A nursing facility shall do all of the following:

(a) Establish and maintain an infection control program designed to provide a safe, sanitary and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

(b) Be designed, constructed, equipped and maintained in a manner so as to protect the health and safety of residents, personnel and the general public.

(12) COMPLIANCE WITH LAWS, REGULATIONS AND PROFESSIONAL STANDARDS. (a) A nursing facility shall operate and provide services in compliance with all applicable state laws and federal regulations and with accepted professional standards and principles that apply to professionals providing services in the nursing facility.

(b) A nursing facility shall meet requirements relating to the health and safety of residents or relating to physical facilities for the health and safety of residents under regulations promulgated by the federal department of health and human services.

(13) ANNUAL STANDARD SURVEY. A nursing facility is subject to a standard survey under 42 USC 1396r (g) (2) (A) (i). No person may notify a nursing facility or cause a nursing facility to be notified of the time or date on which the survey is scheduled to be conducted.

(14) RULE MAKING. The department shall promulgate all of the following rules:

(a) Establishing a fair mechanism meeting the requirements of 42 USC 1396r (e) (3) and (f) (3) for hearing appeals on transfers and discharges of residents from nursing facilities.

(b) Specifying an instrument for use in performing assessments of residents under sub. (2) (c) 1. c.

(c) Establishing criteria for the denial of payment under s. 49.45 (6m) (d) 5., for the imposition of forfeitures under sub. (16) (b), for the placement of a monitor or appointment of a receiver for a facility under sub. (17) and for closure of a facility under sub. (18) that do all of the following:

1. Are consistent with federal regulations promulgated to interpret 42 USC 1396r.

2. Are designed so as to minimize the time between the identification of violations and final imposition of the penalties.

3. Provide incrementally more severe penalties for repeated or uncorrected deficiencies.

(d) Establishing the percentage of interest to be assessed under sub. (16) (d).

(15) CLASSIFICATION OF VIOLATIONS. (a) A class "1" violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.

(b) A class "2" violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility directly threatening to the health, safety or welfare of a resident.

(c) A class "3" violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility which does not directly threaten the health, safety or welfare of a resident.

(d) Each day of violation constitutes a separate violation. The department shall have the burden of showing that a violation existed on each day for which a forfeiture is assessed. No forfeiture may be assessed for a condition for which the nursing facility has received a variance or waiver of a standard.

(16) FORFEITURES, PENALTY ASSESSMENTS AND INTEREST. (a) Any operator or owner of a nursing facility which is in violation of this section or any rule promulgated under this section may be subject to the following forfeitures:

1. A class "1" violation may be subject to a forfeiture of not more than $250 for each violation.

2. A class "2" violation may be subject to a forfeiture of not more than $125 for each violation.

3. A class "3" violation may be subject to a forfeiture of not more than $60 for each violation.

(b) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, factors shall be considered that are established in rules that shall be promulgated by the department consistent with federal regulations promulgated to interpret 42 USC 1396r.

(c) 1. Whenever the department imposes a forfeiture under par. (a) for a violation of this section or the rules promulgated under this section, the department shall in addition levy a penalty assessment in the following amounts:

a. For a class "1" violation, not less than $5,100 nor more than $10,000.

b. For a class "2" violation, not less than $2,600 nor more than $5,000.

c. For a class "3" violation, not less than $100 nor more than $2,500.

2. Notwithstanding subd. 1., whenever the department imposes a forfeiture under par. (a) for the violation of the following, the department shall levy a penalty assessment in the following amounts:

a. For a violation of sub. (2) (c) 3., $1,000.

b. For a violation of sub. (2) (c) 4., $5,000.

c. For a violation of sub. (13), $2,000.

3. If multiple violations are involved, the penalty assessment levied under subd. 1. or 2. shall be based on the total forfeitures for all violations.

(d) If the period of the violation under par. (a) is longer than one day, the penalty assessment shall additionally include interest for each day of the period at a rate established in rules that the department shall promulgate, except that no interest shall be computed for a day in the period between the date on which a request for a hearing, if any, is filed under par. (f) and the date of the conclusion of all administrative and judicial proceedings arising out of the imposition of a forfeiture under par. (a).

(dm) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, factors shall be considered that are established in rules that shall be promulgated by the department consistent with federal regulations promulgated to interpret 42 USC 1396r.

(e) The department may directly assess forfeitures provided for under par. (a), penalty assessments provided for under par. (c) and interest provided for under par. (d). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, it shall send a notice of assessment to the nursing facility. The notice shall specify the amount of the forfeiture assessed, the amount of the penalty assessment, the violation, the statute or rule alleged to have been violated, and shall inform the licensee of the right to hearing under par. (f).

(f) A nursing facility may contest an assessment of forfeiture, penalty assessment or interest, if any, by sending a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the department, if not the petitioner who was in the proceeding before the division, shall be the named respondent.

(g) All forfeitures, penalty assessments, and interest, if any, shall be paid to the department within 10 days of receipt of notice of assessment or, if the forfeiture, penalty assessment, and interest, if any, are contested under par. (f), within 10 days of receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order under sub. (19) (b). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund. The department shall deposit all penalty assessments and interest in the appropriation under s. 20.435 (6) (g).

(h) The attorney general may bring an action in the name of the state to collect any forfeiture, penalty assessment or interest, if any, imposed under par. (e) or (f) if the forfeiture, penalty assessment or interest, if any, has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture, penalty assessment or interest has been paid.

(16m) APPEALS PROCEDURES. Appeals procedures under this section shall be consistent with the requirements specified in 42 CFR 431.151 (a) and (b). Any appeals under this section shall be filed with the division of hearings and appeals created under s. 15.103 (1).

(17) TEMPORARY MANAGEMENT. Any nursing facility that is in violation of this section or any rule promulgated under this section may be subject to placement of a monitor or appointment of a receiver, under the procedures and criteria specified in s. 50.05 and under criteria promulgated as rules by the department under sub. (14) (c).

(18) NURSING FACILITY CLOSURE AND RESIDENT TRANSFER. (a) Any nursing facility that is in violation of this section or any rule promulgated under this section may, in an emergency as determined by the department, be subject to closure by the department or to the transfer of residents of the nursing facility to another nursing facility, or both, under criteria promulgated as rules by the department under sub. (14) (c).

(b) A nursing facility may contest closure of the nursing facility or transfer of residents of the nursing facility, if any, by sending a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the department, if not the petitioner who was in the proceeding before the division, shall be the named respondent.

(19) JUDICIAL REVIEW. (a) All administrative remedies shall be exhausted before an agency determination under this section shall be subject to judicial review. Final decisions after hearing shall be subject to judicial review exclusively as provided in s. 227.52, except that any petition for review of department action under this section shall be filed within 15 days after receipt of notice of the final agency determination.

(b) The court may stay enforcement under s. 227.54 of the department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if a stay is not granted, and that the nursing facility will meet the requirements of this section and the rules promulgated under this section during such stay. Where a stay is granted the court may impose such conditions on the granting of the stay as may be necessary to safeguard the lives, health, rights, safety and welfare of residents, and to assure compliance by the nursing facility with the requirements of this section.

(c) The attorney general may delegate to the department the authority to represent the state in any action brought to challenge department decisions prior to exhaustion of administrative remedies and final disposition by the division of hearings and appeals created under s. 15.103 (1).

(20) VIOLATIONS. If an act forms the basis for a violation of this section and s. 50.04, the department or the attorney general may impose sanctions in conformity with this section or under s. 50.04, but not both.

History: 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387; 2007 a. 153; 2013 a. 294.

49.499 Nursing facility resident protection. (1) From the appropriation under s. 20.435 (6) (g), the department shall contribute to the payment of all of the following, as needed by a resident in a nursing facility, as defined in s. 49.498 (1) (i), that is in violation of s. 49.498 or of a rule promulgated under s. 49.498:

(a) The cost of relocating the resident from the nursing facility to another nursing facility.

(b) Maintenance of operation of a nursing facility pending correction of deficiencies or closure of the nursing facility.

(c) Reimbursement of the resident for any personal funds of the resident that were misappropriated by the nursing facility staff or other persons holding an interest in the nursing facility.

(2m) From the appropriation under s. 20.435 (6) (g), the department may distribute funds for innovative projects designed to protect the health and property of a resident in a nursing facility, as defined in s. 49.498 (1) (i).

History: 1989 a. 31; 1997 a. 27; 1999 a. 9.

SUBCHAPTER V

OTHER SUPPORT AND MEDICAL PROGRAMS

49.66 Definitions. In this subchapter:

(1) "Department" means the department of health services.

(2) "Secretary" means the secretary of health services.

History: 1995 a. 27 ss. 3179, 9126 (19); 2007 a. 20 s. 9121 (6) (a).

49.665 Badger care. (1) DEFINITIONS. In this section:

(b) "Child" means a person who is born and who is under the age of 19.

(c) "Employer−subsidized health care coverage" means family coverage under a group health insurance plan offered by an employer for which the employer pays at least 80 percent of the cost, excluding any deductibles or copayments that may be required under the plan.

(d) "Family" means a unit that consists of at least one child and his or her parent or parents, all of whom reside in the same household. "Family" includes the spouse of an individual who is a parent if the spouse resides in the same household as the individual.

(e) "Parent" has the meaning given in s. 49.141 (1) (j).

(f) "State plan" means the state child health plan under 42 USC 1397aa (b).

(g) "Unborn child" means a person from the time of conception until it is born alive.

(2) WAIVERS. (a) 1. The department of health services shall request a waiver from the secretary of the federal department of health and human services to permit the department of health services to implement, beginning not later than July 1, 1998, or the effective date of the waiver, whichever is later, a health care program under this section. If a waiver that is consistent with all of the provisions of this section, excluding sub. (4) (a) 3m. and (ap) and provisions related to sub. (4) (ap), is granted and in effect, the department of health services shall implement the program under this section, subject to subd. 2. The department of health services may not implement the program under this section unless a waiver that is consistent with all of the provisions of this section, excluding sub. (4) (a) 3m. and (ap) and provisions related to sub. (4) (ap), is granted and in effect.

2. The department may not implement sub. (4) (ap) or provisions related to the coverage under sub. (4) (ap) unless a state plan amendment authorizing the coverage under sub. (4) (ap) is approved by the federal department of health and human services.

(b) If the department of health services determines that it needs a waiver to require the verification specified in sub. (4) (a) 3m., the department shall request a waiver from the secretary of the federal department of health and human services and may not implement the verification requirement under sub. (4) (a) 3m. unless the waiver is granted. If a waiver is required and is granted, the department of health services may implement the verification requirement under sub. (4) (a) 3m. as appropriate. If a waiver is not required, the department of health services may require the verification specified in sub. (4) (a) 3m. for eligibility determinations and annual review eligibility determinations made by the department, beginning on January 1, 2004.

(3) ADMINISTRATION. Subject to sub. (2) (a) 2., the department shall administer a program to provide the health services and benefits described in s. 49.46 (2) to persons that meet the eligibility requirements specified in sub. (4). The department shall promulgate rules setting forth the application procedures and appeal and grievance procedures. The department may promulgate rules limiting access to the program under this section to defined enrollment periods. The department may also promulgate rules establishing a method by which the department may purchase family coverage offered by the employer of a member of an eligible family or of a member of an eligible child's household, or family or individual coverage offered by the employer of an eligible unborn child's mother or her spouse, under circumstances in which the department determines that purchasing that coverage would not be more costly than providing the coverage under this section.

(4) ELIGIBILITY. (a) A family is eligible for health care coverage under this section if the family meets all of the following requirements:

1. The family's income does not exceed 185 percent of the poverty line, except as provided in par. (at) and except that a family that is already receiving health care coverage under this section may have an income that does not exceed 200 percent of the poverty line. The department shall establish by rule the criteria to be used to determine income.

2. The family does not have access to employer−subsidized health care coverage.

3. The family has not had access to employer−subsidized health care coverage within the time period established by the department by rule, but not to exceed 18 months, immediately preceding application for health care coverage under this section. The department may establish exceptions to this time period restriction by rule.

3m. Each member of the family who is employed provides verification from his or her employer, in the manner specified by the department, of his or her earnings, of whether the employer provides health care coverage for which the family is eligible, and of the amount that the employer pays, if any, towards the cost of the health care coverage, excluding any deductibles or copayments required under the coverage.

4. The family meets all other requirements established by the department by rule. In establishing other eligibility criteria, the department may not include any health condition requirements.

(am) A child who does not reside with his or her parent is eligible for health care coverage under this section if the child meets all of the following requirements:

1. The child's income does not exceed 185 percent of the poverty line, except as provided in par. (at) and except that a child that is already receiving health care coverage under this section may have an income that does not exceed 200 percent of the poverty line. The department shall use the criteria established under par. (a) 1. to determine income under this subdivision.

2. The child does not have access to employer−subsidized health care coverage.

3. The child has not had access to employer−subsidized health care coverage within the time period established by the department under par. (a) 3. The department may establish exceptions to this subdivision.

4. The child meets all other requirements established by the department by rule. In establishing other eligibility criteria, the department may not include any health condition requirements.

(ap) An unborn child whose mother is not eligible for health care coverage under par. (a) or (am) or for medical assistance under s. 49.46 or 49.47, except that she may be eligible for benefits under s. 49.45 (27), is eligible for health care coverage under this section, which shall be limited to coverage for prenatal care, if all of the following requirements are met:

1. The income of the unborn child's mother, mother and her spouse, or mother and her family, whichever is applicable, does not exceed 185 percent of the poverty line, except as provided in par. (at) and except that, if an unborn child is already receiving health care coverage under this section, the applicable specified person or persons may have an income that does not exceed 200 percent of the poverty line. The department shall establish by rule the criteria to be used to determine income.

3. The unborn child's mother provides medical verification of her pregnancy, in the manner specified by the department.

4. The unborn child and the mother of the unborn child meet all other requirements established by the department by rule except for any of the following:

a. The mother is not a U.S. citizen or an alien qualifying for medicaid under 8 USC 1612.

b. The mother is an inmate of a public institution.

c. The mother does not provide a social security number, but only if subd. 4. a. applies.

(at) 1. a. Except as provided in subd. 1. b., the department shall establish a lower maximum income level for the initial eligibility

determination if funding under s. 20.435 (4) (jz), (p), and (x) is insufficient to accommodate the projected enrollment levels for the health care program under this section. The adjustment may not be greater than necessary to ensure sufficient funding.

b. The department may not lower the maximum income level for initial eligibility unless the department first submits to the joint committee on finance a plan for lowering the maximum income level. If, within 14 days after the date on which the plan is submitted to the joint committee on finance, the cochairpersons of the committee do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the plan, the department shall implement the plan as proposed. If, within 14 days after the date on which the plan is submitted to the committee, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting to review the plan, the department may implement the plan only as approved by the committee.

cm. Notwithstanding s. 20.001 (3) (b), if, after reviewing the plan submitted under subd. 1. b., the joint committee on finance determines that the amounts appropriated under s. 20.435 (4) (jz), (p), and (x) are insufficient to accommodate the projected enrollment levels, the committee may transfer appropriated moneys from the general purpose revenue appropriation account of any state agency, as defined in s. 20.001 (1), other than a sum sufficient appropriation account, to the appropriation account under s. 20.435 (4) (b) to supplement the health care program under this section if the committee finds that the transfer will eliminate unnecessary duplication of functions, result in more efficient and effective methods for performing programs, or more effectively carry out legislative intent, and that legislative intent will not be changed by the transfer.

2. If, after the department has established a lower maximum income level under subd. 1., projections indicate that funding under s. 20.435 (4) (jz), (p), and (x) is sufficient to raise the level, the department shall, by state plan amendment, raise the maximum income level for initial eligibility, but not to exceed 185 percent of the poverty line.

3. The department may not adjust the maximum income level of 200 percent of the poverty line for persons already receiving health care coverage under this section or for applicable persons specified in par. (ap) 1. with respect to an unborn child already receiving health care coverage under this section.

(b) Notwithstanding fulfillment of the eligibility requirements under this subsection, no person is entitled to health care coverage under this section.

(c) No person may be denied health care coverage under this section solely because of a health condition of that person, of any family member of that person, or of the mother of an unborn child.

(d) An unborn child's eligibility for coverage under par. (ap) shall not begin before the first day of the month in which the unborn child's mother provides the medical verification required under par. (ap) 3.

(4g) DISEASE MANAGEMENT PROGRAM. Based on the health conditions identified by the physical health risk assessments, if performed under sub. (4m), the department shall develop and implement, for individuals who are eligible under sub. (4), disease management programs. These programs shall have at least the following characteristics:

(a) The use of information science to improve health care delivery by summarizing a patient's health status and providing reminders for preventive measures.

(b) Educating health care providers on health care process improvement by developing best practice models.

(c) The improvement and expansion of care management programs to assist in standardization of best practices, patient education, support systems, and information gathering.

(d) Establishment of a system of provider compensation that is aligned with clinical quality, practice management, and cost of care.

(e) Focus on patient care interventions for certain chronic conditions, to reduce hospital admissions.

(4m) PHYSICAL HEALTH RISK ASSESSMENT. The department shall encourage each individual who is determined on or after October 27, 2007, to be eligible under sub. (4) to receive a physical health risk assessment as part of the first physical examination the individual receives under Badger Care.

(5) LIABILITY FOR COST. (ac) In this subsection, "cost" means total cost−sharing charges, including premiums, copayments, coinsurance, deductibles, enrollment fees, and any other cost−sharing charges.

(ag) Except as provided in pars. (am), (b), and (bm), a family, a child who does not reside with his or her parent, or the mother of an unborn child, who receives health care coverage under this section shall pay a percentage of the cost of that coverage in accordance with a schedule established by the department by rule. The department may not establish or implement a schedule that requires a contribution, including the amounts required under par. (am), of more than 5 percent of the income of the family, child, or applicable persons specified in sub. (4) (ap) 1. towards the cost of the health care coverage provided under this section.

(am) Except as provided in pars. (b) and (bm), a child, a family member, or the mother of an unborn child, who receives health care coverage under this section shall pay the following cost−sharing amounts:

1. A copayment of $1 for each prescription of a drug that bears only a generic name, as defined in s. 450.12 (1) (b).

2. A copayment of $3 for each prescription of a drug that bears a brand name, as defined in s. 450.12 (1) (a).

(b) The department may not require a family, child who does not reside with his or her parent, or applicable persons specified in sub. (4) (ap) 1., with an income below 150 percent of the poverty line, to contribute to the cost of health care coverage provided under this section.

(bm) If the federal department of health and human services notifies the department of health services that Native Americans may not be required to contribute to the cost of the health care coverage provided under this section, the department of health services may not require Native Americans to contribute to the cost of health care coverage under this section.

(c) The department may establish by rule requirements for wage withholding as a means of collecting a family's or an unborn child's mother's share of the cost of the health care coverage under this section.

(5m) INFORMATION ABOUT BADGER CARE RECIPIENTS. The department shall obtain and share information about Badger Care health care program recipients as provided in s. 49.475.

(7) EMPLOYER VERIFICATION FORMS; FORFEITURE AND PENALTY ASSESSMENT. (a) 1. Notwithstanding sub. (4) (a) 3m., the department shall mail information verification forms to the employers of the individuals required to provide the verifications under sub. (4) (a) 3m. to obtain the information specified.

2. An employer that receives a verification form shall complete the form and return it to the department, by mail, with a postmark that is not more than 30 working days after the date on which the department mailed the form to the employer.

3. As an alternative to the method under subd. 2., an employer may, within 30 working days after the date on which the department mailed the form to the employer, return the completed form to the department by any electronic means approved by the department. The department must be able to determine, or the employer must be able to verify, the date on which the form was sent to the department electronically.

(b) 1. Subject to subd. 3., an employer that does not comply with the requirements under par. (a) 2. or 3. shall be required to pay a forfeiture of $50 for each verification form not returned in compliance with par. (a) 2. or 3.

2. Subject to subd. 3., whenever the department imposes a forfeiture under subd. 1., the department shall also levy a penalty assessment of $50.

3. An employer with fewer than 250 employees may not be required to pay more than $1,000 in forfeitures and penalty assessments under this paragraph in any 6−month period. An employer with 250 or more employees may not be required to pay more than $15,000 in forfeitures and penalty assessments under this paragraph in any 6−month period.

4. All penalty assessments collected under subd. 2. shall be credited to the appropriation account under s. 20.435 (4) (jz) and all forfeitures collected under subd. 1. shall be credited to the common school fund.

(c) An employer may contest an assessment of forfeiture or penalty assessment under par. (b) by sending a written request for hearing to the division of hearings and appeals in the department of administration. Proceedings before the division are governed by ch. 227.

History: 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1638 to 1644, 9121 (6) (a); 2009 a. 28.

Cross−reference: See also chs. DHS 101, 102, 103, 104, 105, 106, 107, and 108 and s. DHS 103.085 Wis. adm. code.

49.68 Aid for treatment of kidney disease. (1) DECLARATION OF POLICY. The legislature finds that effective means of treating kidney failure are available, including dialysis or artificial kidney treatment or transplants. It further finds that kidney disease treatment is prohibitively expensive for the overwhelming portion of the state's citizens. It further finds that public and private insurance coverage is inadequate in many cases to cover the cost of adequate treatment at the proper time in modern facilities. The legislature finds, in addition, that the incidence of the disease in the state is not so great that public aid may not be provided to alleviate this serious problem for a relatively modest investment. Therefore, it is declared to be the policy of this state to assure that all persons are protected from the destructive cost of kidney disease treatment by one means or another.

(1m) DEFINITION. In this section, "recombinant human erythropoietin" means a bioengineered glycoprotein that has the same biological effects in stimulating red blood cell production as does the glycoprotein erythropoietin that is produced by the human body.

(2) DUTIES OF DEPARTMENT. The department shall:

(a) Promulgate rules setting standards for operation and certification of dialysis and renal transplantation centers and home dialysis equipment and suppliers.

(b) Promulgate rules setting standards for acceptance and certification of patients into the treatment phase of the program.

(c) Promulgate rules concerning reasonable cost and length of treatment programs.

(d) Aid in preparing educational programs and materials informing the public as to chronic renal disease and the prevention and treatment thereof.

(3) AID TO KIDNEY DISEASE PATIENTS. (a) Subject to s. 49.687 (1m), any permanent resident of this state who suffers from chronic renal disease may be accepted into the dialysis treatment phase of the renal disease control program if the resident meets standards set by rule under sub. (2) and s. 49.687.

(b) From the appropriation accounts under ss. 20.435 (4) (e) and (je), the state shall pay, at a rate determined by the department under par. (e), for medical treatment that is required as a direct result of chronic renal disease of certified patients from the date of certification, including administering recombinant human erythropoietin to appropriate patients, whether the treatment is rendered in an approved facility in the state or in a dialysis or transplantation center that is approved as such by a contiguous state, subject to the conditions specified under par. (d). Approved facilities may include a hospital in−center dialysis unit or a nonhospital dialysis center that is closely affiliated with a home dialysis program supervised by an approved facility. Aid shall also be provided for all reasonable expenses incurred by a potential living−related donor, including evaluation, hospitalization, surgical costs, and postoperative follow−up to the extent that these costs are not reimbursable under the federal medicare program or other insurance. In addition, all expenses incurred in the procurement, transportation, and preservation of cadaveric donor kidneys shall be covered to the extent that these costs are not otherwise reimbursable. All donor−related costs are chargeable to the recipient and reimbursable under this subsection.

(c) Disbursement and collection of all funds under this subsection shall be by the department or by a fiscal intermediary, in accordance with a contract with a fiscal intermediary. The costs of the fiscal intermediary under this paragraph shall be paid from the appropriation under s. 20.435 (1) (a).

(d) 1. No aid may be granted under this subsection unless the recipient has no other form of aid available from the federal medicare program, from private health, accident, sickness, medical, and hospital insurance coverage, or from other health care coverage specified by rule under s. 49.687 (1m). If insufficient aid is available from other sources and if the recipient has paid an amount equal to the annual medicare deductible amount specified in subd. 2., the state shall pay the difference in cost to a qualified recipient. If at any time sufficient federal or private insurance aid or other health care coverage becomes available during the treatment period, state aid under this subsection shall be terminated or appropriately reduced. Any patient who is eligible for the federal medicare program shall register and pay the premium for medicare medical insurance coverage where permitted, and shall pay an amount equal to the annual medicare deductible amounts required under 42 USC 1395e and 1395L (b), prior to becoming eligible for state aid under this subsection.

2. Aid under this subsection is only available after the patient pays an annual amount equal to the annual deductible amount required under the federal medicare program. This subdivision requires an inpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 1395e and requires an outpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 1395L (b).

3. No payment shall be made under this subsection for any portion of medical treatment costs or other expenses that are payable under any state, federal, or other health care coverage program, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

(e) Payment for services provided under this section shall be at a rate determined by the department that does not exceed the allowable charges under the federal Medicare program. In no case shall state rates for individual service elements exceed the federally defined allowable costs. The rate of charges for services not covered by public and private insurance shall not exceed the reasonable charges as established by Medicare fee determination procedures. A person that provides to a patient a service for which aid is provided under this section shall accept the amount paid under this section for the service as payment in full and may not bill the patient for any amount by which the charge for the service exceeds the amount paid for the service under this section. The state may not pay for the cost of travel, lodging, or meals for persons who must travel to receive inpatient and outpatient dialysis

treatment for kidney disease. This paragraph shall not apply to donor related costs as defined in par. (b).

History: 1973 c. 308; 1975 c. 39; 1977 c. 29; 1981 c. 314; 1983 a. 27; 1985 a. 332 s. 251 (1); 1989 a. 311; 1991 a. 316; 1993 a. 16, 449, 491; 1995 a. 27 ss. 3035 to 3044; Stats. 1995 s. 49.68; 2001 a. 16; 2003 a. 33; 2011 a. 32; 2015 a. 196.

Cross−reference: See also ch. DHS 152, Wis. adm. code.

49.682 Recovery from estates; disease aids and funeral expenses. (1) In this section:

(a) "Client" means a person who receives or received aid under s. 49.68, 49.683, or 49.685 or a person on whose behalf funeral, burial, or cemetery expenses aid was provided under s. 49.785.

(am) "Decedent" means a deceased client or a deceased nonclient surviving spouse, whichever is applicable.

(b) "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

(c) "Home" means property in which a person has an ownership interest consisting of the person's dwelling and the land used and operated in connection with the dwelling.

(d) "Nonclient surviving spouse" means any of the following:

1. A person who was married to a client when the client was receiving or received services or aid for which the cost may be recovered under sub. (2) (a) and who survived the client.

2. A person who was married to a client on whose behalf funeral, burial, or cemetery expenses aid was provided under s. 49.785, who was married to the client at the client's death or when the client was receiving or received any of the benefits described in s. 49.785 (1c) that made the client an eligible recipient under s. 49.785, or at both times, and who survived the client.

(e) "Property of a decedent" means all real and personal property to which the client held any legal title or in which the client had any legal interest immediately before death, to the extent of that title or interest, including assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust, or any other arrangement, excluding an irrevocable trust.

(2) (a) Except as provided in par. (d), the department shall file a claim against the estate of a client, and against the estate of a nonclient surviving spouse, for the amount of aid under s. 49.68, 49.683, or 49.685 paid to or on behalf of the client.

(am) The department shall file a claim against the estate of a client, and against the estate of a nonclient surviving spouse, for the amount of aid under s. 49.785 paid to or on behalf of the client.

(b) The affidavit of a person designated by the secretary to administer this subsection is evidence of the amount of the claim.

(bm) 1. Property that is subject to the department's claim under par. (a) or (am) in the estate of a client or in the estate of a nonclient surviving spouse is all property of a decedent that is included in the estate.

2. There is a presumption, consistent with s. 766.31, which may be rebutted, that all property in the estate of the nonclient surviving spouse was marital property held with the client and that 100 percent of the property in the estate of the nonclient surviving spouse is subject to the department's claim under par. (a) or (am).

(c) The court shall reduce the amount of a claim under par. (a) or (am) by up to the amount specified in s. 861.33 (2) if necessary to allow the decedent's heirs or the beneficiaries of the decedent's will to retain the following personal property:

1. The decedent's wearing apparel and jewelry held for personal use.

2. Household furniture, furnishings and appliances.

3. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33 (1) (a) 4.

(d) A claim under par. (a) is not allowable if the decedent has a surviving child who is under age 21 or disabled or a surviving spouse.

(e) 1. If the department's claim is not allowable because of par. (d) and the estate includes an interest in real property, including a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the real property subject to a lien in favor of the department for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

2. If the department's claim is not allowable because of par. (d), the estate includes an interest in real property, including a home, and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the real property is assigned subject to a lien in favor of the department for the amount described in par. (a). The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgment.

(f) The department may not enforce a lien under par. (e) as long as any of the following survive the decedent:

1. A spouse.

2. A child who is under age 21 or disabled.

(fm) All of the following apply to a lien under par. (e) that the department may not enforce because of par. (f):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.849 (4) (c) 2.

(g) The department may enforce a lien under par. (e) by foreclosure in the same manner as a mortgage on real property.

(3) The department shall administer the program under this section and may contract with an entity to administer all or a portion of the program, including gathering and providing the department with information needed to recover payment of aid provided under s. 49.68, 49.683, 49.685, or 49.785. All funds received under this subsection, net of any amount claimed under s. 49.849 (5), shall be remitted for deposit in the general fund.

(4) (a) The department may recover amounts under this section for the provision of aid provided under s. 49.68, 49.683, or 49.685 paid on and after September 1, 1995, and for the provision of aid provided under s. 49.785 paid on or after July 14, 2015.

(b) The department may file a claim under sub. (2) (a) only with respect to a client who dies after September 1, 1995. The department may file a claim under sub. (2) (am) only with respect to a client who dies after July 14, 2015.

(5) The department shall promulgate rules establishing standards for determining whether the application of this section with respect to a claim under sub. (2) (a) would work an undue hardship in individual cases. If the department determines that the application of this section with respect to a claim under sub. (2) (a) would work an undue hardship in a particular case, the department shall waive application of this section in that case.

(6) The department may contract with or employ an attorney to probate estates to recover under this section the costs of care.

History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9; 2013 a. 20, 92; 2015 a. 55.

49.683 Cystic fibrosis aids. (1) Subject to s. 49.687 (1m), the department may provide financial assistance for costs of medical care of persons over the age of 18 years with the diagnosis of cystic fibrosis who meet financial requirements established by the department by rule under s. 49.687 (1).

(2) Approved costs for medical care under sub. (1) shall be paid from the appropriation accounts under s. 20.435 (4) (e) and (je).

(3) No payment shall be made under this section for any portion of medical care costs that are payable under any state, federal, or other health care coverage program, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

History: 1973 c. 300; Stats. 1973 s. 146.35; 1973 c. 336 s. 55; Stats. 1973 s. 146.36; 1975 c. 39; 1979 c. 34 s. 2102 (43) (a); 1983 a. 27 s. 1562; Stats. 1983 s. 49.483; 1993 a. 16, 449; 1995 a. 27 ss. 3045, 3046, 3047; Stats. 1995 s. 49.683; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

Cross−reference: See also ch. DHS 154, Wis. adm. code.

49.685 Hemophilia treatment services. (1) DEFINITIONS. In this section:

(a) "Comprehensive hemophilia treatment center" means a center, and its satellite facilities, approved by the department, which provide services, including development of the maintenance program, to persons with hemophilia and other related congenital bleeding disorders.

(c) "Hemophilia" means a bleeding disorder resulting from a genetically determined clotting factor abnormality or deficiency.

(d) "Home care" means the self−infusion of a clotting factor on an outpatient basis by the patient or the infusion of a clotting factor to a patient on an outpatient basis by a person trained in such procedures.

(e) "Maintenance program" means the individual's therapeutic and treatment regimen, including medical, dental, social and vocational rehabilitation including home health care.

(f) "Net worth" means the sum of the value of liquid assets, real property, after excluding the first $10,000 of the full value of the home derived by dividing the assessed value by the assessment ratio of the taxation district.

(g) "Physician director" means the medical director of the comprehensive hemophilia treatment center which is directly responsible for an individual's maintenance program.

(2) ASSISTANCE PROGRAM. From the appropriation accounts under s. 20.435 (4) (e) and (je), the department shall establish a program of financial assistance to persons suffering from hemophilia and other related congenital bleeding disorders. The program shall assist such persons to purchase the blood derivatives and supplies necessary for home care. The program shall be administered through the comprehensive hemophilia treatment centers.

(4) ELIGIBILITY. Any permanent resident of this state who suffers from hemophilia or other related congenital bleeding disorder may participate in the program if that person meets the requirements of this section and s. 49.687 and the standards set by rule under this section and s. 49.687. The person shall enter into an agreement with the comprehensive hemophilia treatment center for a maintenance program to be followed by that person as a condition for continued eligibility. The physician director or a designee shall, at least once in each 6−month period, review the maintenance program and verify that the person is complying with the program.

(5) RECOVERY FROM OTHER SOURCES. The department is responsible for payments for blood products and supplies used in home care by persons participating in the program. The department may enter into agreements with comprehensive hemophilia treatment centers under which the treatment center assumes the responsibility for recovery of the payments from a 3rd party, including any insurer.

(6) PAYMENTS. (a) The department shall, by rule, establish a reasonable cost for blood products and supplies used in home care as a basis of reimbursement under this section.

(b) Reimbursement shall not be made under this section for any blood products or supplies that are not purchased from or provided by a comprehensive hemophilia treatment center, or a source approved by the treatment center. Reimbursement shall not be made under this section for any portion of the costs of blood products or supplies that are payable under any other state, federal, or other health care coverage program under which the person is covered, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

(c) The reasonable cost, determined under par. (a), of blood products and supplies used in home care for which reimbursement is not prohibited under par. (b), shall be reimbursed under this section after deduction of the patient's liability, determined under sub. (7).

(7) PATIENT'S LIABILITY. (a) 1. The percentage of the patient's liability for the reasonable costs for blood products and supplies which are determined to be eligible for reimbursement under sub. (6) shall be based upon the income and the size of the person's family unit, according to standards to be established by the department under s. 49.687.

2. In determining income, only the income of the patient and persons responsible for the patient's support under s. 49.90 may be considered.

4. In determining family size, only persons who are related to the patient as parent, spouse, legal dependent or, if under the age of 18, as brother or sister may be considered.

5. In determining net worth, only the net worth of the patient and persons responsible for the patient's support under s. 49.90 will be considered.

(b) Individual liability shall be determined at the time of initial treatment and shall be redetermined annually or upon the patient's notification to the department of a change in family size or financial condition.

(8) DEPARTMENT'S DUTIES. The department shall:

(a) Extend financial assistance under this section to eligible persons suffering from hemophilia or other related congenital bleeding disorders.

(b) Employ administrative personnel to implement this section.

(c) Promulgate all rules necessary to implement this section.

History: 1977 c. 213; 1979 c. 32; 1983 a. 27; 1983 a. 189 s. 329 (10); 1983 a. 544 s. 47 (1); 1985 a. 29 s. 3202 (23), (46); 1987 a. 27; 1987 a. 312 s. 17; 1993 a. 16, 449; 1995 a. 27 ss. 3048 to 3060; Stats. 1995 s. 49.685; 2001 a. 16; 2003 a. 33, 198.

Cross−reference: See also ch. DHS 153, Wis. adm. code.

49.686 AZT and pentamidine reimbursement program. (1) DEFINITIONS. In this section:

(a) "AIDS" means acquired immunodeficiency syndrome.

(am) "AZT" means the drug azidothymidine.

(b) "Gross income" means all income, from whatever source derived and in whatever form realized, whether in money, property or services.

(c) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(d) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(e) "Physician" has the meaning specified in s. 448.01 (5).

(f) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(2) REIMBURSEMENT. From the appropriation accounts under s. 20.435 (1) (am), (i), and (ma), the department may reimburse or supplement the reimbursement of the cost of AZT, the drug pentamidine, and any drug approved for reimbursement under sub. (4) (c) for an individual who is eligible under sub. (3).

(3) ELIGIBILITY. An individual is eligible to receive the reimbursement specified under sub. (2) if he or she meets all of the following criteria:

(a) Has residence in this state.

(b) Has an infection that is certified by a physician to be an HIV infection.

(c) Has a prescription issued by a physician for AZT, for pentamidine or for a drug approved for reimbursement under sub. (4) (c).

(d) Has applied for coverage under and has been denied eligibility for medical assistance within 12 months prior to application for reimbursement under sub. (2). This paragraph does not apply to an individual who is eligible for benefits under the demonstration project for childless adults under s. 49.45 (23) or to an individual who is eligible for benefits under BadgerCare Plus under s. 49.471 (11).

(e) Has no insurance coverage for AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c) or, if he or she has insurance coverage, the coverage is inadequate to pay the full cost of the individual's prescribed dosage of AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c).

(f) Is an individual whose annual gross household income is at or below 200 percent of the poverty line and, if funding is available under s. 20.435 (1) (i) or (m), is an individual whose annual gross household income is above 200 percent and at or below 300 percent of the poverty line.

(4) DEPARTMENTAL DUTIES. The department shall do all of the following:

(a) Determine the eligibility of individuals applying for reimbursement, or a supplement to the reimbursement, of the costs of AZT or the drug pentamidine.

(b) Within the limits of sub. (5) and of the funds specified under sub. (2) and under a schedule that the department shall establish based on the ability of individuals to pay, reimburse or supplement the reimbursement of the eligible individuals.

(c) After consulting with individuals, including those not employed by the department, with expertise in issues relative to drugs for the treatment of HIV infection and AIDS, determine which, if any, drugs that are cost−effective alternatives to AZT and pentamidine may also have costs reimbursed under this section.

(5) REIMBURSEMENT LIMITATION. Reimbursement may not be made under this section for any portion of the costs of AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c) which are payable by an insurer, as defined in s. 600.03 (27).

History: 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3061 to 3062d; Stats. 1995 s. 49.686; 1997 a. 27; 2001 a. 81; 2007 a. 20, 89; 2009 a. 28, 209; 2013 a. 20.

49.687 Disease aids; patient requirements; rebate agreements; cost containment. (1) The department shall promulgate rules that require a person who is eligible for benefits under s. 49.68, 49.683, or 49.685 and whose estimated total family income for the current year is at or above 200 percent of the poverty line to obligate or expend specified portions of the income for medical care for treatment of kidney disease, cystic fibrosis, or hemophilia before receiving benefits under s. 49.68, 49.683, or 49.685. The rules shall require a person to pay 0.50 percent of his or her total family income for the cost of medical treatment covered under s. 49.68, 49.683, or 49.685 if that income is from 200 percent to 250 percent of the federal poverty line, 0.75 percent if that income is more than 250 percent but not more than 275 percent of the federal poverty line, 1 percent if that income is more than 275 percent but not more than 300 percent of the federal poverty line, 1.25 percent if that income is more than 300 percent but not more than 325 percent of the federal poverty line, 2 percent if that income is more than 325 percent but not more than 350 percent of the federal poverty line, 2.75 percent if that income is more than 350 percent but not more than 375 percent of the federal poverty line, 3.5 percent if that income is more than 375 percent but not more than 400 percent of the federal poverty line, and 4.5 percent if that income is more than 400 percent of the federal poverty line.

(1m) (a) A person is not eligible to receive benefits under s. 49.68 or 49.683 unless before the person applies for benefits under s. 49.68 or 49.683, the person first applies for benefits under all other health care coverage programs specified by the department by rule for which the person reasonably may be eligible.

(b) The department shall promulgate rules that specify other health care coverage programs for which a person must apply before applying for benefits under s. 49.685. The department may waive the requirement under this paragraph for an applicant who requests a waiver for religious reasons.

(c) Using the procedure under s. 227.24, the department may promulgate rules under par. (b) for the period before the effective date of any permanent rules promulgated under par. (b), but not to exceed the period authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that promulgating a rule under par. (b) as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for promulgating a rule under par. (b) as an emergency rule.

(2) The department shall develop and implement a sliding scale of patient liability for kidney disease aid under s. 49.68, cystic fibrosis aid under s. 49.683, and hemophilia treatment under s. 49.685, based on the patient's ability to pay for treatment. The department shall continuously review the sliding scale for patient liability and revise it as needed to ensure that the amounts budgeted under s. 20.435 (4) (e) and (je) are sufficient to cover treatment costs.

(2m) If a pharmacy directly bills the department or an entity with which the department contracts for a drug supplied to a person receiving benefits under s. 49.68, 49.683, or 49.685 and prescribed for treatment covered under s. 49.68, 49.683, or 49.685, the person shall pay a $7.50 copayment amount for each such generic drug and a $15 copayment amount for each such brand name drug.

(3) The department or an entity with which the department contracts shall provide to a drug manufacturer that sells drugs for prescribed use in this state documents designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r−8. The department or entity may enter into a rebate agreement under this subsection that shall include all of the following as requirements:

(a) That, as a condition of coverage for prescription drugs of a manufacturer under s. 49.68, 49.683, or 49.685, the manufacturer shall make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by persons who meet eligibility criteria under s. 49.68, 49.683, or 49.685, to the secretary of administration to be credited to the appropriation under s. 20.435 (4) (je), each calendar quarter or according to a schedule established by the department.

(b) That the amount of the rebate payment shall be determined by a method specified in 42 USC 1396r−8 (c).

(4) The department may adopt managed care methods of cost containment for the programs under ss. 49.68, 49.683, and 49.685.

(6) The department shall obtain and share information about individuals who receive benefits under s. 49.68, 49.683, or 49.685 as provided in s. 49.475.

History: 1983 a. 27; 1989 a. 56; 1991 a. 39; 1993 a. 16, 449; 1995 a. 27 ss. 3063 to 3065; Stats. 1995 s. 49.687; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 198; 2007 a. 20.

Cross−reference: See also ch. DHS 154, Wis. adm. code.

49.688 Prescription drug assistance for elderly persons. (1) In this section:

(a) "Generic name" has the meaning given in s. 450.12 (1) (b).

(b) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(c) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20), that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is manufactured by a drug manufacturer that enters into a rebate agreement in force under sub. (6).

(d) "Prescription order" has the meaning given in s. 450.01 (21).

(e) "Program payment rate" means the rate of payment made for the identical drug specified under s. 49.46 (2) (b) 6. h. plus a dispensing fee that is equal to the dispensing fee permitted to be charged for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

(2) (a) A person to whom all of the following applies is eligible to purchase a prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

2. The person is at least 65 years of age.

3. The person is not a recipient of medical assistance or, as a recipient, does not receive prescription drug coverage.

4. The person's annual household income, as determined by the department, does not exceed 240 percent of the federal poverty line for a family the size of the person's eligible family.

5. The person pays the program enrollment fee specified in sub. (3) (a).

(b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household income, as determined by the department, exceeds 240 percent of the federal poverty line for a family the size of the persons' eligible family, is eligible to purchase a prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining amount of any 12−month period in which the person has first paid the annual deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

(3) Program participants shall pay all of the following:

(a) For each 12−month benefit period, a program enrollment fee of $30.

(b) 1. For each 12−month benefit period, for a person specified in sub. (2) (a), a deductible for prescription drugs that is based on the percentage that a person's annual household income, as determined by the department, is of the federal poverty line for a family the size of the person's eligible family, as follows:

a. One hundred sixty percent or less, no deductible.

b. More than 160 percent, but not more than 200 percent, $500.

c. More than 200 percent, but not more than 240 percent, $850.

2. For each 12−month benefit period, for a person specified in sub. (2) (b), a deductible for prescription drugs that equals all of the following:

a. The difference between the person's annual household income and 240 percent of the federal poverty line for a family the size of the person's eligible family.

b. Eight hundred fifty dollars.

(c) After payment of any applicable deductible under par. (b), all of the following:

1. A copayment of $5 for each prescription drug that bears only a generic name.

2. A copayment of $15 for each prescription drug that does not bear only a generic name.

(d) If a person who is eligible under this section has other available coverage for payment of a prescription drug, this section applies only to costs for prescription drugs for the person that are not covered under the person's other available coverage.

(4) The department shall devise and distribute a form for application for the program under sub. (2), shall determine eligibility for each 12−month benefit period of applicants and shall issue to eligible persons a prescription drug card for use in purchasing prescription drugs, as specified in sub. (5). The department shall promulgate rules that specify the criteria to be used to determine household income under sub. (2) (a) 4. and (b) and (3) (b) 1.

(5) (a) Beginning on September 1, 2002, except as provided in sub. (7) (b), as a condition of participation by a pharmacy or pharmacist in the program under s. 49.45, 49.46, 49.47, or 49.471, the pharmacy or pharmacist may not charge a person who presents a valid prescription order and a card indicating that he or she meets eligibility requirements under sub. (2) an amount for a prescription drug under the order that exceeds the following:

1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment rate.

2. After any applicable deductible under subd. 1. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged to a person under this subdivision.

3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

4. After the deductible under subd. 3. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged to a person under this subdivision.

(b) The department shall calculate and transmit to pharmacies and pharmacists that are certified providers of medical assistance amounts that may be used in calculating charges under par. (a). The department shall periodically update this information and transmit the updated amounts to pharmacies and pharmacists.

(6) The department, or an entity with which the department contracts, shall provide to a drug manufacturer that sells drugs for prescribed use in this state documents designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r−8. A rebate agreement under this subsection shall include all of the following as requirements:

(a) That, except as provided in sub. (7) (b), the manufacturer shall make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by persons who meet criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have paid the deductible under sub. (3) (b) 2. a., to the secretary of administration to be credited to the appropriation account under s. 20.435 (4) (j), each calendar quarter or according to a schedule established by the department.

(b) That, except as provided in sub. (7) (b), the amount of the rebate payment shall be determined by a method specified in 42 USC 1396r−8 (c).

(7) (a) Except as provided in par. (b), from the appropriation accounts under s. 20.435 (4) (bv), (j), and (pg), beginning on September 1, 2002, the department shall, under a schedule that is identical to that used by the department for payment of pharmacy provider claims under medical assistance, provide to pharmacies and pharmacists payments for prescription drugs sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1., are not required to pay a deductible. The payment for each prescription drug under this paragraph shall be at the program payment rate, minus any copayment paid by the person under sub. (5) (a) 2. or 4., and plus, if applicable, incentive payments that are similar to those provided under s. 49.45 (8v). The department shall devise and distribute a claim form for use by pharmacies and pharmacists under this paragraph and may limit payment under this paragraph to those prescription drugs for which payment claims are submitted by pharmacists or pharmacies directly to the department. The department may apply to the program under this section the same utilization and cost control procedures that apply under rules promulgated by the department to medical assistance under subch. IV of ch. 49.

(b) During any period in which funding under s. 20.435 (4) (bv) and (pg) is completely expended for the payments specified in par. (a), the requirements of par. (a) and subs. (3) (c), (5), and (6) (a) and (b) do not apply to drugs purchased during that period, but the department shall continue to accept applications and determine eligibility under sub. (4) and shall indicate to applicants that the eligibility of program participants to purchase prescription

drugs as specified in sub. (3), under the requirements of sub. (5), is conditioned on the availability of funding under s. 20.435 (4) (bv) and (pg).

(8m) The department shall obtain and share information about participants in the program under this section as provided in s. 49.475.

(9) (a) The department shall promulgate rules relating to prohibitions on fraud that are substantially similar to applicable provisions under s. 946.91 (2).

(b) A person who is convicted of violating a rule promulgated by the department under par. (a) in connection with that person's furnishing of prescription drugs under this section is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(c) A person other than a person specified in par. (b) who is convicted of violating a rule promulgated by the department under par. (a) may be fined not more than $10,000, or imprisoned in the county jail for not more than one year, or both.

(10) If federal law is amended to provide coverage for prescription drugs for outpatient care as a benefit under medicare or to provide similar coverage under another program, the department shall submit to appropriate standing committees of the legislature under s. 13.172 (3) a report that contains an analysis of the differences between such a federal program and the program under this section and that provides recommendations concerning alignment, if any, of the differences.

(11) The department shall request from the federal secretary of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid laws necessary to permit the department of health services to conduct a project, under all of the requirements of this section, to expand eligibility for medical assistance, for purposes of receipt of prescription drugs as a benefit, to include individuals who are eligible under sub. (2). The department may implement a waiver requested under this subsection only if the conditions of the waiver are consistent with the requirements of this section. The department shall implement the program under this section regardless of whether a waiver, as specified in this subsection, is received.

(12) Except as provided in subs. (8m) to (11) and except for the department's rule−making requirements and authority, the department may enter into a contract with an entity to perform the duties and exercise the powers of the department under this section.

History: 2001 a. 16, 109; 2003 a. 33; 2007 a. 20 ss. 1651, 1655, 9121 (6) (a); 2009 a. 28; 2013 a. 226.

Cross−reference: See also ch. DHS 109, Wis. adm. code.

49.70 County home; establishment. (1) Each county may establish a county home for the relief and support of dependent persons pursuant to s. 46.17.

(2) In all counties whose population is less than 250,000 such county home shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) No county in which a county home is established shall contract to conduct the same or to support and maintain the inmates thereof; and all agreements in violation of this subsection are void.

(4) The trustees or any person employed by the county board pursuant to subs. (1) and (2), may administer oaths concerning any matter submitted to the trustees or person employed by the county board, in connection with their functions.

(5) The uniform accounting system established by s. 50.03 (10) shall be used by each county home and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1991 a. 316; 1995 a. 27 ss. 2810 to 2815; Stats. 1995 s. 49.70.

A county did not violate sub. (3) by terminating county home operations, conveying the home's assets, and leasing the physical plant to a private operator. Local Union 2490 v. Waukesha County, 143 Wis. 2d 438, 422 N.W.2d 117 (Ct. App. 1988).

49.703 County homes; commitments; admissions. (1) Any person upon his or her application to the board of trustees may be admitted to the county home upon such terms as may be prescribed by the board. If the person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the county of his or her residence.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons committed or admitted to the county home, and may repeal any resolution adopted under this subsection.

History: 1977 c. 428, 1985 a. 29; 1995 a. 27 ss. 2816, 2817, 2819; Stats. 1995 s. 49.703.

49.71 County hospitals; establishment. (1) Each county may establish a county hospital for the treatment of dependent persons, under s. 46.17, and other persons authorized under s. 46.21 (4m).

(2) In counties with a population of 750,000 or more, an institution established under sub. (1) shall be governed under s. 46.21 or 59.79 (10), but in all other counties it shall be governed under ss. 46.18, 46.19, and 46.20.

(3) The uniform accounting system established by s. 50.03 (10) shall be used by each county hospital and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1985 a. 176; 1993 a. 186; 1995 a. 27 ss. 2820 to 2823; Stats. 1995 s. 49.71; 1995 a. 201; 2015 a. 172.

49.713 County hospitals; admissions. (1) Any person upon application to the board of trustees may be admitted to the county hospital upon such terms as may be prescribed by the board. If the person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the county of his or her residence.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons admitted to the county hospital, and may repeal any resolution adopted under this subsection.

History: 1985 a. 29; 1995 a. 27 ss. 2824, 2825, 2827; Stats. 1995 s. 49.713.

49.72 County infirmaries; establishment. (1) Each county, or any 2 or more counties jointly, may establish, pursuant to s. 46.17 or 46.20 a county infirmary for the treatment, care and maintenance of the aged infirm.

(2) In counties with a population of 750,000 or more, such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19, and 46.20.

(3) As used in ss. 49.72 to 49.726:

(a) An aged infirm person is a person over the age of 65 years so incapacitated mentally by the degenerative processes of old age, or so incapacitated physically, as to require continuing infirmary care.

(b) A county infirmary is a county institution created pursuant to sub. (1) or (2) under the general supervision and inspection of the department pursuant to ss. 46.16 and 46.17 as to adequacy of equipment and staff to treat, care for and maintain the physical and mental needs of aged infirm persons.

(4) The uniform accounting system established by s. 50.03 (10) shall be used by each county infirmary and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1995 a. 27 ss. 2828 to 2834; Stats. 1995 s. 49.72; 2015 a. 172.

49.723 County infirmaries, admissions; standards. (1) The following standards shall apply to admissions to a county infirmary:

(a) The primary standard shall be need of infirmary care, rather than ability to pay for care, and no person shall be excluded from an infirmary solely because of ability or inability to pay for care.

(b) The person admitted must be an aged infirm individual, and it must be reasonably apparent that unless admitted the person will be without adequate care.

(cm) Except as provided in par. (d), any person who meets the standards for admission is eligible for admission.

(d) An applicant who has removed residence to Wisconsin from a state which requires that one who has removed residence from Wisconsin to that state reside in the latter more than one year before being eligible for a similar type of care shall be required to reside in this state for a like period before becoming eligible for admission.

(2) The board of trustees of a county infirmary, subject to regulations approved by the county board, shall establish rules and regulations governing the admission and discharge of voluntary patients.

(3) If it appears to the satisfaction of the circuit court for the county in which an infirmary is located, upon petition for commitment, that a person meets the standards under sub. (1), it may, after affording the person an opportunity to be heard in person or by someone on his or her behalf, commit the person to a county infirmary. The power to commit includes persons who entered an infirmary voluntarily. The court may also, on petition and after a hearing, order the discharge of any patient, upon a showing that the patient is no longer in need of infirmary care, or that the patient can be adequately cared for elsewhere.

(4) The board of trustees on receipt of an application for voluntary admission, or the circuit court on the filing of a petition for commitment, shall appoint a person licensed to practice medicine and surgery in this state to examine personally the applicant or the subject of the petition and to advise the board or court whether such person meets the standard prescribed by sub. (1) (a).

(5) The department shall prescribe and prepare the forms to be used for the voluntary admission or commitment of patients.

(6) The circuit court in the case of a commitment, and the board of trustees in the case of a voluntary admission, shall pass on the economic status of the patient at the time of commitment or admission, and in all cases in which the patient has residence in another county shall notify the county of residence of the fact of such commitment or admission.

History: 1977 c. 449 ss. 130, 497; 1985 a. 29; 1989 a. 359; 1995 a. 27 s. 2835; Stats. 1995 s. 49.723; 1995 a. 225.

49.726 County infirmaries; cost of treatment, care and maintenance of patients. (1) In the first instance the county or counties operating an infirmary shall defray the actual per capita cost of treatment, care and maintenance. To the extent that a patient is a public charge, such county or counties shall be reimbursed for such expenditures, as determined from annual infirmary reports filed with the department under s. 46.18 (8), (9) and (10), by the county of residence.

(2) To the extent that a patient is not a public charge, such cost shall be charged and paid in advance for each calendar month, and payment may be enforced by the board of trustees.

(4) The records and accounts of each county infirmary may be audited by the department. In addition to other findings, such audits shall ascertain compliance with the mandatory uniform cost record−keeping system requirements of s. 46.18 (8), (9) and (10), and verify the actual per person cost of maintenance, care and treatment of patients.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1985 a. 29; 1995 a. 27 s. 2836; Stats. 1995 s. 49.726.

49.729 County infirmaries; fees and expenses of proceedings. The fees of examining physicians, witnesses and guardians ad litem and other expenses of proceedings under ss. 49.72 to 49.726 shall be governed by s. 51.20 (18).

History: 1975 c. 430 s. 80; 1977 c. 428 s. 115; 1995 a. 27 s. 2837; Stats. 1995 s. 49.729.

49.73 Residential care institutions; establishment. (1) Any county or combination of counties may establish and staff a county residential care institution for the reception and care of dependent persons which shall be governed by the county board. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent person.

(2) Residential care institutions may be established and staffed by private vendors for the reception and care of dependent persons. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent persons.

(3) Any county operated or private residential care facility not certifiable as a Title XIX facility shall be licensed and governed under s. 50.03 by the department before receiving or caring for any dependent persons.

(4) The cost of care of such patients shall be determined by multiplying the per day patient rate for such facility as determined by applying the formula under s. 49.45 (6m) (ag), except that interest on capital expenditures which are reimbursable under s. 51.91 shall be excluded, times the number of days of care of such patients in the time period being considered. Any amounts received by the facility from the patient or resident shall be deducted from the costs determined under this subsection. This section shall not be construed to require that as a condition of reimbursement any facility must meet any skilled or intermediate care standards established by the department.

(6) The care, services and supplies provided under this section shall be a liability against the patient's county of residence.

History: 1971 c. 216; 1973 c. 90, 333; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1977 c. 418 s. 929 (55); 1985 a. 29; 1987 a. 27; 1995 a. 27 ss. 2838 to 2843; Stats. 1995 s. 49.73.

49.74 Institutions subject to chapter 150. Any institution created under the authority of s. 49.70, 49.71, 49.72 or 49.73 is subject to ch. 150.

History: 1977 c. 29; 1995 a. 27 s. 2850; Stats. 1995 s. 49.74.

49.76 Department duties relating to hunger prevention. The department shall do all of the following:

(1) Annually review existing public and private activities within the state relating to hunger prevention.

(2) Advise the department of public instruction and any other relevant state agency on the use of state and federal resources and on the provision and administration of programs for hunger prevention.

(4) Develop an annual plan that documents areas of hunger and populations experiencing hunger within this state and that recommends strategies and state and federal policy changes to address hunger in these areas and populations.

(5) Submit, by December 31 annually, the plan developed under sub. (4) to the governor, superintendent of public instruction and the appropriate standing committees under s. 13.172 (3).

History: 2009 a. 28 s. 1220; Stats. 2009 s. 49.76.

49.77 State supplemental payments. (1) DEFINITION. In this section "secretary" means the secretary of the U.S. department of health and human services or the secretary of any other federal agency subsequently charged with the administration of federal Title XVI.

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s. 49.18, 1971 stats., s. 49.20, 1971 stats., or s. 49.61, 1971 stats., as affected by chapter 90, laws of 1973.

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under fed-

eral Title XVI and this section, if the person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.

4. Any essential person.

(2m) SUPPLEMENTAL PAYMENT LEVELS. The department may submit a proposal to change the amount of supplemental payments under this section to the secretary of administration. If the secretary of administration approves the proposal, he or she shall submit it to the joint committee on finance for approval, modification or disapproval. Joint committee on finance approval of a change in the amount of supplemental payments will be considered to be given, if within 14 calendar days after the secretary of administration files a proposal with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposal. Payment changes approved by the joint committee on finance are subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this subsection.

(3) MINIMUM SUPPLEMENTAL PAYMENT IN CERTAIN CASES. The total monthly benefits received under this section and federal Title XVI by a person or couple described in sub. (2) (a) 1. shall not be less than the total state cash assistance payment amount plus gross earned and unearned income, received by such person or couple for December of 1973.

(3g) FEDERAL PAYMENTS. If federal supplemental security income payments increase, the department may, with approval as provided under sub. (2m), reduce payments under this section by all or part of the amount of the increase, subject to 42 USC 1382g.

(3s) INCREASED SUPPLEMENTAL PAYMENT IN CERTAIN CASES. (a) The department shall authorize the payment of an increased state supplement to a person receiving payments under this section who resides in a residential setting if the person needs at least 40 hours per month of supportive home care, daily living skills training or community support services.

(b) 1. If a person receiving payments under this section is a minor child residing with a parent, only services needed when the parent is away from the residence for purposes of employment count toward the 40−hour requirement in par. (a).

2. If a person receiving payments under this section resides with a spouse, only services needed either because the spouse is away from the residence for purposes of employment or because the spouse is physically or mentally unable to provide the care count toward the 40−hour requirement in par. (a).

(c) The department shall establish a uniform assessment process for determining eligibility under this subsection.

(d) The amount payable under this subsection equals the amount of the state supplement under sub. (2) (a) paid to persons living in nonmedical group homes.

(4) OPTIONAL FEDERAL ADMINISTRATION. (a) The department may enter into an agreement with the secretary under which the secretary will provide supplemental payments to all eligible persons on behalf of the state or any of its subdivisions. Under the agreement the department shall pay to the secretary an amount specified in accordance with agreed procedures. The department may make advance payments to the secretary if the agreement so provides.

(b) The department may enter into an agreement with the secretary under which the secretary may determine eligibility for medical assistance in the case of aged, blind or disabled individuals under the state plan approved under Title XIX of the social security act.

(c) Agreements made under this subsection or modifications to such agreements require prior approval or amendment by the joint committee on finance. Prior approval will be deemed to be given if within 21 calendar days following the department filing a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Agreements or modifications to such agreements approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this paragraph.

(5) INCOME DETERMINATION. In determining the amount of aid to be granted a person applying for supplemental payments under this section, income shall be disregarded to the extent allowed by federal regulations.

(6) AUTHORITY TO ADMINISTER; RULES. The department shall administer this section and s. 49.775, and may promulgate rules to guide the administration of eligibility determinations and benefits payments.

History: 1973 c. 90, 147; 1975 c. 39, 199, 224; 1977 c. 29; 1979 c. 34; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 27; 1985 a. 29, 120, 176; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 31, 56; 1993 a. 16; 1995 a. 27 ss. 2844 to 2849, 3151; Stats. 1995 s. 49.77; 2005 a. 25; 2011 a. 257.

Cross−reference: See also ch. DHS 2, Wis. adm. code.

Because there is no statutory authority and DHFS had not properly promulgated a rule under ch. 227, administrative recovery of overpayments of benefits under this section was unauthorized. Mack v. DHFS, 231 Wis. 2d 644, 605 N.W.2d 651 (Ct. App. 1999), 99−0627.

49.775 Payments for the support of children of supplemental security income recipients. (1) DEFINITIONS. In this section:

(a) "Custodial parent" has the meaning given in s. 49.141 (1) (b).

(b) "Dependent child" has the meaning given in s. 49.141 (1) (c).

(2) SUPPLEMENTAL PAYMENTS. Subject to sub. (3), the department shall make a monthly payment in the amount specified in sub. (4) to a custodial parent for the support of each dependent child of the custodial parent if all of the following conditions are met:

(a) The custodial parent is a recipient of supplemental security income under 42 USC 1381 to 1383c or of state supplemental payments under s. 49.77, or both.

(b) If the dependent child has 2 custodial parents, each custodial parent receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, or both.

(bm) The custodial parent assigns to the state any right of the custodial parent or of the dependent child to support from any other person accruing during the time that any payment under this subsection is made to the custodial parent. No amount of support that begins to accrue after the individual ceases to receive payments under this section may be considered assigned to the state. Seventy−five percent of all money that is received by the department of children and families under an assignment to the state under this paragraph shall be paid to the custodial parent. The department of children and families shall pay the federal share of support assigned under this paragraph as required under federal law or waiver.

(c) The dependent child of the custodian parent meets the eligibility criteria under the aid to families with dependent children program under s. 49.19 (1) to (19) or would meet the eligibility criteria under s. 49.19 but for the application of s. 49.19 (20).

(d) The dependent child does not receive supplemental security income under 42 USC 1381 to 1383d.

(e) The custodial parent meets any of the following conditions:

1. The custodial parent is ineligible for aid under s. 49.19 solely because he or she receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

2. The custodial parent is ineligible for a Wisconsin works employment position, as defined under s. 49.141 (1) (r), solely because of the application of s. 49.145 (2) (i).

(2m) DISREGARD OF SUPPORT. In determining a custodial parent's eligibility under this section, the department shall, for purposes of determining the custodial parent's income, disregard any court−ordered support that is received by or owed to the custodial parent.

(3) TWO−PARENT FAMILIES. In the case of a dependent child who has 2 custodial parents, the department may not make more than one payment under sub. (2) per month for the support of that dependent child.

(4) PAYMENT AMOUNT. (a) The payment under sub. (2) is $250 per month for one dependent child and $150 per month for each additional dependent child.

History: 1997 a. 27, 237; 1999 a. 9; 2005 a. 25; 2007 a. 20; 2009 a. 28.

Cross−reference: See also ch. DHS 2, Wis. adm. code.

49.776 Payment of support arrears. If a custodial parent who formerly received payments under s. 49.775 but who is no longer receiving payments under s. 49.775 assigned to the state under s. 49.775 (2) (bm) his or her right or the right of the dependent child to support from any other person, the department shall pay to the custodial parent all money in support arrears that is collected by the department after the custodial parent's receipt of payments under s. 49.775 ceased and that accrued while the custodial parent was receiving those payments.

History: 2009 a. 28.

49.78 Income maintenance administration. (1) DEFINITIONS. In this section:

(b) "Income maintenance program" means the Medical Assistance program under subch. IV, the Badger Care health care program under s. 49.665, the food stamp program under 7 USC 2011 to 2036 except for the employment and training program described in s. 49.79 (9), or the cemetery, funeral, and burial expenses program under s. 49.785.

(br) "Multicounty consortium" means a group of counties that is approved by the department under sub. (1m) to administer income maintenance programs.

(cr) "Tribal governing body" means an elected governing body of a federally recognized American Indian tribe.

(1m) MULTICOUNTY CONSORTIA. (a) Except as provided in par. (c), each county with a population of less than 750,000 shall participate in a multicounty consortium that is approved by the department under par. (b).

(b) By October 31, 2011, the department shall approve multicounty consortia. The department may not approve more than 10 multicounty consortia.

(c) If a county with a population of less than 750,000 does not participate in a multicounty consortium or the department determines that a multicounty consortium does not satisfy the department's performance requirements, the department shall assume responsibility for administering income maintenance programs in that county or in the geographical area of the multicounty consortium. The department may provide income maintenance program administration under this paragraph by contracting with another multicounty consortium or by providing the administrative services with state resources and employees.

(d) If the department assumes responsibility for administering income maintenance programs in a county or in the geographical area of the multicounty consortium under par. (c), any county for which the department administers income maintenance programs shall pay to the department the amount that the county expended for the administration of income maintenance programs in calendar year 2009. For the purposes of this paragraph, Kenosha County expended $673,000 for the administration of income maintenance programs in calendar year 2009.

(1r) SINGLE COUNTY CONSORTIA. The department shall administer income maintenance programs in a county with a population of 750,000 or more as a single−county consortium, including the administrative functions specified in sub. (2) (b) 1.

(2) CONTRACTS WITH MULTICOUNTY CONSORTIA. (a) Annually, beginning with contracts for 2012, the department shall enter into a contract with each multicounty consortium to administer income maintenance programs in the multicounty consortium's geographical area.

(b) A contract under par. (a) shall provide all of the following:

1. That the multicounty consortia shall be responsible for all of the following administrative functions related to income maintenance programs:

a. Operating and maintaining a call center.

b. Conducting application processing and eligibility determinations.

c. Conducting ongoing case management.

d. Providing lobby services.

2. That the department and multicounty consortia shall cooperate to provide the following administrative functions related to the income maintenance programs:

a. Conducting subrogation and benefit recovery efforts.

b. Participating in fair hearings.

c. Conducting fraud prevention and identification activities.

3. That the department will reimburse a multicounty consortium for services provided under the contract using a method determined by the department.

(2m) ADMINISTRATION BY A TRIBAL GOVERNING BODY. (a) A tribal governing body may administer income maintenance programs by electing to have the department administer the tribe's income maintenance programs or by providing the required administrative services and entering into a contract with the department for reimbursement under par. (b).

(b) Annually, for the income maintenance administrative program functions, if any, that the department delegates to a tribal governing body, the department and tribal governing body may enter into a contract, for reimbursement of the tribal governing body for the reasonable cost of administering income maintenance programs.

(c) The amount of each reimbursement paid under a contract entered into par. (b) shall be calculated using a formula based on workload within the limits of state and federal funds. The department may adjust reimbursement amounts determined under the contract for workload changes and computer network activities performed by a tribal governing body.

(2r) DEPARTMENTAL ADMINISTRATIVE FUNCTIONS. The department shall perform all of the following administrative functions related to income maintenance programs:

(a) Providing income maintenance worker training.

(b) Performing 2nd−party reviews.

(c) Administering the funeral expenses program under s. 49.785.

(d) Providing information technology and licenses for call centers that are operated by multicounty consortia.

(e) Maintaining the client assistance reemployment and economic support system.

(f) Contracting with multicounty consortia under sub. (2), including establishing performance requirements.

(g) Contracting with tribal governing bodies under sub. (2m), including establishing performance requirements.

(h) Monitoring contracts with multicounty consortia and tribal governing bodies, including compliance with performance standards and federal and other reporting requirements.

(i) Operating a centralized document processing unit.

(3) RULES. The department shall promulgate rules establishing standards of competency, including training requirements, for income maintenance workers.

(4) RULES; MERIT SYSTEM. The department of children and families shall promulgate rules for the efficient administration of aid to families with dependent children in agreement with the requirement for federal aid, including the establishment and maintenance of personnel standards on a merit basis. The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provisions of any law relating to county personnel. This subsection shall not be construed to invalidate the provisions of s. 46.22 (1) (d).

(5) PERSONNEL EXAMINATIONS. Statewide examinations to ascertain qualifications of applicants in any county department administering aid to families with dependent children shall be given by the director of the bureau of merit recruitment and selection in the department of administration. The department of administration shall be reimbursed for actual expenditures incurred in the performance of its functions under this section from the appropriations available to the department of children and families for administrative expenditures.

(6) PERSONNEL LISTS. All persons who are qualified as a result of examinations shall be certified to the counties in which they reside at the time of examination; if there are no resident qualified persons for any class of positions on the list certified to the county, appointments shall be made from available lists without regard to residence within the county.

(7) COUNTY PERSONNEL SYSTEMS. Pursuant to rules promulgated under sub. (4), the department of children and families where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the authority of the department of children and families under sub. (4) to establish and maintain personnel standards including salary levels.

(8) REIMBURSEMENT FOR INCOME MAINTENANCE ADMINISTRATION. (a) From the appropriations under s. 20.435 (4) (bn) and (nn) and subject to par. (b), the department shall provide funding to reimburse each multicounty consortium that contracts with the department under sub. (2) and each tribal governing body that contracts with the department under sub. (2m) for the costs of administering the income maintenance programs, including conducting fraud prevention activities, in accordance with the terms of the applicable contract. The amount of reimbursement calculated under this paragraph and par. (b) is in addition to any reimbursement provided to a county, multicounty consortium, or tribal governing body for fraud and error reduction under s. 49.197 or 49.845.

(b) The department may reduce the amount of any reimbursement if federal reimbursement is withheld due to audits, quality control samples, or program reviews.

(10) REIMBURSEMENT CERTIFICATION. (a) An authorized representative from each multicounty consortium that contracts with the department under sub. (2) and each tribal governing body that contracts with the department under sub. (2m) shall certify monthly under oath to the department in such manner as the department prescribes the claim of the multicounty consortium or tribal governing body for state reimbursement under sub. (8) (a). The department shall review each claim of reimbursement and, if the department approves the claim, the department shall certify to the department of administration for reimbursement to the multicounty consortium or tribal governing body for amounts due under sub. (8) (a) and payment claimed to be made to the multicounty consortia or tribal governing bodies monthly. The department may make advance payments prior to the beginning of each month equal to one−twelfth of the contracted amount.

(b) To facilitate prompt reimbursement the certificate of the department may be based on the certified statements of the authorized representatives of multicounty consortia or tribal governing body executives filed under par. (a). Funds recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties or multicounty consortia owed funds as a result of any audit adjustment. By September 30 annually, the department shall submit a report to the appropriate standing committees under s. 13.172 (3) on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

(11) REQUIREMENT TO PROVIDE INFORMATION. (a) 1. The department, a county department under s. 46.215, 46.22, or 46.23, a multicounty consortium, or a tribal governing body may request from any person in this state information it determines appropriate and necessary for determining or verifying eligibility or benefits for a recipient under any income maintenance program. Unless access to the information is prohibited or restricted by law, or unless the person has good cause, as determined by the department in accordance with federal law and regulations, for refusing to cooperate, the person shall make a good faith effort to provide the information within 7 days after receiving a request under this paragraph. The department, county department, multicounty consortium, or tribal governing body, or employees of any of them, may not disclose information obtained under this subdivision for any purpose not connected with the administration of the income maintenance program for which the information was requested.

2. In conjunction with any request for information under subd. 1., including a request made by subpoena under par. (b), the department, county department, multicounty consortium, or tribal governing body shall advise the person of the time by which the information must be provided.

(b) The department, a county department, a multicounty consortium, or a tribal governing body may issue a subpoena, in substantially the form authorized under s. 885.02, to compel the production of financial information or other documentary evidence for determining or verifying eligibility or benefits for a recipient under any income maintenance program.

(c) A person is not liable to any person for any of the following:

1. Allowing access to financial or other records by the department, a county department, a multicounty consortium, or a tribal governing body in response to a request under par. (a) or a subpoena described in par. (b).

2. Disclosing information from financial or other records to the department, a county department, a multicounty consortium, or a tribal governing body in response to a request under par. (a) or a subpoena described in par. (b).

3. Any other action taken in good faith to comply with this subsection or a subpoena described in par. (b) or to comply with a request for information or access to records from the department, a county department, a multicounty consortium, or a tribal governing body for determining or verifying eligibility or benefits for a recipient under any income maintenance program.

History: 1995 a. 27 ss. 2041 to 2049, 2933 to 2936, 3084 to 3087, 3130; 1995 a. 289, 417; 1997 a. 27; 2001 a. 16; 2003 a. 33 ss. 1308, 1448, 9160; Stats. 2003 s. 49.78; 2005 a. 25; 2007 a. 20; 2009 a. 15, 28; 2011 a. 32; 2013 a. 20; 2015 a. 55; s. 35.17 correction in (10) (title).

Cross−reference: See also ch. DHS 254, Wis. adm. code.

49.785 Funeral expenses. (1) Except as provided in sub. (1m) and subject to s. 49.825, if any recipient specified in sub. (1c) dies and the estate of the deceased recipient is insufficient to pay the funeral, burial, and cemetery expenses of the deceased recipient, from the appropriation under s. 20.435 (4) (br) the department shall pay, to the person designated by the department, all of the following:

(a) The lesser of $1,000 or the cemetery expenses that are not paid by the estate of the deceased and other persons.

(b) The lesser of $1,500 or the funeral and burial expenses not paid by the estate of the deceased and other persons.

(1c) All of the following are eligible recipients under this section:

(a) A recipient of benefits under s. 49.148, 49.46, or 49.77, or under 42 USC 1381 to 1385 in effect on May 8, 1980.

(b) A recipient of benefits under s. 49.471 who is any of the following:

1. A pregnant woman or a child under 6 years of age with a family income not exceeding 185 percent of the poverty line at the time of death.

2. A child at least 6 years of age but less than 19 years of age with a family income not exceeding 100 percent of the poverty line at the time of death.

3. A parent or caretaker relative with a family income not exceeding 50 percent of the poverty line at the time of death.

(1m) (a) If the total cemetery expenses for the recipient exceed $3,500, the department is not required to make a payment for the cemetery expenses under sub. (1) (a).

(b) If the total funeral and burial expenses for the recipient exceed $4,500, the department is not required to make a payment for funeral and burial expenses under sub. (1) (b).

(c) If a request for payment under sub. (1) is made more than 12 months after the death of the recipient, the department is not required to make a payment for cemetery, funeral, or burial expenses.

(d) If the recipient, or the recipient's spouse or another person, owns a life insurance policy insuring the recipient's life and the face value of the policy is more than $3,000, any amount that the department would be obligated to pay under sub. (1) shall be reduced by one dollar for every dollar by which the face value of the policy exceeds $3,000.

(1r) A funeral home, cemetery, or crematorium that receives payment under sub. (1) shall be exempt from paying any of the following fees:

(a) Fees for services rendered by a coroner or medical examiner.

(b) Fees assessed for the signing of a death certificate by a coroner or medical examiner.

(c) Fees assessed by a county related to transportation services.

(2) The department shall pursue recovery of any amounts paid under sub. (1) from the estate of the recipient and from the estate of any surviving spouse or former spouse of the recipient as provided in ss. 49.682 and 49.849.

History: 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 206; 1981 c. 20; 1985 a. 29, 176, 332; 1989 a. 31, 239; 1995 a. 27, 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 s. 1302; Stats. 2003 s. 49.785; 2005 a. 25; 2007 a. 20; 2009 a. 15, 393; 2011 a. 32, 260; 2013 a. 20; 2015 a. 55, 336.

A cement grave liner will be considered a funeral and burial expense or a cemetery expense depending on who provides the liner; a liner provided by a funeral home constitutes a funeral and burial expense subject to the statutory payment limit. 79 Atty. Gen. 164.

49.79 Food stamp administration. (1) DEFINITIONS. In this section:

(am) "Able−bodied adult" means an individual who is not any of the following:

1. Younger than 18 years of age.

2. Fifty years of age or older.

3. Determined by the department to be medically certified as physically or mentally unfit for employment, as described in 7 CFR 273.24 (c) (2).

4. A parent of a household member who is younger than 18 years old, even if the household member who is younger than 18 years old is not eligible for food stamps.

5. Residing in a household that includes a household member who is younger than 18 years old, even if the household member who is younger than 18 years old is not eligible for food stamps.

6. Exempt from the work requirement under the food stamp program, as described in 7 CFR 273.24 (c) (5).

7. Pregnant.

(b) "Controlled substance" has the meaning given in 21 USC 802 (6).

(c) "Food stamp program" means the federal food stamp program under 7 USC 2011 to 2036.

(e) "Multicounty consortium" has the meaning given in s. 49.78 (1) (br).

(f) "Qualified alien" has the meaning given in 8 USC 1641 (b).

(g) "Wisconsin Works employment position" has the meaning given in s. 49.141 (1) (r).

(1m) WELFARE RECIPIENT. An individual who is a recipient under the food stamp program is considered to be a welfare recipient for purposes of 21 USC 862b.

(2) DENIAL OF ELIGIBILITY. An individual who fails to comply with the work requirements of the employment and training program under sub. (9) is ineligible to participate in the food stamp program as specified under sub. (9) (b).

Cross−reference: See also ch. DHS 252, Wis. adm. code.

(3) LIABILITY FOR LOST FOOD COUPONS. (a) A county, multicounty consortium, or federally recognized American Indian tribe is liable for all food stamp coupons lost, misappropriated, or destroyed while under the county's, consortium's, or tribe's direct control, except as provided in par. (b).

(b) A county, multicounty consortium, or federally recognized American Indian tribe is not liable for food stamp coupons lost in natural disasters if it provides evidence acceptable to the department that the coupons were destroyed and not redeemed.

(c) A county, multicounty consortium, or federally recognized American Indian tribe is liable for food stamp coupons mailed to residents of the county or counties that are in the multicounty consortium or members of the tribe and lost in the mail due to incorrect information submitted to the department by the county or tribe.

(4) DEDUCTIONS FROM COUNTY INCOME MAINTENANCE PAYMENTS. The department shall withhold the value of food stamp losses for which a county, multicounty consortium, or federally recognized American Indian tribe is liable under sub. (3) from the payment to the county, multicounty consortium, or tribe under income maintenance contracts under s. 49.78 and reimburse the federal government from the funds withheld.

(5) DRUG CONVICTIONS. (a) The department shall require an applicant for, or recipient under, the food stamp program to state in writing whether the applicant or recipient or any member of the applicant's or recipient's household has been convicted, in any state or federal court of a felony that has as an element possession, use or distribution of a controlled substance. The department shall require an applicant or recipient, or member of the applicant's or recipient's household to submit to a test for use of a controlled substance as a condition of continued eligibility if, after August 22, 1996, but not more than 5 years prior to the date the written statement is made, the applicant or recipient or the member of the applicant's or recipient's household was convicted in any state or federal court of a felony that had as an element possession, use or distribution of a controlled substance. If the test results are positive with respect to any individual, the department may not consider the needs of that individual in determining the household's eligibility for the food stamp program for at least 12 months from the date of the test. The department shall, however, consider the income and resources of that individual to be available to the household.

(b) If an individual whose needs are not considered under par. (a) submits to a test for use of a controlled substance at least 12 months after the date that the department first disregarded that individual's needs under par. (a), and if the test results are negative, the department shall consider the individual's needs in determining the eligibility of the individual's household.

(6) INELIGIBILITY FOR FUGITIVE FELONS. No person is eligible for the food stamp program in a month in which that person is a fugitive felon under 7 USC 2015 (k) (1) or is violating a condition of probation, extended supervision or parole imposed by a state or federal court.

(7) SIMPLIFIED FOOD STAMP PROGRAM. The department shall develop a simplified food stamp program that meets all of the requirements under P.L. 104−193, section 854, and shall submit

the plan to the secretary of the federal department of agriculture for approval. If the secretary of the federal department of agriculture approves the plan, the department shall submit the plan to the secretary of administration for approval. If the secretary of administration approves the plan, the department may implement the plan.

(7c) REDUCTION OF BENEFITS TO PAY COST OF REPLACEMENT CARDS. (a) If a recipient under the food stamp program requests replacement of a lost or stolen electronic benefit transfer card, the department shall deduct from the recipient's benefit account the allowable costs incurred by the state, as determined by the department, to replace the lost or stolen electronic benefit transfer card. Amounts deducted under this paragraph shall be transferred to the appropriation account under s. 20.435 (4) (jd).

(b) The department shall inform the food and nutrition service of the federal department of agriculture of its plan to implement the policy under par. (a). The plan shall specify how the department intends to account for card replacement fees and shall identify the replacement threshold, frequency, and circumstances in which the fee will be applicable.

(8) BENEFITS FOR QUALIFIED ALIENS. The department shall not provide benefits under this section to a qualified alien, except to the extent that federal food stamp benefits for qualified aliens are required by the federal government.

(8m) APPLICANTS FROM CORRECTIONAL INSTITUTIONS. (a) The department shall allow a prisoner who is applying for the food stamp program from a correctional institution in anticipation of being released from the institution to use the address of the correctional institution as his or her address on the application.

(b) The department shall allow an employee of a correctional institution who has been authorized by a prisoner of the institution to act on his or her behalf in matters related to the food stamp program to receive and conduct telephone calls on behalf of the prisoner in matters related to the food stamp program.

(9) EMPLOYMENT AND TRAINING PROGRAM. (a) 1. The department shall administer an employment and training program for recipients under the food stamp program and may contract with county departments under ss. 46.215, 46.22, and 46.23, multicounty consortia, local workforce development boards established under 29 USC 2832, tribal governing bodies, or other organizations to carry out the administrative functions. A county department, multicounty consortium, local workforce development board, tribal governing body, or other organization may subcontract with a Wisconsin Works agency or another provider to administer the employment and training program under this subsection. Except as provided in subds. 2. and 3., the department may require able individuals who are 18 to 60 years of age who are not participants in a Wisconsin Works employment position to participate in the employment and training program under this subsection.

2. The department may not require an individual who is a recipient under the food stamp program and who is the caretaker of a child under the age of 6 to participate in any employment and training program under this subsection.

3. The department may not require an individual who is a recipient under the food stamp program to participate in any employment and training program under this subsection if that individual is enrolled at least half time in a school, as defined in s. 49.26 (1) (a) 2., a training program, or an institution of higher education.

4. The amount of food stamp benefits paid to a recipient who is a participant in a Wisconsin Works employment position under s. 49.147 (4) or (5) shall be calculated based on the pre−sanction benefit amount received under s. 49.148.

5. A participant in an employment and training program under this subsection administered by the department is an employee of the department for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage. A participant in an employment and training program under this subsection administered by a Wisconsin Works agency or another provider is an employee of the Wisconsin Works agency or other provider for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

(b) Except as provided in par. (c), an individual who fails to comply with the work requirements under par. (a) without good cause is ineligible to participate in the food stamp program as follows:

1. For the first occurrence of noncompliance, one month, or until the person complies with the work requirements under par. (a), whichever is later.

2. For the 2nd occurrence of noncompliance, 3 months, or until the person complies with the work requirements under par. (a), whichever is later.

3. For the 3rd and subsequent occurrences of noncompliance, 6 months, or until the person complies with the work requirements under par. (a), whichever is later.

(c) If the department implements a policy under sub. (10), par. (b) does not apply to an individual who is required to fulfill the work requirement under sub. (10) (a).

(d) 1. The department shall promulgate rules to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in an employment and training program under this subsection who are able−bodied adults for use of a controlled substance without a valid prescription for the controlled substance. The policy shall include at least all of the following elements:

b. If a participant tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this paragraph.

c. If a participant tests positive for use of a controlled substance for which he or she does not have a valid prescription, then the individual must participate in substance abuse treatment to remain eligible for the employment and training program.

d. While participating in treatment, an individual who has tested positive for the use of a controlled substance without a valid prescription for the controlled substance shall submit to random testing for the use of a controlled substance, and the test results must be negative, or positive with evidence of a valid prescription, in order for the individual to remain eligible for the employment and training program under this subsection. If a test result is positive and the individual does not have a valid prescription for the controlled substance for which the individual tests positive, the individual may begin treatment again one time and will remain eligible for the employment and training program. If the individual completes treatment and tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse screening and testing requirements under this paragraph.

2. Subject to the promulgation of rules under subd. 1., the department shall screen and, if indicated, test and treat participants in an employment and training program under this subsection who are able−bodied adults for illegal use of a controlled substance without a valid prescription for the controlled substance.

(10) ELIGIBILITY AND WORK REQUIREMENTS FOR ABLE−BODIED ADULTS. (a) The department may implement a policy that complies with 7 CFR 273.24. If the department implements a policy under this paragraph, all of the following apply:

1. The department shall require an able−bodied adult who is participating in the food stamp program to fulfill the work requirement defined under 7 CFR 273.24 (a) (1).

2. If an able−bodied adult does not fulfill the work requirement, the department may limit the able−bodied adult's eligibility for food stamps to no more than 3 months during a 3−year period.

3. The department may exempt up to 15 percent of the able−bodied adults who are participating in the food stamp program from the time limit under subd. 2.

(b) If the department determines that a waiver, or an amendment to a waiver, is necessary to implement a policy that complies with 7 CFR 273.24, the department shall request the waiver or the amendment to the waiver from the federal department of agriculture to permit the department to implement a policy that complies with 7 CFR 273.24 as provided under this subsection.

History: 2001 a. 16 ss. 1656sy to 1656tjk, 1656tjm to 1656tp, 1656tr, 1656ts to 1656tx, 1838sb to 1838td.; Stats 2001 s. 49.79; 2003 a. 33; 2005 a. 25; 2005 a. 443 s. 265; 2007 a. 20 ss. 1397, 1399 to 1407, 1662 to 1669; 2011 a. 32; 2013 a. 20, 168; 2015 a. 55.

49.793 Recovery of food stamps. (1) The department or a county, a multicounty consortium, as defined in s. 49.78 (1) (br), or an elected governing body of a federally recognized American Indian tribe or band acting on behalf of the department, may recover overpayments that arise from an overissuance of food coupons under the food stamp program administered under s. 46.215 (1) (k) or 46.22 (1) (b) 2. d. Recovery shall be made in accordance with 7 USC 2022.

(2) (a) Except as provided in par. (b), a county, multicounty consortium, as defined in s. 49.78 (1) (br), or governing body of a federally recognized American Indian tribe may retain a portion of the amount of an overpayment the state is authorized to retain under 7 USC 2025 that is recovered under sub. (1) due to the efforts of an employee or officer of the county, multicounty consortium, or tribe. The department shall promulgate a rule establishing the portion of the amount of the overpayment that the county, multicounty consortium, or governing body may retain. This paragraph does not apply to recovery of an overpayment that was made as a result of state, county, multicounty consortium, or tribal governing body error.

(b) Any amount that Milwaukee County would otherwise be entitled to retain under par. (a) for the recovery of an overpayment due to the efforts of a department employee or officer, or a county employee or officer under the management of the department, shall be credited to the appropriation account under s. 20.435 (4) (L).

History: 2001 a. 16 ss. 1656ty, 1656tym; Stats. 2001 s. 49.793; 2009 a. 15; 2011 a. 32.

49.796 Food stamp reinstatement. A person may apply to a multicounty consortium, as defined in s. 49.78 (1) (br), or a federally recognized American Indian tribal governing body or, if the person is a supplier, as defined in s. 946.92 (1) (d), to the federal department of agriculture for reinstatement of benefits following a period of suspension imposed under s. 946.92, if the suspension is not permanent.

History: 2013 a. 226 s. 43; Stats. 2013 s. 49.796.

49.797 Electronic benefit transfer. (1) DEFINITION. In this section, "food stamp program" means the federal food stamp program under 7 USC 2011 to 2029 or, if the department determines that the food stamp program no longer exists, a nutrition program that the department determines is a successor to the food stamp program.

(2) DELIVERY OF FOOD STAMPS. (a) Notwithstanding s. 46.028 and except as provided in par. (b) and sub. (8), the department shall administer a statewide program to deliver food stamp benefits to recipients of food stamp benefits by an electronic benefit transfer system. All suppliers, as defined in s. 946.92 (1) (d), may participate in the delivery of food stamp benefits under the electronic benefit transfer system. The department shall explore methods by which nontraditional retailers, such as farmers' markets, may participate in the delivery of food stamp benefits under the electronic benefit transfer system.

(b) The department need not implement a program to deliver food stamp benefits by an electronic benefit transfer system if any of the following applies:

1. The department determines that the cost of the electronic benefit transfer system would be greater than the cost of another food stamp delivery system.

2. The department determines that the state may be liable under 12 CFR 205 for lost or stolen benefits.

(4) DUTIES. In administering a program to deliver benefits by an electronic benefit transfer system, the department shall do all of the following:

(a) Consult with members of the following groups:

1. Benefit recipients.

2. Advocates for benefit recipients.

3. Financial institution personnel.

4. Appropriate county, state and tribal governing body employees.

5. Persons who sell goods or services to recipients for which payment may be made by use of an electronic benefit transfer system, including, as appropriate, retailers, landlords and public utilities.

(b) Hold informational meetings at a variety of locations around the state.

(c) To the extent possible, maximize the use of existing automated teller machines and point−of−sale terminals.

(d) Authorize the use of cards that physically resemble financial transaction cards, as defined in s. 943.41 (1) (em).

(5) STATE AGENCIES. The department may enter into an agreement with any state agency to deliver benefits paid by that agency by an electronic benefit transfer system.

(6) ADMINISTRATION; CONTRACTS. The department may enter into a contract with any financial institution, as defined in s. 705.01 (3), or other fiscal intermediary to administer a program to deliver benefits to recipients by an electronic benefit transfer system. The contract shall require the contractor to do all of the following:

(a) Provide training on the use of the electronic benefit transfer system to the persons enumerated in sub. (4) (a).

(b) Provide ongoing assistance, on a 24−hour basis, on the use of the electronic benefit transfer system.

(7) RULES. The department shall promulgate rules for the administration of the electronic benefit transfer system under this section. The rules shall include all of the following:

(a) The liability, and limits on the liability, of a recipient for lost benefits after the loss or theft of a card issued to the recipient under sub. (4) (d).

(b) The suspension from a program of recipients, retailers or other participants for fraudulent activity, as defined by the department.

(c) A provision for confidentiality.

(d) Measures to be taken by the department or the person with whom the department contracts under sub. (6) to ensure the security of card issuance and electronic transfer of benefits.

(8) COUNTY PARTICIPATION; EXCEPTION. The department may not require a multicounty consortium, as defined in s. 49.78 (1) (br), or tribal governing body to participate in an electronic benefit transfer system under this section if the costs to the multicounty consortium or tribal governing body would be greater than the costs that the multicounty consortium or tribal governing body would incur in delivering the benefits through a system that is not an electronic benefit transfer system.

History: 2001 a. 16 ss. 1656u to 1656ue, 1656uj to 1656ut; Stats. 2001 s. 49.797; 2009 a. 28; 2011 a. 32; 2013 a. 226.

Cross−reference: See also ch. DHS 252, Wis. adm. code.

SUBCHAPTER VI

GENERAL PROVISIONS

49.81 Public assistance recipients' bill of rights. The department of health services, the department of children and families, and all public assistance and relief−granting agencies shall respect rights for recipients of public assistance. The rights shall include all rights guaranteed by the U.S. constitution and the constitution of this state, and in addition shall include:

(1) The right to be treated with respect by state agents.

(2) The right to confidentiality of agency records and files on the recipient. Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes or, to the extent permitted under federal law, for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax−related prosecutions.

(3) The right to access to agency records and files relating to the recipient, except that the agency may withhold information obtained under a promise of confidentiality.

(4) The right to a speedy determination of the recipient's status or eligibility for public assistance, to notice of any proposed change in such status or eligibility, and, in the case of assistance granted under s. 49.19, 49.46, 49.468, 49.47, or 49.471, to a speedy appeals process for resolving contested determinations.

History: 1977 c. 29; 1989 a. 31; 1995 a. 27 ss. 2638, 2640 to 2643, 9126 (19), 9130 (4); 1997 a. 3, 237; 2007 a. 20 ss. 1670 to 1671, 9121 (6) (a).

49.82 Administration of public assistance programs. **(1)** DEPARTMENTS TO ADVISE COUNTIES. The department of health services and the department of children and families shall advise all county officers charged with the administration of requirements relating to public assistance programs under this chapter and shall render all possible assistance in securing compliance therewith, including the preparation of necessary forms and reports. The department of health services and the department of children and families shall also publish any information that those departments consider advisable to acquaint persons entitled to public assistance, and the public generally, with the laws governing public assistance under this chapter.

(2) ELIGIBILITY VERIFICATION. (a) Except as provided in par. (b), for each person included in an application for public assistance under this chapter, proof shall be provided of his or her social security number or that an application for a social security number has been made.

(b) Paragraph (a) does not apply to any of the following:

1. A child who is eligible for medical assistance under s. 49.46, 49.47, or 49.471 because of 42 USC 1396a (e) (4).

2. An unborn child who is eligible for coverage under s. 49.471 or the Badger Care health care program under s. 49.665 (4) (ap).

3. A person who is applying for medical assistance under subch. IV, coverage under the Badger Care health care program under s. 49.665, or coverage under the program for prescription drug assistance for elderly persons under s. 49.688 and who refuses to obtain a social security number because of well−established religious objections, as defined in 42 CFR 435.910 (h) (2).

History: 1995 a. 27 ss. 3088, 3125, 3209, 9126 (19), 9130 (4); 1997 a. 3; 2001 a. 107; 2005 a. 25; 2007 a. 20 ss. 1672 to 1676, 9121 (6) (a).

49.825 Department administration in Milwaukee County. **(1)** DEFINITIONS. In this section:

(a) "County" means Milwaukee County.

(b) "Department" means the department of health services.

(c) "Income maintenance program" has the meaning given in s. 49.78 (1) (b).

(d) "Secretary" means the secretary of health services.

(e) "Unit" means the Milwaukee County enrollment services unit.

(2) ESTABLISHMENT OF UNIT. (a) The department shall establish a Milwaukee County enrollment services unit under s. 15.02 (3) (c) 3. to determine eligibility under and administer the following public assistance programs in the county:

1. Income maintenance programs.

2. The programs under ss. 49.77 and 49.775.

3. To the extent contracted under par. (b), the child care subsidy program under s. 49.155.

(b) The department of children and families may enter into a contract with the department of health services that provides for the performance of eligibility and authorization functions under the program under s. 49.155 in the county by the unit.

(c) The department may enter into a contract with the county that provides for the performance by the county of any of the administrative functions under this subsection.

(d) The department shall reimburse the county for all approved, allowable costs that are incurred by the county under a contract with the department for the operation of the public assistance programs under par. (a) in the county.

(3) DIVISION OF EMPLOYMENT−RELATED FUNCTIONS. (a) Supervisory personnel in the unit shall be state employees. Nonsupervisory staff performing services under this section for the unit may be a combination of state employees and employees of Milwaukee County.

(b) 1. The department shall have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, and adjust grievances with respect to, and state supervisory employees may supervise, county employees performing services under this section for the unit.

2. For the purposes under subd. 1., the department shall use the same process and procedures under ch. 230 that are used for the classified service of the state civil service system, including specifically the use of probationary periods under s. 230.28.

3. County employees performing services under this section for the unit shall be subject to the residency requirements that apply to other county employees under the county's civil service rules.

(c) The county shall perform all administrative tasks related to payroll and benefits for the county employees performing services under this section for the unit.

(4) TREATMENT OF FORMER COUNTY EMPLOYEES APPOINTED TO STATE EMPLOYEE POSITIONS IN THE UNIT BEFORE JULY 1, 2011. All of the following shall apply to an employee who is appointed to a state employee position in the unit after May 29, 2009, and before July 1, 2011, and who, immediately prior to his or her appointment, was a county employee:

(a) The employee shall serve any applicable probationary period under s. 230.28, but shall have his or her seniority with the state computed by treating the employee's total service with the county as state service.

(b) Annual leave for the employee shall accrue at the rate provided in s. 230.35 using the employee's state service computed under par. (a).

(c) 1. The employee may remain a participating employee in the retirement system established under chapter 201, laws of 1937. To remain under the retirement system established under chapter 201, laws of 1937, the employee must exercise this option in writing, on a form provided by the department, at the time the employee is appointed to a state employee position. The employee shall exercise this option, in writing, no later than 10 days after the employee is appointed to a state employee position. An employee's decision to remain a participating employee in the retirement system established under chapter 201, laws of 1937, is irrevocable during the period that the employee is holding a state employee position in the unit.

2. The secretary shall pay, on behalf of the employee, all required employer contributions under the retirement system established under chapter 201, laws of 1937.

(d) The employee shall have his or her sick leave accrued with the state computed by treating the employee's unused balance of sick leave accrued with the county as sick leave accrued in state service, but not to exceed the amount of sick leave the employee would have accrued in state service for the same period, if the employee is able to provide adequate documentation in accounting for sick leave used during the accrual period with the county. Sick leave that transfers under this paragraph is not subject to a right of conversion, under s. 40.05 (4) or otherwise, upon death or termination of creditable service for payment of health insurance benefits on behalf of the employee or the employee's dependents.

(e) Notwithstanding par. (c), beginning on July 1, 2011, an employee who has opted under par. (c) to remain a participating employee in the retirement system established under chapter 201, laws of 1937, shall remain a participating employee in the retirement system until the employee has vested in all retirement contributions paid by, or on behalf of, the employee. When the employee becomes vested in all of the contributions paid by, or on behalf of, the employee in the retirement system established under chapter 201, laws of 1937, the employee may no longer be a participating employee in that retirement system and shall immediately become a participating employee in the Wisconsin retirement system.

(5) TREATMENT OF FORMER COUNTY EMPLOYEES APPOINTED TO STATE EMPLOYEE POSITIONS IN THE UNIT ON OR AFTER JULY 1, 2011. All of the following shall apply to an employee who is appointed to a state employee position in the unit on or after July 1, 2011, and who, immediately prior to his or her appointment, was a county employee performing services for the unit:

(a) The employee shall serve any applicable probationary period under s. 230.28, but shall have his or her seniority with the state computed by treating the employee's total service with the county as state service.

(b) Annual leave for the employee shall accrue at the rate provided in s. 230.35 using the employee's state service computed under par. (a).

(c) 1. The employee shall remain a participating employee in the retirement system established under chapter 201, laws of 1937, until the employee becomes vested in all of the contributions paid by, or on behalf of, the employee in the retirement system. When the employee becomes vested in all of the contributions paid by, or on behalf of, the employee in the retirement system established under chapter 201, laws of 1937, the employee may no longer be a participating employee in that retirement system and shall immediately become a participating employee in the Wisconsin retirement system.

2. The secretary shall pay, on behalf of the employee, all required employer contributions under the retirement system established under chapter 201, laws of 1937.

(d) The employee shall have his or her sick leave accrued with the state computed by treating the employee's unused balance of sick leave accrued with the county as sick leave accrued in state service, but not to exceed the amount of sick leave the employee would have accrued in state service for the same period, if the employee is able to provide adequate documentation in accounting for sick leave used during the accrual period with the county. Sick leave that transfers under this paragraph is not subject to a right of conversion, under s. 40.05 (4) or otherwise, upon death or termination of creditable service for payment of health insurance benefits on behalf of the employee or the employee's dependents.

(e) The employee shall not be subject to s. 40.23 (2m) (er) and (3) (b).

History: 2009 a. 15; 2011 a. 10, 32.

49.826 Administration of child care provider services in certain counties. (1) DEFINITIONS. In this section:

(a) "County" means a county having a population of 750,000 or more.

(b) "Department" means the department of children and families.

(c) "Secretary" means the secretary of children and families.

(d) "Unit" means the child care provider services unit.

(2) ESTABLISHMENT OF UNIT. (a) The department may establish a child care provider services unit under s. 15.02 (3) (c) 3. to perform any of the following administrative functions under the program under s. 49.155 in a county:

1. Certify child care providers under s. 48.651.

2. Provide child care program integrity services under s. 49.197 (2).

4. Assist individuals who are eligible for child care subsidies under s. 49.155 to identify available child care providers and select appropriate child care arrangements.

(b) The department may enter into a contract with a county that provides for the performance by the county of any of the administrative functions under this subsection in the county.

(c) The department shall reimburse a county for all approved, allowable costs that are incurred by the county under a contract with the department under par. (b).

(3) DIVISION OF EMPLOYMENT–RELATED FUNCTIONS. (a) Supervisory personnel in the unit shall be state employees. Nonsupervisory staff performing services under this section for the unit in a county may be a combination of state employees and employees of the county. For the performance of services under this section for the unit, a county shall maintain no fewer represented authorized full−time employee positions than the number of represented full−time employee positions that were authorized on February 1, 2009, for performance of the same types of services.

(b) 1. The department shall have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, and adjust grievances with respect to, and state supervisory employees may supervise, county employees performing services under this section for the unit.

2. For the purposes under subd. 1., the department shall use the same process and procedures under ch. 230 that are used for the classified service of the state civil service system, including specifically the use of probationary periods under s. 230.28.

3. County employees performing services under this section for the unit in a county shall be subject to the residency requirements that apply to other county employees under the county's civil service rules.

(c) A county shall perform all administrative tasks related to payroll and benefits for the county employees performing services under this section in the county for the unit.

(4) TREATMENT OF FORMER COUNTY EMPLOYEES APPOINTED TO STATE EMPLOYEE POSITIONS IN THE UNIT. All of the following shall apply to an employee who is appointed to a state employee position in the unit after July 1, 2009, and who, immediately prior to his or her appointment, was a county employee:

(a) The employee shall serve any applicable probationary period under s. 230.28, but shall have his or her seniority with the state computed by treating the employee's total service with the county as state service.

(b) Annual leave for the employee shall accrue at the rate provided in s. 230.35 using the employee's state service computed under par. (a).

(c) 1. The employee may remain a participating employee in the retirement system established under chapter 201, laws of 1937. To remain under the retirement system established under chapter 201, laws of 1937, the employee must exercise this option in writing, on a form provided by the department, at the time the employee is appointed to a state employee position. The employee shall exercise this option, in writing, no later than 10 days after the employee is appointed to a state employee position. An employee's decision to remain a participating employee in the

retirement system established under chapter 201, laws of 1937, is irrevocable during the period that the employee is holding a state employee position in the unit.

2. The secretary shall pay, on behalf of the employee, all required employer contributions under the retirement system established under chapter 201, laws of 1937.

(d) The employee shall have his or her sick leave accrued with the state computed by treating the employee's unused balance of sick leave accrued with the county as sick leave accrued in state service, but not to exceed the amount of sick leave the employee would have accrued in state service for the same period, if the employee is able to provide adequate documentation in accounting for sick leave used during the accrual period with the county. Sick leave that transfers under this paragraph is not subject to a right of conversion, under s. 40.05 (4) or otherwise, upon death or termination of creditable service for payment of health insurance benefits on behalf of the employee or the employee's dependents.

History: 2009 a. 28, 185; 2011 a. 10; 2013 a. 20; 2015 a. 172.

49.83 Limitation on giving information. Except as provided under ss. 49.25 and 49.32 (6m), (9), (10), and (10m), no person may use or disclose information concerning applicants and recipients of relief funded by a relief block grant, aid to families with dependent children, Wisconsin Works under ss. 49.141 to 49.161, social services, child and spousal support and establishment of paternity and medical support liability services under s. 49.22, or supplemental payments under s. 49.77 for any purpose not connected with the administration of the programs, except that the departments of children and families and health services may disclose, including by transmitting or granting access to electronic data, such information, including social security numbers, to the department of revenue for the sole purposes of administering state taxes, including verifying refundable individual income tax credits, and collecting debts owed to the department of revenue. Any person violating this section may be fined not less than $25 nor more than $500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

History: 1995 a. 27 ss. 3142, 3144; Stats. 1995 s. 49.83; 1995 a. 289, 361, 404; 1997 a. 35; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2013 a. 20; 2015 a. 55.

49.835 Statements in applications. A person who makes a statement in a written application for any aid or benefit provided under this chapter is considered to have made an admission as to the existence, correctness, or validity of any fact stated. Such a statement is prima facie evidence against the person who made it in any complaint, information, or indictment, or in any action brought for enforcement of any provision of this chapter.

History: 2013 a. 226.

49.84 Verification of public assistance applications. **(1)** Any person who applies for any public assistance shall execute the application or self−declaration in the presence of the welfare worker or other person processing the application. This subsection does not apply to any superintendent of a mental health institute, director of a center for the developmentally disabled, superintendent of a state treatment facility or superintendent of a state correctional facility who applies for public assistance on behalf of a patient.

(2) At the time of application, the agency administering the public assistance program shall apply to the department of health services for a certified copy of a birth certificate for the applicant if the applicant is required to provide a birth certificate or social security number as part of the application and for any person in the applicant's household who is required to provide a birth certificate or social security number. The department of health services shall provide without charge any copy for which application is made under this subsection.

(3) Notwithstanding subs. (1) and (2), personal identification documentation requirements may be waived for 10 days for an applicant for relief funded by a relief block grant, if the applicant agrees to cooperate with the relief agency by providing information necessary to obtain proper identification.

(4) Notwithstanding sub. (2), the relief agency receiving an application under sub. (3) shall pay on behalf of any applicant under sub. (3) fees required for the applicant to obtain proper identification.

(5) A person applying for Wisconsin works under ss. 49.141 to 49.161, aid to families with dependent children under s. 49.19, medical assistance under subch. IV or food stamp program benefits under 7 USC 2011 to 2029 shall, as a condition of eligibility, provide a declaration and other verification of citizenship or satisfactory immigration status as required by the department by rule or as required in 42 USC 1320b−7 (d).

(6) (a) In this subsection, "department" means the department of health services.

(b) 1. Notwithstanding any other eligibility requirements for the programs specified in par. (c), unless excepted by par. (c) an applicant for or recipient under any of those programs who declares himself or herself to be a citizen or national of the United States shall provide, as a further condition of eligibility, satisfactory documentary evidence, as provided in par. (d), that he or she is a citizen or national of the United States.

2. An applicant shall provide the documentation at the time of application. If a recipient was not required to provide documentation at the time he or she applied, the recipient shall provide the documentation the first time his or her eligibility is reviewed or redetermined after October 27, 2007. An applicant or recipient shall be granted a reasonable time, as determined by the department, to submit the documentation before his or her eligibility is denied or terminated.

(c) The requirement to provide satisfactory documentary evidence under par. (b) applies to applicants for and recipients under all of the following:

1. The Medical Assistance program under subch. IV, except for any of the following:

a. An applicant or recipient who is entitled to benefits under or enrolled in any part of Medicare under 42 USC 1395 et seq., as amended.

b. An applicant or recipient who is receiving supplemental security income under 42 USC 1381 to 1383c.

c. A person who is eligible for medical assistance under s. 49.45 (27).

d. A child who is receiving medical assistance under s. 49.46 (1) (a) 13., 49.47 (4) (am) 3., or 49.471 (4) (a) 2. or 2m. or an unborn child receiving prenatal care under s. 49.471.

e. A pregnant woman who is receiving medical assistance under s. 49.465 or a child or pregnant woman who is receiving medical assistance under s. 49.471 (5) (b) 1. or 2.

2. The Badger Care health care program under s. 49.665, except for an unborn child under s. 49.665 (4) (ap).

3. The part of the prescription drug assistance for elderly persons program under s. 49.688 that is supported by a Medical Assistance waiver under 42 USC 1315 (a), as authorized under s. 49.688 (11).

(d) Satisfactory documentary evidence that an applicant or a recipient is a citizen or national of the United States consists of the documents or other forms of evidence specified in 42 CFR 435.407.

(7) (a) In this subsection:

1. "Department" means the department of health services.

2. "Medical Assistance" means the Medical Assistance program under subch. IV.

(b) Except as provided in par. (c), for determining eligibility or continued eligibility the department shall electronically verify the residence of an applicant for or recipient of Medical Assistance. If the department is unable to verify the applicant's or recipient's residence electronically, the applicant or recipient must pro-

vide adequate proof of residency, in the manner determined by the department, to be eligible for Medical Assistance.

(c) The requirements under par. (b) do not apply with respect to any of the following:

1. An individual who is receiving benefits under the food stamp program under 7 USC 2011 to 2029 or under the Temporary Assistance for Needy Families block grant program and who presented an acceptable form of residency verification for receipt of those benefits.

2. An individual who resides in a nursing home, intermediate care facility, inpatient psychiatric hospital, or other residential care facility and whose care in the facility is paid for by Medical Assistance.

3. A child residing in a foster care placement under the care and placement responsibility of a county department under s. 46.215, 46.22, or 46.23 or, in a county with a population of 750,000 or more, under the care and placement responsibility of the department of children and families.

History: 1971 c. 334; 1979 c. 221; 1985 a. 29 ss. 1005m, 3200 (23); 1985 a. 315; 1989 a. 31; 1995 a. 27 ss. 2798 to 2801b, 2803, 2804, 3210, 3211, 9126 (19); Stats. 1995 s. 49.84; 1995 a. 289; 2007 a. 20 ss. 1678 to 1680, 9121 (6) (a); 2013 a. 20; 2013 a. 116 s. 29; 2013 a. 117 s. 2, 3; 2015 a. 172.

49.845 Fraud investigation and error reduction. (1) FRAUD INVESTIGATION. From the appropriations under s. 20.435 (4) (bn), (kz), (L), and (nn), the department of health services shall establish a program to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665 and, if the department of children and families contracts with the department of health services under sub. (4), on the part of recipients of aid to families with dependent children under s. 49.19 and participants in the Wisconsin Works program under ss. 49.141 to 49.161. The activities of the department of health services under this subsection may include comparisons of information provided to the department by an applicant and information provided by the applicant to other federal, state, and local agencies, development of an advisory welfare investigation prosecution standard, and provision of funds to county departments under ss. 46.215, 46.22, and 46.23 and to Wisconsin Works agencies to encourage activities to detect fraud. The department of health services shall cooperate with district attorneys regarding fraud prosecutions.

(2) STATE ERROR REDUCTION ACTIVITIES. The department of health services shall conduct activities to reduce payment errors in the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665 and, if the department of children and families contracts with the department of health services under sub. (4), in Wisconsin Works under ss. 49.141 to 49.161.

(3) WISCONSIN WORKS AGENCY ERROR REDUCTION. If the department of children and families contracts with the department of health services under sub. (4), the department of health services shall provide funds from the appropriation under s. 20.435 (4) (kz) to Wisconsin Works agencies to offset the administrative costs of reducing payment errors in Wisconsin Works under ss. 49.141 to 49.161.

(4) CONTRACT FOR WISCONSIN WORKS. (a) 1. Notwithstanding s. 49.197 (1m) and (3), the department of children and families may contract with the department of health services to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19 and participants in Wisconsin Works under ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin Works under ss. 49.141 to 49.161, as provided in this section. If any employee of the department of health services reasonably suspects that fraudulent activity as described in this subdivision has occurred or is occurring, the employee shall immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor.

2. An immediate supervisor who receives a report under subd. 1. shall immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the immediate supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the immediate supervisor shall immediately report the facts and circumstances contributing to that suspicion to the sheriff and to the unit of the department of health services that is responsible for investigating suspected fraudulent activity as described in subd. 1.

3. Except as provided in subd. 2., an immediate supervisor who receives a report under subd. 1. shall keep the identity of the reporter confidential. A sheriff or unit of the department of health services that receives a report under subd. 2. shall keep the identity of the employee reporting under subd. 1. and the immediate supervisor reporting under subd. 2. confidential until the sheriff or unit determines that the report merits further investigation. If the sheriff or unit conducts a full investigation, the sheriff or unit shall keep the identity of that employee and immediate supervisor confidential if it is reasonably possible to do so. Any person who fails to report as required in subd. 1. or 2. may be required to forfeit not more than $1,000.

(b) Any person participating in good faith in the making of a report under par. (a) 1. or 2. or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity as described in par. (a) 1. is alleged shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under par. (a) 1. or 2. shall be presumed.

(c) The department of health services or an employee of that department may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity as described in par. (a) 1. was alleged or because that department or employee believes that the person in good faith reported any information under par. (a) 1. or 2. or initiated, participated in, or testified in, such an action or proceeding.

(d) Any person who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of par. (c) may file a complaint with the department of workforce development under s. 106.54 (9). If that department finds that a violation of par. (c) has been committed, that department may take such action under s. 111.39 as will effectuate the purpose of this section. Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under this paragraph.

History: 2005 a. 25; 2007 a. 20 ss. 1681 to 1684, 9121 (6) (a); 2009 a. 76 ss. 37q to 37t; 2011 a. 260 s. 80.

49.846 Jurisdiction of the department of justice. (1) In this section, "public assistance program" means any program administered by the department of health services or the department of children and families under this chapter under which the department administering the program provides services, benefits, or other assistance to individuals or families.

(2) The department of justice or the district attorney may institute, manage, control, and direct, in the proper county, any prosecution for violation of criminal laws affecting a public assistance program, including laws in this chapter, chs. 939 to 951 relating to Medical Assistance, Wisconsin Works, the food stamp program, or any other public assistance program, and laws affecting the health, safety, and welfare of public assistance program recipients. For this purpose the department of justice shall have

and exercise all powers conferred upon district attorneys in such cases. If a prosecution under this section involves a person holding a license granted by the medical examining board or an interested affiliated credentialing board, the department of justice or district attorney shall notify the medical examining board or the interested affiliated credentialing board of the prosecution.

History: 1977 c. 418; 1985 a. 340; 1993 a. 107; 1995 a. 27; 2013 a. 226 ss. 32, 33, 47; Stats. 2013 s. 49.846.

49.847 Recovery of incorrect payments under certain public assistance programs. (1) Subject to ss. 49.497 (1) and 49.793 (1), the department of health services, or a county, multicounty consortium, as defined in s. 49.78 (1) (br), or elected governing body of a federally recognized American Indian tribe or band acting on behalf of the department, may recover benefits incorrectly paid under any of the programs administered by the department under this chapter.

(2) The department, county, multicounty consortium, as defined in s. 49.78 (1) (br), or elected governing body may recover an overpayment from a family or individual who continues to receive benefits under any program administered by the department under this chapter by reducing the family's or individual's benefit amount. Subject to s. 49.793 (1), the department may by rule specify other methods for recovering incorrectly paid benefits.

(3) (a) Subject to ss. 49.497 (2) and 49.793 (2), and except as provided in par. (b), a county or elected governing body may retain a portion of an amount recovered under this section due to the efforts of an employee or officer of the county, tribe, or band, as provided by the department by rule.

(b) Any amount that Milwaukee County would otherwise be entitled to retain under par. (a) for the recovery of an amount under this section due to the efforts of a department employee or officer, or a county employee or officer under the management of the department, shall be credited to the appropriation account under s. 20.435 (4) (L).

History: 2005 a. 25; 2007 a. 20 s. 9121 (6) (a); 2009 a. 15; 2011 a. 32.

Cross−reference: See also ch. DHS 2, Wis. adm. code.

49.849 Recovery of correct payments under certain public assistance programs. (1) DEFINITIONS. In this section:

(a) "Decedent" means a deceased recipient or a deceased nonrecipient surviving spouse, whichever is applicable.

(b) "Department" means the department of health services.

(c) "Nonrecipient surviving spouse" means any of the following:

1. A person who was married to a recipient when the recipient was receiving or received public assistance and who survived the recipient.

2. A person who was married to a recipient on whose behalf aid under s. 49.785 was provided, who was married to the recipient at the recipient's death or when the recipient was receiving or received any of the benefits described in s. 49.785 (1c) that made the recipient an eligible recipient under s. 49.785, or at both times, and who survived the recipient.

(d) "Property of a decedent" means all real and personal property to which the recipient held any legal title or in which the recipient had any legal interest immediately before death, to the extent of that title or interest, including assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust, or any other arrangement, excluding an irrevocable trust.

(e) "Public assistance" means any services provided as a benefit under a long−term care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV, long−term community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, 49.685, or 49.785.

(f) "Recipient" means a person who received public assistance.

(2) RECOVERABLE AMOUNTS. (a) Subject to par. (b), the department may collect from the property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the long−term community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1., or the aid under s. 49.68, 49.683, 49.685, or 49.785 that is recoverable under s. 49.682 (2) (a) or (am), and that was paid on behalf of the decedent or the decedent's spouse, if all of the following conditions are satisfied:

1. The decedent died after September 30, 1991, or for the recovery of aid under s. 49.785 the decedent died after July 14, 2015.

2. The decedent is not survived by a spouse, a child who is under age 21, or a child who is disabled, as defined in s. 49.468 (1) (a) 1. This subdivision does not apply for the recovery of aid under s. 49.785.

(b) The department shall reduce the amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the decedent's heirs or beneficiaries under the decedent's will to retain the following personal property of the decedent:

2. Wearing apparel and jewelry held for personal use.

3. Household furniture, furnishings, and appliances.

4. Other tangible personal property not used in trade, agriculture, or other business, not exceeding in value the amount specified in s. 861.33 (1) (a) 4.

(c) There is a presumption, consistent with s. 766.31, which may be rebutted, that all property of the deceased nonrecipient surviving spouse was marital property held with the recipient and that 100 percent of the property of the deceased nonrecipient surviving spouse is subject to the department's claim under par. (a).

(3) TRANSMITTAL OF PROPERTY UPON RECEIPT OF AFFIDAVIT. (a) Any property of a decedent that is transferred by a person who has possession of the property at the time of the decedent's death is subject to the right of the department to recover the amounts specified in sub. (2) (a). Upon request, the person who transferred the property shall provide to the department information about the property of the decedent that the person has transferred and information about the persons to whom the property was transferred.

(b) A person who possesses or receives property of a decedent shall transmit the property to the department, if the conditions in sub. (2) (a) 1. and, if applicable, sub. (2) (a) 2. are satisfied, upon receipt of an affidavit by a person designated by the secretary of health services to administer this section showing that the department paid on behalf of the decedent or the decedent's spouse recoverable benefits specified in sub. (2) (a). Upon transmittal, the person is released from any obligation to other creditors or heirs of the decedent.

(c) An affidavit under this subsection shall contain all of the following information:

1. That the department has a claim against the property that it intends to recover from the property.

2. The amount of and basis for the claim.

3. That the person may have a right to an administrative hearing under sub. (5m), which must be requested within 45 days after the department sent the affidavit, on the extent and fair market value of the recipient's interest in the property.

4. How to request an administrative hearing under sub. (5m).

5. That the person may request from the department a hardship waiver, if the person co−owned the property with the decedent or is a beneficiary of the property. This subdivision does not apply for the recovery of aid under s. 49.785.

6. How to request a hardship waiver under subd. 5. This subdivision does not apply for the recovery of aid under s. 49.785.

(4) RECOVERY AGAINST REAL PROPERTY. (a) If the condition in sub. (2) (a) 1. is satisfied, the department shall have a lien in the amount that it may recover under sub. (2) (a) on any interest in any

property of the decedent that is real property, including a home, as defined in s. 49.496 (1) (b). The department may record the lien in the office of the register of deeds of the county in which the real property is located.

(b) Except as provided in par. (bm), the department may enforce a lien under par. (a) by foreclosure in the same manner as a mortgage on real property, unless any of the following is alive:

1. The decedent's spouse.

2. A child of the decedent if the child is under age 21 or disabled, as defined in s. 49.468 (1) (a) 1.

(bm) The department may enforce a lien under par. (a) for the recovery of aid under s. 49.785 by foreclosure in the same manner as a mortgage on real property regardless of whether the decedent's spouse or any child of the decedent is alive.

(c) All of the following apply to a lien under par. (a) that the department may not enforce because of par. (b):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien if any of the following applies:

a. The recipient's surviving spouse or child who is under age 21 or disabled sells the property for fair market value, as described in sub. (5c) (d), during the spouse's or child's lifetime.

b. The recipient's surviving spouse or child who is under age 21 or disabled transfers the property for less than fair market value, as described in sub. (5c) (d), during the spouse's or child's lifetime, the transferee sells the property during the spouse's or child's lifetime and places proceeds equal to the lesser of the department's lien or the sale proceeds due to the seller in a trust or bond, and the department is paid the secured amount upon the death of the recipient's spouse or disabled child or when the recipient's child who is not disabled reaches age 21.

c. The surviving owner or transferee of the property, who is not the recipient's surviving spouse or child who is under age 21 or disabled, sells the property during the lifetime of the recipient's surviving spouse or child who is under age 21 or disabled and places proceeds equal to the lesser of the department's lien or the sale proceeds due to the seller in a trust or bond, and the department is paid the secured amount upon the death of the recipient's spouse or disabled child or when the recipient's child who is not disabled reaches age 21.

(4m) ALLOWABLE COSTS OF SALE OF REAL PROPERTY. (a) Subject to par. (b), if any property of a decedent that is real property has been sold after the death of the decedent, only the following reasonable expenses, if any, incurred in preserving or disposing of the real property may be deducted from the sale proceeds that the department may recover:

1. Closing costs of sale, including reasonable attorney fees of the seller, the cost of title insurance, and recording costs.

2. Property insurance premiums.

3. Property taxes due.

4. Utility costs necessary to preserve the property.

5. Expenses incurred in providing necessary maintenance or making necessary repairs, without which the salability of the property would be substantially impaired.

(b) Any expense under par. (a) may be deducted from the sale proceeds only if it is documented and approved by the department and it was not incurred while any other individual was living on the property.

(5) OTHER VALID CLAIMS. If a person has a valid claim against property of the decedent that would have a higher priority under s. 859.25 (1) if the property were subject to administration than the department would have under s. 859.25 (1) (e) and the person demands payment in writing within one year of the date on which the property was transmitted to the department, the department shall pay to the person the value of the property collected under sub. (3) or the amount of the claim, whichever is less. The department may authorize any person who possesses property of the decedent to honor higher priority claims with the decedent's property before transmitting property to the department.

(5c) VALUE OF RECIPIENT'S INTEREST. For purposes of determining the value of the recipient's interest in property of the decedent, all of the following apply:

(a) If the recipient held title to real property jointly with one or more persons other than his or her spouse, the recipient's interest in the real property is equal to the fractional interest that the recipient would have had in the property if the property had been held with the other owner or owners as tenants in common.

(b) If the recipient held title to personal property jointly with one or more persons other than his or her spouse, the recipient's interest in the personal property is equal to either of the following:

1. The percentage interest that was attributed to the recipient when his or her eligibility for public assistance was determined.

2. If the percentage interest was not determined as provided in subd. 1., the fractional interest that the recipient would have had in the property if the property had been held with the other co−owner or co−owners as tenants in common.

(c) If the recipient held a life estate in real property, the recipient's interest is equal to the recipient's percentage of ownership in the property based on the recipient's age on the date of death and calculated using the fair market value of the property and life estate−remainderman tables used by the department to value life estates for purposes of determining eligibility for Medical Assistance.

(d) A property's fair market value is the price that a willing buyer would pay a willing seller for the purchase of the property. The burden of proof for establishing a property's fair market value is on the surviving owners or beneficiaries, or their representatives. Fair market value must be established through a credible methodology, which may include an appraisal performed by a licensed appraiser.

(5m) FAIR HEARING. A person who has possession of any property of the decedent, or who receives an affidavit from the department under sub. (3) (c) for transmittal of any property of the decedent, is entitled to and may, within 45 days after the affidavit was sent, request a departmental fair hearing on the value of the property and the extent of the recipient's interest in the property, if the property is not being transferred under s. 867.03 or through formal or informal administration of the decedent's estate.

(5r) ACTION OR ORDER TO ENFORCE RECOVERY. (a) If, after receipt of an affidavit under sub. (3), a person who possesses property of a decedent does not transmit the property to the department or timely request a hearing, the department may bring an action to enforce its right to collect amounts specified in sub. (2) (a) from the property or may issue an order to compel transmittal of the property. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a class 3 proceeding, as defined in s. 227.01 (3) (c), under ch. 227 by filing a request for appeal, within 30 days after the date of the order, with the division of hearings and appeals created under s. 15.103 (1). The date on which the division of hearings and appeals receives the request for appeal shall be the date of service. The only issue at the hearing shall be whether the person has transmitted the property to the department. The decision of the division of hearings and appeals shall be the final decision of the department.

(b) If any person named in an order to compel transmittal of property issued under par. (a) fails to transmit the property under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The sworn statement of the secretary shall be evidence of the department's right to collect amounts specified in sub. (2) (a) from the property and of the person's failure to transmit the property to the department. The circuit court shall, without notice, render judgment in accordance

with the order. A judgment rendered under this paragraph shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(c) The recovery procedure under this subsection is in addition to any other recovery procedure authorized by law.

(6) PAYMENTS FROM RECOVERED AMOUNTS. (a) From the appropriation under s. 20.435 (4) (im), with respect to funds collected by the department under sub. (2) related to medical assistance paid on behalf of the decedent or the decedent's spouse, the department shall pay claims under sub. (5), shall pay to the federal government from the amount recovered under this section and not paid out as claims under sub. (5) an amount equal to the amount of federal funds used to pay the benefits recovered under this section and shall spend the remainder of the amount recovered under this section for medical assistance benefits under subch. IV.

(b) From the appropriation under s. 20.435 (4) (im), with respect to funds collected by the department under sub. (2) related to long−term community support services funded under s. 46.27 (7) paid on behalf of the decedent or the decedent's spouse, the department shall pay claims under sub. (5) and shall spend the remainder of the funds recovered under this section for long−term community support services funded under s. 46.27 (7).

(7) RULES FOR HARDSHIP WAIVER. The department shall promulgate rules establishing standards to determine whether the application of this section would work an undue hardship in individual cases. If the department determines that the application of this section would work an undue hardship in a particular case, the department shall waive the application of this section in that case. This subsection does not apply with respect to the recovery of aid under s. 49.785.

History: 2013 a. 20 ss. 1222, 2305, 2307, 2308, 2310 to 2312, 2314 to 2317; 2013 a. 92; 2013 a. 151 s. 28; 2015 a. 55.

49.85 Certification of certain public assistance overpayments, payment recoveries, and delinquent loan repayments. (1) DEPARTMENT NOTIFICATION REQUIREMENT. If a county department under s. 46.215, 46.22, or 46.23 or a governing body of a federally recognized American Indian tribe or band determines that the department of health services may recover an amount under s. 49.497, 49.793, or 49.847, or that the department of children and families may recover an amount under s. 49.138 (5), 49.161, or 49.195 (3) or collect an amount under s. 49.147 (6) (cm), the county department or governing body shall notify the affected department of the determination. If a Wisconsin Works agency determines that the department of children and families may recover an amount under s. 49.138 (5), 49.161, or 49.195 (3), or collect an amount under s. 49.147 (6) (cm), the Wisconsin Works agency shall notify the department of children and families of the determination.

(2) DEPARTMENT CERTIFICATION. (a) At least annually, the department of health services shall certify to the department of revenue the amounts that, based on the notifications received under sub. (1) and on other information received by the department of health services, the department of health services has determined that it may recover under s. 49.45 (2) (a) 10., 49.497, 49.793, 49.847, or 49.849, except that the department of health services may not certify an amount under this subsection unless all of the following apply:

1. The department has met the notice requirements under sub. (3).

2. The department's determination has either not been appealed or is no longer under appeal.

3. If the determination relates to recovery of an amount under s. 49.497, the determination was rendered to a judgment under s. 49.497 (1m) (b).

4. If the determination relates to recovery of an amount under s. 49.849, the determination was rendered to a judgment under s. 49.849 (5r) (b).

(b) At least annually, the department of children and families shall certify to the department of revenue the amounts that, based on the notifications received under sub. (1) and on other information received by the department of children and families, the department of children and families has determined that it may recover under ss. 49.138 (5), 49.161, and 49.195 (3) and collect under s. 49.147 (6) (cm), except that the department of children and families may not certify an amount under this subsection unless it has met the notice requirements under sub. (3) and unless its determination has either not been appealed or is no longer under appeal.

(3) NOTICE REQUIREMENTS. (a) At least 30 days before certification of an amount, the department of health services shall send a notice to the last−known address of the person from whom that department intends to recover the amount. The notice shall do all of the following:

1. Inform the person that the department of health services intends to certify to the department of revenue an amount that the department of health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793, 49.847, or 49.849, for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of health services to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

3. Inform the person that, if the determination of the department of health services is appealed, that department will not certify the amount to the department of revenue while the determination of the department of health services is under appeal.

4. Inform the person that, unless a contested case hearing is requested to appeal the determination of the department of health services, the person may be precluded from challenging any subsequent setoff of the certified amount by the department of revenue, except on the grounds that the certified amount has been partially or fully paid or otherwise discharged, since the date of the notice.

5. Request that the person inform the department of health services if a bankruptcy stay is in effect with respect to the person or if the claim has been discharged in bankruptcy.

6. Inform the person that the person may need to contact the department of revenue in order to protect the refunds of spouses who are not liable for the claim.

(b) At least 30 days before certification of an amount, the department of children and families shall send a notice to the last−known address of the person from whom that department intends to recover or collect the amount. The notice shall do all of the following:

1. Inform the person that the department of children and families intends to certify to the department of revenue an amount that the department of children and families has determined to be due under s. 49.138 (5), 49.161, or 49.195 (3) or to be delinquent under a repayment agreement for a loan under s. 49.147 (6), for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of children and families to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

3. Inform the person that, if the determination of the department of children and families is appealed, that department will not certify the amount to the department of revenue while the determination of the department of children and families is under appeal.

4. Inform the person that, unless a contested case hearing is requested to appeal the determination of the department of children and families, the person may be precluded from challenging any subsequent setoff of the certified amount by the department of revenue, except on the grounds that the certified amount has

been partially or fully paid or otherwise discharged, since the date of the notice.

5. Request that the person inform the department of children and families if a bankruptcy stay is in effect with respect to the person or if the claim has been discharged in bankruptcy.

6. Inform the person that the person may need to contact the department of revenue in order to protect the refunds of spouses who are not liable for the claim.

(4) HEARINGS. (a) If a person has requested a hearing under this subsection, the department of health services shall hold a contested case hearing under s. 227.44, except that the department of health services may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

(b) If a person has requested a hearing under this subsection, the department of children and families shall hold a contested case hearing under s. 227.44, except that the department of children and families may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

(5) EFFECT OF CERTIFICATION. Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.93. Certification of an amount under this section does not prohibit the department of health services or the department of children and families from attempting to recover or collect the amount through other legal means. The department of health services or the department of children and families shall promptly notify the department of revenue upon recovery or collection of any amount previously certified under this section.

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a); 2013 a. 20; 2013 a. 173 s. 33; 2015 a. 55.

Cross−reference: See also ch. DHS 2, Wis. adm. code.

49.852 Delinquent support payments; pension plans. (1c) In this section, "department" means the department of children and families.

(1m) The department may direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment from a pension plan that may be paid a delinquent support obligor, except that the department may not direct that an amount be withheld under this subsection unless it has met the notice requirements under sub. (2) and unless the amount specified has either not been appealed or is no longer under appeal under s. 49.854.

(2) The department shall send a notice to the last−known address of the person from whom the department intends to recover the amount specified in the statewide support lien docket under s. 49.854 (2) (b). The notice shall do all of the following:

(a) Inform the person that the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, shall withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment from a pension plan that may be paid the person.

(b) Inform the person that he or she may, within 20 business days after the date of the notice, request a court hearing on the issue of whether the person owes the amount specified in the statewide support lien docket under s. 49.854 (2) (b). The request shall be in writing and the person shall mail or deliver a copy of the request to the county child support agency under s. 59.53 (5).

(c) Request that the person inform the department or the appropriate county child support agency under s. 59.53 (5) if a bankruptcy stay is in effect with respect to the person.

(3) If a person has requested a hearing pursuant to sub. (2) (b), the hearing shall be conducted before the circuit court that rendered the initial order to pay support. The court shall schedule a hearing within 10 business days after receiving a request for a hearing. A circuit court commissioner may conduct the hearing. If the court determines that the person owes the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department may direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, to withhold the amount from any lump sum payment from a pension plan that may be paid the person. If the court determines that the person does not owe the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department may not direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, to withhold the amount from any lump sum payment from a pension plan that may be paid the person.

(4) (a) If the department directs the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b), this directive shall constitute a lien, equal to the amount specified in the statewide support lien docket, on any lump sum payment from a pension plan that may be paid the person.

(b) If the department directs the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan shall deduct from any lump sum payment that may be paid the person the amount specified in the statewide support lien docket, less any amount specified under par. (d). If the amount specified in the statewide support lien docket under s. 49.854 (2) (b), less any amount specified under par. (d), exceeds the lump sum payment, the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan shall deduct the entire lump sum payment, less any withholdings otherwise required by law. The amount deducted under this paragraph shall be remitted to the department.

(c) A directive to the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) under this section does not prohibit the department from attempting to recover the amount through other legal means.

(d) The department shall promptly notify the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan upon recovery of any amount previously specified in the statewide support lien docket under s. 49.854 (2) (b).

History: 1997 a. 191; 2001 a. 61; 2007 a. 20.

49.853 Financial record matching program. (1) DEFINITIONS. In this section:

(a) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account.

(am) "County child support agency" means the county child support agency under s. 59.53 (5).

(b) "Department" means the department of children and families.

(c) "Financial institution" means any of the following:

1. A depository institution, as defined in 12 USC 1813 (c).

2. An institution−affiliated party, as defined in 12 USC 1813 (u), of a depository institution under subd. 1.

3. A federal credit union or state credit union, as defined in 12 USC 1752.

4. An institution−affiliated party, as defined in 12 USC 1786 (r), of a credit union under subd. 3.

5. A benefit association, insurance company, safe deposit company, money market mutual fund or similar entity authorized to do business in this state.

6. A broker−dealer, as defined in s. 551.102 (4).

(d) "Obligor" has the meaning given in s. 49.854 (1) (d).

(dm) "Ownership interest" has the meaning specified by the department by rule.

(e) "Support" has the meaning given in s. 49.854 (1) (f).

(2) FINANCIAL RECORD MATCHING PROGRAM AND AGREEMENTS. The department shall operate a financial record matching program under this section. The department shall promulgate rules specifying procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this section. The agreement shall require the financial institution to participate in the financial record matching program under this section by electing either the financial institution matching option under sub. (3) or the state matching option under sub. (4). The department shall reimburse a financial institution up to $125 per quarter for participating in the financial record matching program under this section.

(3) FINANCIAL INSTITUTION MATCHING OPTION. (a) If a financial institution with which the department has an agreement under sub. (2) elects to use the financial institution matching option under this subsection, the department shall provide a financial institution with information regarding delinquent obligors. The information shall be provided at least once each calendar quarter and shall include the obligor's name and social security number. The information shall be provided to the financial institution in the manner specified by rule or by agreement. To the extent feasible, the information required under this paragraph shall be provided to the financial institution by an automated data exchange.

(b) Each financial institution receiving information under par. (a) shall take actions necessary to determine whether any obligor has an ownership interest in an account maintained at the financial institution. If the financial institution determines that an obligor has an ownership interest in an account at the financial institution, the financial institution shall provide the department with a notice containing the obligor's name, address of record, social security number or other taxpayer identification number, and account information. The information regarding the obligor's account shall include the account number, the account type, the nature of the obligor's ownership interest in the account, and the balance of the account at the time that the record match is made. The notice under this paragraph shall be provided in the manner specified by rule or agreement. To the extent feasible, the notice required under this paragraph shall be provided to the department by an automated data exchange.

(c) The financial institution participating in the financial institution matching option under this subsection, and the employees, agents, officers and directors of the financial institution, may use the information provided by the department under par. (a) only for the purpose of matching records under par. (b). Neither the financial institution nor any employee, agent, officer or director of the financial institution may disclose or retain information provided under par. (a) concerning obligors who do not have an interest in an account maintained at the financial institution. Any person who violates this paragraph may be fined not less than $25 nor more than $500 or imprisoned in the county jail for not less than 10 days nor more than one year or both.

(4) STATE MATCHING OPTION. (a) If a financial institution with which the department has an agreement under sub. (2) elects to use the state matching option under this subsection, the financial institution shall provide the department with information concerning all accounts maintained at the financial institution at least once each calendar quarter. For each account maintained at the financial institution, the financial institution shall notify the department of the name and social security number or other tax identification number of each person having an ownership interest in the account, together with a description of each person's interest. The information required under this paragraph shall be provided in the manner specified by rule or agreement. To the extent feasible, the notice required under this paragraph shall be provided to the department by an automated data exchange.

(b) The department shall take actions necessary to determine whether any obligor has an ownership interest in an account maintained at a financial institution providing information under par. (a). Upon the request of the department, the financial institution shall provide the department, for each obligor who matches information provided by the financial institution under par. (a), the obligor's address of record, the obligor's account number and account type and the balance of the account.

(c) The department may use the information provided by a financial institution under pars. (a) and (b) only for the purpose of matching records under par. (b). The department may not disclose or retain information received under pars. (a) and (b) concerning account holders who are not delinquent obligors.

(d) A financial institution participating in the state matching option under this subsection, and the employees, agents, officers and directors of the financial institution, may use any information that is provided by the department in requesting additional information under par. (b) only for the purpose of administering s. 49.22 or for the purpose of providing the additional information. Any person who violates this paragraph may be fined not less than $25 nor more than $500 or imprisoned in the county jail for not less than 10 days nor more than one year or both.

(5) DELEGATION. The department may delegate any powers and duties given to the department under this section to county child support agencies. The department may require financial institutions to provide county child support agencies with any notices that are required under this section to be provided to the department.

History: 1997 a. 191; 2001 a. 16; 2007 a. 20, 196.

Cross−reference: See also ch. DCF 152, Wis. adm. code.

49.854 Liens against property for delinquent support payments. (1) DEFINITIONS. In this section:

(a) "Department" means the department of children and families.

(b) "County child support agency" means the county child support agency under s. 59.53 (5).

(c) "Levy" means all powers of distraint and seizure.

(d) "Obligor" means a person who is obligated to pay court−ordered support.

(e) "Property" includes accounts at financial institutions, personal property and real property, tangible and intangible property and rights to property, but is limited to property and rights of the obligor to property existing at the time of levy.

(f) "Support" means any of the following:

1. Child or family support.

2. Maintenance.

3. Medical expenses of a child.

4. Birth expenses.

5. Any accrued interest on delinquent amounts under subds. 1. to 4.

(2) CREATION OF LIEN; SATISFACTION. (a) *Creation.* If a person obligated to pay support fails to pay any court−ordered amount of support, that amount becomes a lien in favor of the department upon all property of the person. The lien becomes effective when the information is entered in the statewide support lien docket under par. (b) and that docket is delivered to the register of deeds in the county where the property is located. A lien created under this paragraph is not effective against a good−faith purchaser of titled personal property, unless the lien is recorded on that title.

(b) *Statewide support lien docket.* The department shall maintain a statewide support lien docket. The department shall provide a copy of the statewide support lien docket to the register of deeds and the county child support agency of each county in this state, and to each state agency that titles personal property. Each entry in the statewide support lien docket shall contain the name and the social security number of the obligor and the date that the lien is entered in the docket, as well as the amount of the lien as of the time that the entry is made.

(c) *Updating the statewide support lien docket.* The department shall update the statewide support lien docket in response to orders issued by a court or circuit court commissioner. The department shall periodically update the statewide support lien docket to reflect changes in the amounts of the liens contained in the docket.

(d) *Amount of lien; satisfaction.* The amount of any support obligation that is a lien under this subsection may be determined by requesting that information from the county child support agency or the register of deeds, as specified by the department. Payment of the full amount that is delinquent at the time of payment to that county child support agency extinguishes that lien. Upon request, the county child support agency shall furnish to the payer of the delinquent amount a satisfaction of lien showing that the amount of support owed has been paid in full and that the person no longer owes the delinquent amount. The satisfaction of lien may be recorded in the office of the register of deeds for any county in which real or personal property of the person who owed the support is located.

(3) NOTIFICATION AND APPEAL OF LIEN. (a) *Notice.* When a delinquent support obligation is included in the statewide support lien docket, the department shall provide notice to the obligor that a lien exists with respect to the delinquent support obligation. The notice shall include the amount of the delinquent child support obligation and shall inform the obligor that the lien is in effect. The notice shall inform the obligor of the obligor's right to request a financial records and court order review under par. (ag) and the obligor's right to request a court hearing under par. (ar). The notice under this paragraph shall also inform the obligor that the department will not take actions to enforce the lien if the obligor pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department or a county child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

(ag) *Financial records and court order review.* 1. Within 10 business days of the date of the notice under par. (a), the obligor may file a written request for a financial records and court order review with the county child support agency. If the obligor makes a timely request for a financial records and court order review under this paragraph, the department shall hold the review as soon as practicable, but in no event to exceed 60 days after the date of the request. The department shall conduct the financial records and court order review at no charge to the obligor. As soon as practicable after conducting the financial records and court order review, the department shall make a determination regarding whether the amount of the delinquency contained in the notice is correct and shall provide a copy of the determination to the obligor. If the department determines that the amount of the delinquency is incorrect, the department shall take appropriate actions to correct the inaccuracy. The notice of the determination shall include information regarding the obligor's right to request a review of the determination under subd. 2.

2. If the obligor disagrees with the determination of the department, the obligor may request a hearing with the court or a circuit court commissioner to review the department's determination. To request a hearing under this subdivision, the obligor shall make the request within 5 business days of the date of the department's determination under subd. 1. The obligor shall make the request in writing and shall mail or deliver a copy of the request to the county child support agency. If a timely request for a hearing is made under this subdivision, the court or circuit court commissioner shall hold the hearing within 15 business days of the request. If, at the hearing, the obligor establishes that the lien is not proper because of a mistake of fact, the court or circuit court commissioner shall order the department to remove the lien from the statewide support lien docket or adjust the amount of the delinquent obligation.

(ar) *Direct appeal.* If the obligor has not requested a financial records and court order review under par. (ag), the obligor may request a hearing under this paragraph within 20 business days of the date of the notice under par. (a). The obligor shall make the request in writing and shall mail or deliver a copy of the request to the county child support agency. If a timely request for a hearing is made under this paragraph, the court or circuit court commissioner shall schedule a hearing within 10 days after the date of the request. If, at the hearing, the obligor establishes that the lien is not proper because of a mistake of fact, the court or circuit court commissioner shall order the department to remove the lien from the statewide support lien docket or adjust the amount of the delinquent obligation.

(b) *Appeal.* If a circuit court commissioner conducts a hearing under par. (ag) or (ar), the department or the obligor may, within 15 business days after the date of the decision by the circuit court commissioner, request review of the decision by the court having jurisdiction over the action. The court conducting the review may order that the lien be withdrawn from the statewide support lien dockets or may order an adjustment of the amount of the delinquent obligation. If no appeal is sought or if the court does not order the withdrawal of the lien, the department may take appropriate actions to enforce the lien.

(4) POWERS OF LEVY AND DISTRAINT; GENERALLY. If any obligor neglects or refuses to pay the support owed by the obligor after the department has made demand for payment, the department may collect that support and the levy fees and costs under sub. (11) by levy upon any property belonging to the obligor as provided in subs. (5) to (7). Whenever the value of any property that has been levied upon under this subsection is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the obligor until the support owed and levy costs are fully paid.

(5) LEVYING AGAINST FINANCIAL ACCOUNTS. (a) *Definitions.* In this subsection:

1. "Account" has the meaning given in s. 49.853 (1) (a).

2. "Financial institution" has the meaning given in s. 49.853 (1) (c).

3. "Lien" means a lien under this section or a lien in favor of another state based on a support obligation, including a lien placed under s. 769.305 (2) (g).

(b) *Notice to the financial institution.* To enforce a lien by levying against an account at a financial institution, the department shall send a notice of levy to the financial institution instructing the financial institution to prohibit the closing of or withdrawals from one or more accounts that the obligor owns in whole or in part, up to a total amount that is sufficient to pay the support owed, financial institution fees under par. (e), and estimated levy fees and costs under sub. (11), until further notice from the department or a court. The financial institution shall comply with the notice

of levy and shall hold the amount specified in the notice until the financial institution receives further instructions from the department or a court.

(c) *Liens in favor of other states*. 1. Notwithstanding par. (b), if a lien under par. (b) is in favor of another state, the notice sent by the department to the financial institution may consist of the request from the other state to enforce the lien, a certification by the department that any necessary due process requirements were met in the other state, a request that the financial institution honor the request from the other state by sending the amount specified in the request directly to the other state, and the address to which the financial institution shall send the funds.

2. If a financial institution receives directly from another state, or a child support agency in another state, a notice of levy or request to enforce a lien in favor of that other state, along with a certification by the other state that any necessary due process requirements were met in the other state, the financial institution shall honor the notice of levy or request from the other state by sending the amount specified in the notice of levy or request, up to the amount contained in the account or accounts minus any financial institution fee under par. (e) and levy fee under sub. (11) (a), directly to the other state at the address to which the financial institution is directed to send the funds in the notice or request.

3. Notice and hearing requirements under pars. (d) and (f) do not apply to a lien in favor of another state.

(d) *Notice to the obligor and certain others*. No later than the next business day after the department sends notice of levy to the financial institution under par. (b), the department shall send a copy of the notice of levy to the obligor. The department shall also send a copy of the notice of levy to any other person who has an ownership interest in the account. The notices required under this paragraph shall be in the form determined by the department, however the notice shall include language stating all of the following:

1. That the obligor has been certified as delinquent in paying support.

2. The amount of the support owed.

3. The financial institution to which the department sent the notice under par. (b).

4. That one or more accounts owned in whole or in part by the obligor at the financial institution have been frozen, up to a total amount that is sufficient pay the support owed, the department's levy costs and financial institution fees.

6. That the obligor may request a hearing within 20 business days after the date of the notice, by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

6m. That a person, other than the obligor, who holds the account jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of the jointly held account that is attributable to his or her net contributions to the jointly held account.

7. The address to which the request for hearing must be mailed or delivered in order to schedule a hearing.

(e) *Financial institution fees*. A financial institution may continue to collect fees, under the terms of the account agreement, on accounts frozen or levied against under this subsection. In addition to the levy fee authorized under sub. (11) (a), a financial institution may collect any early withdrawal penalty incurred under the terms of an account as a result of the levy. Financial institution fees authorized under this paragraph may be charged to the account immediately prior to the remittance of the amount to the department or the other state and may be charged even if the amounts in the obligor's accounts are insufficient to pay the total amount of support owed and the department's levy costs under sub. (11) (b).

(f) *Hearings*. A hearing requested under par. (d) 6. shall be conducted before the circuit court rendering the order to pay support. Within 45 business days after receiving a request for hearing under par. (d) 6., the court shall conduct the hearing. A circuit court commissioner may conduct the hearing. The hearing shall be limited to a review of whether the account holder owes the amount of support certified and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit court commissioner shall order the department to instruct the financial institution to release all or a portion of the funds. If the court or circuit court commissioner determines that the account holder does not owe support or owes less than the amount claimed by the department, the court shall order the department to instruct the financial institution to release the funds in the account or the excess of those funds over the amount of the delinquency to the account holder. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action.

(6) LEVYING AGAINST OTHER PERSONAL PROPERTY. (a) *When notice of seizure required*. If the department has enforced a lien under this section by levying against personal property, the department shall immediately notify the obligor that the property has been seized. The department shall provide the notice of seizure under this paragraph to any person having an ownership interest in the property or any other person with an interest of record in the property. If the property is titled, the department shall also send a copy of the notice of seizure to the state agency that titles the property. A state agency receiving a notice under this paragraph may not transfer title to the personal property described in the notice, except on the instructions of a court or the department.

(b) *Content of notice of seizure*. The notice provided under par. (a) shall include all of the following:

1. The name of the obligor and the amount of the support owed.

2. A description of the personal property seized.

3. A statement that the obligor may, within 20 business days after the date of the notice, request a hearing on the questions of whether past−due support is owed and whether the property was wrongfully seized.

3m. A statement that a person, other than the obligor, who holds the personal property jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of the jointly held personal property that is attributable to his or her net contributions to the jointly held personal property.

4. A statement that the hearing may be requested by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

(c) *Hearing*. If a hearing is requested under par. (b) 4., the court or circuit court commissioner shall schedule a hearing within 10 business days after receiving the request under par. (b) 4. The hearing shall be limited to a review of whether the obligor owes the amount of support owed that is stated in the notice of seizure and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit

court commissioner shall order the department to return the seized property within 15 business days. If the court or circuit court commissioner determines that the obligor does not owe support or owes less than the amount claimed by the department, the court shall order the department to return the seized property within 15 business days or specify the amount which may be retained by the department after the sale of the seized property. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action. The court reviewing the decision may order the department to return the seized property or may authorize the sale of the property by the department. If the department is ordered to return seized property under this paragraph, the court shall instruct any state agency responsible for titling the property that it may transfer title to the property without receiving instructions from a court or the department under par. (a).

(d) *Notice of sale.* As soon as practicable after seizing the personal property and after any requested hearings are conducted under par. (c), the department shall send a notice to the obligor stating that the department intends to issue an execution requiring the sheriff to sell the property within 90 days of the date of the execution. The final notice shall include a notice of the obligor's right to redeem the property under par. (e) 8.

(e) *Execution and sale.* After the department has sent the notice under par. (d), the department may issue an execution on any personal property identified in the notice to enforce a lien contained in the statewide support lien docket. The department shall provide a copy of an execution under this paragraph to the obligor and to any other person having an interest in the property. The provisions of ch. 815 apply to the executions issued by the department, except as follows:

1. References to judgments shall be read as references to liens entered in the statewide support lien docket, references to debtors shall be read as references to obligors and references to the court or a judge shall be read as references to the department.

2. Sections 815.01 to 815.04 do not apply. The department may not issue an execution more than 5 years after the date on which the lien was entered in the statewide support lien docket.

3. Section 815.05 does not apply. If the department has delegated under sub. (17) its authority under this subsection, the execution shall be signed by the director of the child support agency that is initiating the property seizure on behalf of the department. The execution shall include all of the following information:

a. The date that a lien against the obligor was first entered on the child support lien docket.

b. The amount of past due child support that is owed at the time the execution is issued.

c. A description of the personal property.

d. A directive to the officer to whom the execution is addressed to sell the property within 90 days of the date of the execution.

4. The execution shall be made returnable under s. 815.06 to the department within 90 days, rather than 60 days, after its receipt by the officer.

5. Sections 815.07, 815.09 to 815.12, 815.14, 815.15, 815.18 to 815.21, 815.25 and 815.26 do not apply.

6. Notwithstanding s. 815.29, the officer may not sell the personal property without 20 days advance notice. In addition to the notice required under s. 815.29, the officer to whom the execution is issued shall notify the obligor of the time and place of the sale of the personal property.

7. If, prior to the sale of the personal property, the department or child support agency notifies the officer that the obligor has paid the amount owed together with any levy fees and costs under sub. (11) or that the custodial parent to whom the support is owed has died, the officer shall discontinue the execution.

8. Sections 815.52 to 815.55 do not apply. The obligor may redeem the property prior to the date of the sale by payment of the full amount of support owed together with any levy fees and costs under sub. (11). The property may not be redeemed after it is sold. If the property is redeemed, the county child support agency shall issue a certificate upon redemption that includes the date of redemption, the amount of money paid and a description of the property redeemed. The certificate of redemption may be recorded in the office of the register of deeds. If titled property is redeemed, the department shall instruct the titling agency that the agency may transfer title to the property without receiving instructions from a court or the department under par. (a). Upon the sale of personal property on execution, the officer shall issue a certificate of sale to the purchaser within 10 days of the sale. If titled property is sold, the department shall instruct the titling agency to transfer title of the sold property to the purchaser.

(f) *Updating the lien docket.* The department shall update the statewide support lien docket to remove a lien that is satisfied by an execution or sale under this subsection.

(7) LEVYING AGAINST REAL PROPERTY. (a) *When notice of intent to levy required.* To enforce a lien under this section by levying against real property, the department shall provide the obligor and all owners of the real property with a notice of intent to levy under par. (b) 1. A copy of the notice under par. (b) 1. shall be provided to the register of deeds in the county where the real property is located. A register of deeds receiving a notice of intent to levy under this paragraph shall file the notice of intent to levy. The department shall provide a notice of intent to levy under par. (b) 2. to any person having an interest of record in the real property.

(b) *Content of notice of intent.* 1. The notice provided under par. (a) to the obligor, to owners of the property and to the register of deeds shall include all of the following:

a. The name of the obligor and the amount of the support owed.

b. A description of the real property against which the department intends to levy.

c. A statement that the obligor may, within 20 business days after the date of the notice, request a hearing on the question of whether past−due support is owed.

d. A statement that a person, other than the obligor, who holds the real property jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of the jointly held real property that is attributable to his or her net contributions to the jointly held real property.

e. A statement that the hearing may be requested by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

2. In addition to the information included under subd. 1. a. to c., the notice provided under par. (a) to a person having an interest of record in the real property shall include a request that the interest holder notify the department, within 10 business days after receiving the notice, of the amount and nature of the person's interest in the property.

(c) *Hearing.* If a hearing is requested under par. (b) 1. c., the court or circuit court commissioner shall schedule a hearing within 10 business days after receiving the request under par. (b) 1. c. The hearing shall be limited to a review of whether the obligor owes the amount of support owed that is stated in the notice of intent under par. (b) and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit court commissioner shall order the department not to proceed with the levy. If the court or circuit

court commissioner determines that the obligor does not owe support or owes less than the amount claimed by the department, the court shall order the department not to proceed with the levy or specify the amount that may be retained by the department after the sale of the seized property. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action. The court reviewing the decision may order the department not to proceed with the levy of the property or may authorize the sale of the property by the department.

(d) *Final notice.* Unless the department has been directed not to proceed with the levy in a hearing under par. (c) or unless the support owed and any levy fees and costs under sub. (11) have been paid, the department may send to the obligor a final notice of intent to seize and sell the property. The final notice may not be sent until 20 business days after the date of the notice of intent to levy under par. (a) or after any requested hearings under par. (c) have been completed. The final notice shall state that the department intends to issue an execution requiring the sheriff to seize and sell the property within 90 days of the date of the execution and that the obligor must vacate the property by the time of sale. The final notice shall include a notice of the obligor's right to redeem the property under par. (e) 8. The department shall provide a copy of any final notice under this paragraph to the register of deeds in the county where the real property is located. A register of deeds receiving a final notice under this paragraph shall file the final notice.

(e) *Execution and sale.* After the department has sent the final notice under par. (d), the department may issue an execution on any real property identified in the notice to enforce a lien contained in the statewide support lien docket. The department shall provide a copy of an execution under this paragraph to the obligor and to any other person having an interest in the property. The provisions of ch. 815 apply to the executions issued by the department, except as follows:

1. References to judgments shall be read as references to liens entered in the statewide support lien docket, references to debtors shall be read as references to obligors and references to the court or a judge shall be read as references to the department.

2. Sections 815.01 to 815.04 do not apply. The department may not issue an execution more than 5 years after the date on which the lien was entered in the statewide support lien docket.

3. Section 815.05 does not apply. If the department has delegated under sub. (17) its authority under this subsection, the execution shall be signed by the director of the child support agency that is initiating the real property seizure on behalf of the department. The execution shall include all of the following information:

a. The date that a lien against the obligor was first entered on the child support lien docket.

b. The amount of past due child support that is owed at the time the execution is issued.

c. A legal description of the property against which the lien is to be executed. Including the location, of the property against which the lien is to be executed.

d. The street address or location of the property against which the lien is to be executed.

e. A directive to the officer to whom the execution is addressed to seize and sell the property within 90 days of the date of the execution.

4. The execution shall be made returnable under s. 815.06 to the department within 90 days, rather than 60 days, after its receipt by the officer.

5. Sections 815.07, 815.09 to 815.12, 815.14, 815.15, 815.18 to 815.21, 815.25 and 815.26 do not apply.

6. In addition to the notice required under s. 815.31, the officer to whom the execution is issued shall notify the obligor of the time and place of the sale of the real property.

7. If, prior to the sale of the real property, the department or child support agency notifies the officer that the obligor has paid the amount owed together with any levy fees and costs under sub. (11) or that the custodial parent to whom the support is owed has died, the officer shall discontinue the execution.

8. Sections 815.38 to 815.55 do not apply. The obligor may redeem the property prior to the date of the sale by payment of the full amount of support owed together with any levy fees and costs under sub. (11). The property may not be redeemed after it is sold. If the property is redeemed, the county child support agency shall issue a certificate upon redemption that includes the date of redemption, the amount of money paid and a description of the property redeemed. The certificate of redemption may be recorded in the office of the register of deeds. Upon the sale of the real estate on execution, the officer shall issue a deed and a certificate of sale to the purchaser within 10 days of the sale.

9. The department may issue an administrative order directing a local law official to remove the obligor from the property if property is not vacated before the time of sale. A person occupying the property under claim of ownership, lease or month−to−month tenancy may not be removed except by proceedings under ch. 799 or 843.

10. Sections 815.59 to 815.64 do not apply.

(f) *Updating the lien docket.* The department shall update the statewide support lien docket to remove a lien that is satisfied by an execution or sale under this subsection.

(7m) JOINTLY HELD PROPERTY. A person, other than the obligor, who holds a joint interest in property levied against under this section may request a hearing, as provided in subs. (5) (d) 6m., (6) (b) 3m. or (7) (b) 1. d., to determine the proportion of the value of the property that is attributable to his or her net contribution to the property. If a hearing is requested under this subsection, the court or circuit court commissioner shall schedule a hearing within 10 days after receiving the request. The hearing shall be limited to determining the proportion of the value of the property that is attributable to the person's net contribution to the property. If more than one person requests a hearing under this subsection, or if the obligor requests a hearing under sub. (5) (f), (6) (c) or (7) (c), with respect to the same property, the court or circuit court commissioner may schedule the hearings together. The person requesting the hearing shall have the burden of proving his or her net contribution by clear and convincing evidence. If the court determines that a portion of the jointly held property is attributable to the contributions of the person, the court shall direct the department or the county child support agency to pay the person, from the net balance of the jointly held account or the net proceeds of the sale of the jointly held real or personal property, the proportion of the gross value of the account or real or personal property that is attributable to that person. If a circuit court commissioner conducts the hearing under this subsection, the person may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action.

(8) DUTIES TO SURRENDER; GENERALLY. Any person in possession of or obligated with respect to property or rights to property that is subject to levy under this section and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights that is, at the time of the demand, subject to any prior attachment, execution under any judicial process, claim of ownership, lease or month−to−month tenancy.

(9) NOTICE. Any notice required to be provided under this section may be provided by sending the notice by regular mail to the last−known address of the person to whom notice is to be sent.

(11) LEVY FEES AND COSTS. (a) *Third parties.* Any 3rd party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy. The 3rd party shall deduct the fee from the proceeds of the levy.

(b) *The department.* The department may assess a collection fee to recover the department's costs incurred in levying against property under this section. The department shall determine its costs to be paid in all cases of levy. The obligor is liable to the department for the amount of the collection fee authorized under this paragraph. Fees collected under this paragraph shall be credited to the appropriation account under s. 20.437 (2) (ja).

(12) PRIORITIES AND USE OF PROCEEDS. (a) *Priorities.* A lien under this section has the same priority, from the date that the lien is effective, as a judgment docketed under s. 806.15. The lien is effective for a period of 5 years from the date the lien becomes effective.

(b) *Use of proceeds.* After paying any liens on a property that have priority over a lien under this section, the department shall apply all proceeds from a sale of that property under this section first against the support in respect to which the levy was made and then against levy fees and costs under sub. (11).

(c) *Refunds or credits.* The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim therefor and satisfactory proof of the claim, to the person entitled to that amount.

(13) RELEASE OF LEVY; SUSPENSION OF PROCEEDINGS TO ENFORCE LIEN. (a) *Release.* The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(b) *Settlement.* If the obligor enters in to an alternative payment arrangement in accordance with guidelines established under s. 49.858 (2) (a), the department shall suspend all actions to enforce a lien under this section as long as the obligor remains in compliance with the alternative payment arrangement.

(14) WRONGFUL LEVY. If the department determines that property has been wrongfully levied upon, the department shall return the property or, if the property has been sold, shall return an amount of money equal to the amount of money, or value of the property, levied upon. This subsection does not prevent a person whose property has been wrongfully levied upon from seeking relief, under other provisions of the statutes, against the state for damages that have not been compensated for under this subsection.

(15) ACTIONS AGAINST THIS STATE. (a) *Commencement of actions.* If the department has levied upon property, any person, other than the obligor who is liable to pay the support out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. If the county child support agency has levied upon property pursuant to delegated authority under sub. (17), any person, other than the obligor who is liable to pay the support out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the county child support agency in the circuit court for the county where the court order for the payment of support, upon which the seizure is based, was first entered or last modified. That action may be brought whether or not that property has been surrendered to the department or the county child support agency. The court may grant only the relief under par. (b). No other action to question the validity of or restrain or enjoin a levy by the department or a county child support agency may be maintained.

(b) *Remedies.* In an action under par. (a), prior to the sale of the property, if the court determines that property has been improperly levied upon, the court may enjoin the enforcement of the levy and order the return of the property, or may grant a judgment for the amount of money obtained by levy. The court may also order relief necessary to protect the interests of owners of the property, other than the obligor, including, when appropriate, partition of the property. After the sale of the property, if the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) *Validity of determination.* For purposes of an adjudication under this subsection, there is a rebuttable presumption that the support obligation upon which the lien is based is valid.

(17) DELEGATION AND POWER TO CONTRACT. The department may delegate any duties or powers given to the department under this section to county child support agencies, except that the department must approve the initiation of any levy proceedings under sub. (7). The department shall promulgate rules prohibiting a county child support agency from using the powers delegated under this subsection to enforce a child support lien, if the value of the property that is subject to the lien is below the dollar amount specified in the rules.

(18) PRESERVATION OF REMEDIES. The availability of the remedies under this section does not abridge the right of the department to pursue other remedies.

History: 1997 a. 191; 1999 a. 9; 2001 a. 61; 2003 a. 33; 2007 a. 20; 2013 a. 170; 2015 a. 55.

Cross−reference: See also ch. DCF 152, Wis. adm. code.

The Child Support Lien Docket. Chesnik & Petersen. Wis. Law. June 2001.

49.855 Certification of delinquent payments. (1) (a) If a person obligated to pay child support, family support, maintenance, or the receiving and disbursing fee under s. 767.57 (1e) (a) is delinquent in making any of those payments or owes an outstanding amount that has been ordered by the court for past support, medical expenses, or birth expenses, for cases in which the payee is receiving services under s. 49.22 or the state is a real party in interest under s. 767.205 (2), the department of children and families shall certify the delinquent payment or outstanding amount to the department of revenue.

(b) At least annually, the department of children and families shall certify to the department of revenue delinquent payments of the receiving and disbursing fee under s. 767.57 (1e) (a) not certified under par. (a) and shall provide to the department of revenue any certifications of delinquencies or outstanding amounts that it receives from another state because the obligor resides in this state.

(2m) At least annually, the department of health services shall certify to the department of revenue any obligation owed to the department of health services under s. 46.10 if the obligation is rendered to a judgment.

(2p) At least annually, the department of corrections shall certify to the department of revenue any obligation owed to the department of corrections under s. 301.12 if the obligation is rendered to a judgment.

(2r) At least annually, the department of children and families shall certify to the department of revenue any obligation owed to that department under s. 49.345 if the obligation is rendered to a judgment.

(3) Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the obligor that the state intends to reduce any state tax refund or credit due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past support, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. Within 10 days after receiving a request for hearing under this subsection, the court shall set the

matter for hearing. Pending further order by the court or a circuit court commissioner, the department of children and families or its designee, whichever is appropriate, is prohibited from disbursing the obligor's state tax refund or credit. A circuit court commissioner may conduct the hearing. The sole issues at that hearing shall be whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld from a tax refund or credit shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay shall also be an issue at the hearing if the obligation relates to an order under s. 767.805 (4) (d) 1. or 767.89 (3) (e) 1. and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

(4) (a) The department of revenue shall send the portion of any state tax refunds or credits withheld for delinquent child or family support or maintenance or past support, medical expenses, or birth expenses to the department of children and families or its designee for deposit in the support collections trust fund under s. 25.68 and shall send the portion of any state tax refunds or credits withheld for delinquent receiving and disbursing fees to the department of children and families or its designee for deposit in the appropriation account under s. 20.437 (2) (ja). The department of children and families shall make a settlement at least annually with the department of revenue. The settlement shall state the amounts certified, the amounts deducted from tax refunds and credits, and the administrative costs incurred by the department of revenue.

(b) The department of administration shall send the portion of any federal tax refunds or credits received from the internal revenue service that was withheld for delinquent child or family support or maintenance or past support, medical expenses, or birth expenses to the department of children and families or its designee for deposit in the support collections trust fund under s. 25.68 and shall send the portion of any federal tax refunds or credits received from the internal revenue service that was withheld for delinquent receiving and disbursing fees to the department of children and families or its designee for deposit in the appropriation account under s. 20.437 (2) (ja).

(4m) (a) In this subsection, "vendor" means a person providing goods or services to this state under subch. IV or V of ch. 16 or under ch. 84 or any medical assistance provider, as defined under s. 49.43 (10).

(b) The department of revenue may provide a certification that it receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon receipt of the certification, the department of administration shall determine whether the obligor is a vendor or is receiving any other payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration determines that the obligor is a vendor or is receiving payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount certified from those payments and shall notify the obligor that the state intends to reduce any payments due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past support, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20 days after receipt of the notice the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. An obligor may, within 20 days after receiving notice, request a hearing under this paragraph. Within 10 days after receiving a request for hearing under this paragraph, the court shall set the matter for hearing. A circuit court commissioner may conduct the hearing. Pending further order by the court or circuit court commissioner, the department of children and families or its designee, whichever is appropriate, may not disburse the payments withheld from the obligor. The sole issues at the hearing are whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay is also an issue at the hearing if the obligation relates to an order under s. 767.805 (4) (d) 1. or 767.89 (3) (e) 1. and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

(c) Except as provided by order of the court after hearing under par. (b), the department of administration shall continue withholding until the amount certified is recovered in full. The department of administration shall transfer the amounts withheld under this paragraph to the department of children and families or its designee, the department of health services, or the department of corrections, whichever is appropriate. The department of children and families or its designee shall deposit amounts withheld for delinquent child or family support, maintenance, or receiving and disbursing fees or past support, medical expenses, or birth expenses in the appropriation account under s. 20.437 (2) (ja).

(d) A setoff under s. 73.12 (3) has priority over withholding under this subsection.

(5) Certification of an obligation to the department of revenue does not deprive any party of the right to collect the obligation or to prosecute the obligor. The department of children and families or its designee shall immediately notify the department of revenue of any collection of an obligation that has been certified to the department of revenue.

(6) If the state implements the child and spousal support and establishment of paternity and medical support liability program under ss. 49.22 and 59.53 (5), the state may act under this section in place of the county child support agency under s. 59.53 (5).

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105; 2005 a. 22, 25, 304; 2005 a. 443 s. 265; 2007 a. 20 ss. 1711 to 1718, 9121 (6) (a); 2007 a. 96; 2009 a. 113, 180; 2015 a. 55, 172.

The state's right to certification and interception is not extinguished by a child's attainment of majority. Marriage of Howard v. Howard, 130 Wis. 2d 206, 387 N.W.2d 96 (Ct. App. 1986).

49.856 Notification of delinquent payments. (1) In this section:

(a) "Agency" means the county child support agency under s. 59.53 (5).

(b) "Department" means the department of children and families.

(c) "Obligor" means a person who owes a delinquent child support, family support or maintenance payment or who owes an outstanding amount that has been ordered by a court for past support, medical expenses or birth expenses and that delinquent payment or outstanding amount is specified in the statewide support lien docket under s. 49.854 (2) (b).

(2) If an obligor receives a judgment against another person or has settled a lawsuit against another person that provides for the payment of money, the department or agency may send a notice to any person who is ordered to pay the judgment, who has agreed to the settlement or who holds the amount of the judgment or settlement in trust. The notice shall inform the person that the amount of the judgment or settlement due the obligor is subject to a lien by the department for the payment of the delinquent payment or outstanding amount specified in the statewide support lien docket under s. 49.854 (2) (b). The notification shall include the name and address of the obligor and the total amount specified in the statewide support lien docket under s. 49.854 (2) (b). Upon receipt of a notification, the person receiving the notification shall withhold an amount equal to the amount specified in the statewide support lien docket under s. 49.854 (2) (b) before making any payment under the judgment or pursuant to the settlement.

(3) When the department or agency notifies a person under sub. (2), the department or agency shall send a notice to the last−

known address of the obligor. The notice shall do all of the following:

(a) Inform the obligor that the department or agency notified the person who owes money to the obligor or who holds money in trust for the obligor under a judgment or pursuant to a settlement to withhold the amount that was specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment that may be paid to the obligor as a result of the judgment or settlement.

(b) Inform the obligor that he or she may request a hearing before the circuit court that rendered the order to pay support, maintenance, medical expenses or birth expenses within 20 business days after receipt of this notice. The request shall be in writing and the obligor shall mail or deliver a copy of the request to the agency.

(c) Inform the obligor that if a hearing is requested under par. (b) the department or agency will not require the person withholding the amount to send the amount to that department or agency until a final decision is issued in response to the request for a hearing.

(d) Request that the obligor inform the department or agency if a bankruptcy stay is in effect with respect to the obligor.

(4) If the obligor requests a hearing under sub. (3) (b), the circuit court shall schedule a hearing within 10 business days after receiving the request. The only issue at the hearing shall be whether the person owes the delinquent payment or outstanding amount specified in the statewide support lien docket under s. 49.854 (2) (b). A circuit court commissioner may conduct the hearing.

(5) Receipt of a notification by a person under sub. (2) shall constitute a lien, equal to the amount specified in the statewide support lien docket under s. 49.854 (2) (b), on any lump sum payment resulting from a judgment or settlement that may be due the obligor. The department or agency shall notify the person who received the notification under sub. (2) that the obligor has not requested a hearing or, if he or she has requested a hearing, of the results of that hearing, and of the responsibilities of the person who received the notification under sub. (2), including the requirement to submit the amount specified in the statewide support lien docket under s. 49.854 (2) (b). Use of the procedures under this section does not prohibit the department or agency from attempting to recover the amount specified in the statewide support lien docket under s. 49.854 (2) (b) through other legal means. The department or agency shall promptly notify any person who receives notification under sub. (2) if the amount specified in the statewide support lien docket under s. 49.854 (2) (b) has been recovered by some other means and no longer must be withheld from the judgment or settlement under this section.

(6) After receipt of notification by a person under sub. (2) and before receipt of notice from the department under sub. (5) that the amount specified in the statewide support lien docket under s. 49.854 (2) (b) has been otherwise recovered, no release of any judgment, claim or demand by the obligor shall be valid as against a lien created under sub. (5), and the person making any payment to the obligor to satisfy the judgment or settlement shall remain liable to the department for the amount of the lien.

History: 1997 a. 191; 2001 a. 61; 2007 a. 20.

49.857 Administrative enforcement of support; denial, nonrenewal, restriction and suspension of licenses.

(1) In this section:

(a) "Child support agency" means a county child support agency under s. 59.53 (5).

(b) "Credential" means a license, permit, certificate or registration that is granted under chs. 440 to 480.

(c) "Credentialing board" means a board, examining board or affiliated credentialing board in the department of safety and professional services that grants a credential.

(cf) "Department" means the department of children and families.

(d) "License" means any of the following:

1. A license issued under s. 13.63 or a registration issued under s. 13.64.

2. An approval specified in s. 29.024 (2g) or a license issued under ch. 169.

2m. A fishing approval issued under s. 29.229.

3. A license issued under s. 48.66 (1) (a) or (b).

4. A certification, license, training permit, registration, approval or certificate issued under s. 49.45 (2) (a) 11., 97.33, 97.605 (1) (a) or (b), 97.67 (1), 254.176 (1) or (3) (a), 254.178 (2) (a), 254.20 (2), (3) or (4), or 256.15 (5) (a) or (b), (6g) (a), or (8) (a).

5. A business tax registration certificate issued under s. 73.03 (50).

6. A license, registration, registration certificate or certification specified in s. 93.135 (1).

7. A license, permit or certificate of certification or registration specified in s. 101.02 (21) (a).

8. A license issued under s. 102.17 (1) (c), 104.07 or 105.05.

10. A certificate issued under s. 103.275, 103.34, 103.91, or 103.92.

11. A license or permit issued under chs. 115 and 118.

12. A license or certificate of registration issued under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or subch. IV of ch. 551.

13. A permit issued under s. 170.12.

14. A certification under s. 165.85.

14m. A registration issued under ss. 202.12 to 202.14 or 202.22.

15. A license, permit or registration issued under ss. 218.0101 to 218.0163, 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61 or 343.62.

16. A license, registration or certification specified in s. 299.08 (1) (a).

17. A license issued under ch. 343 or, with respect to restriction, limitation or suspension, an individual's operating privilege, as defined in s. 340.01 (40).

18. A credential.

19. A license issued under s. 563.24 or ch. 562.

20. A license issued under s. 628.04, 628.92 (1), 632.69 (2), or 633.14 or a temporary license issued under s. 628.09.

21. A license to practice law.

(e) "Licensing agency" means a board, office or commissioner, department or division within a department that grants or issues a license, but does not include a credentialing board.

(em) "Licensing authority" means the supreme court or the Lac du Flambeau band of the Lake Superior Chippewa.

(f) "Subpoena or warrant" means a subpoena or warrant issued by the department or a child support agency and relating to paternity or support proceedings.

(g) "Support" means child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

(2) (a) The department shall establish a system, in accordance with federal law, under which a licensing authority is requested, and a licensing agency or credentialing board is required, to restrict, limit, suspend, withhold, deny, refuse to grant or issue, or refuse to renew or revalidate a license in a timely manner upon certification by and in cooperation with the department, if the individual holding or applying for the license is delinquent in making court−ordered payments of support or fails to comply, after appropriate notice, with a subpoena or warrant.

(b) Under the system, the department shall enter into a memorandum of understanding with a licensing authority, if the licensing authority agrees, and with a licensing agency. A memorandum of understanding under this paragraph shall address at least all of the following:

1. The circumstances under which the licensing authority or the licensing agency must restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license and guidelines for determining the appropriate action to take. The memorandum of understanding with the department of safety and professional services shall include the circumstances under which the department of safety and professional services shall direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential and guidelines for determining the appropriate action to take. The guidelines under this subdivision for determining the appropriate action to take shall require the consideration of whether the action is likely to have an adverse effect on public health, safety or welfare or on the environment, and of whether the action is likely to adversely affect individuals other than the individual holding or applying for the license, such as employees of that individual.

2. Procedures that the department shall use for doing all of the following:

a. Certifying to the licensing authority or licensing agency a delinquency in support or a failure to comply with a subpoena or warrant. The memorandum of understanding with the department of safety and professional services shall include procedures for the department of safety and professional services to notify a credentialing board that a certification of delinquency in support or failure to comply with a subpoena or warrant has been made by the department of children and families with respect to an individual who holds or applied for a credential granted by the credentialing board.

b. Notifying an individual who is delinquent in making court−ordered payments of support under sub. (3) (a).

bg. Notifying an individual who is delinquent in making court−ordered payments of support and who fails to request a hearing under sub. (3) (am).

br. Notifying an individual who fails to comply with a subpoena or warrant under sub. (3) (b).

c. Notifying the licensing authority or licensing agency that an individual has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant. The memorandum of understanding with the department of safety and professional services shall include procedures for the department of safety and professional services to notify a credentialing board that an individual who holds or applied for a credential granted by the credentialing board has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant.

3. Procedures that the licensing authority or licensing agency shall use for doing all of the following:

a. Restricting, limiting, suspending, withholding, denying, refusing to grant or issue or refusing to renew or revalidate a license. The memorandum of understanding with the department of safety and professional services shall include procedures for the department of safety and professional services to direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential.

b. Notifying an individual of action taken under sub. (3) (c) 2.

c. Issuing or reinstating a license if the department of children and families notifies the licensing authority or licensing agency that an individual who was delinquent in making court−ordered payments of support has paid the delinquent support or made satisfactory alternative payment arrangements or that an individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant. The memorandum of understanding with the department of safety and professional services shall include procedures for the department of safety and professional services to direct a credentialing board to grant or reinstate a credential if the department of children and families notifies the department of safety and professional services that an individual who holds or applied for a credential granted by the credentialing board has paid the delinquent support or made satisfactory alternative payment arrangements or that an individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant.

d. Issuing or reinstating a license after the maximum time has elapsed if an individual who was delinquent in making court−ordered payments of support does not pay the delinquent support or make satisfactory alternative payment arrangements and if an individual who failed to comply with a subpoena or warrant fails to satisfy the requirements under the subpoena or warrant.

4. Procedures for the use under the system of social security numbers obtained from license applications.

5. Procedures for safeguarding the confidentiality of information about an individual, including social security numbers obtained by the department, the licensing authority, the licensing agency, or a credentialing board.

(c) 1. The system shall provide for adequate notice to an individual who is delinquent in making court−ordered payments of support, an opportunity for the individual to make alternative arrangements for paying the delinquent support, an opportunity for the individual to request and obtain a hearing before a court or circuit court commissioner as provided in sub. (3) and prompt reinstatement of the individual's license upon payment of the delinquent support or upon making satisfactory alternative payment arrangements.

2. The system shall provide for adequate notice to an individual who fails to comply with a subpoena or warrant, an opportunity for the individual to satisfy the requirements under the subpoena or warrant and prompt reinstatement of the individual's license upon satisfaction of the requirements under the subpoena or warrant.

(d) Notwithstanding pars. (b) 3. c. and (c), under the system a license may not be restricted, limited, suspended, withheld, denied or refused granting, issuing, renewing or revalidating for a delinquency in support for more than 5 years, or for a failure to comply with a subpoena or warrant for more than 6 months.

(3) (a) Before the department certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual is delinquent in making court−ordered payments of support, the department or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of delinquency in paying support will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of safety and professional services.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued. The notice shall inform the individual that he or she may be eligible for an occupational license under s. 343.10 if his or her operating privilege is suspended.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department or a child support agency. The notice shall inform the individual of how he or she

may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ac) 1. If an individual timely requests a hearing under par. (a) 5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court−ordered payments of support and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (a) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department may not place the individual's name on a certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department may not place the individual's name on a certification list.

(am) If an individual, after receiving notice under par. (a), does not timely request a hearing or pay the delinquent amount of support or make satisfactory alternative payment arrangements, the department shall place the individual's name on a certification list. Thereafter, the department or a child support agency shall provide a 2nd notice to the individual by regular mail that informs the individual of all of the following:

1. That the individual's name has been placed on a certification list, which will be provided to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of safety and professional services.

2. When the certification will be made.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department or a child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ar) 1. If an individual timely requests a hearing under par. (am) 5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court−ordered payments of support and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (am) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department shall remove the individual's name from the certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department may not place the individual's name on a certification list.

(b) Any subpoena or warrant shall include notice to the individual of the effect that a failure to comply with the subpoena or warrant may have on any license that the individual holds or for which the individual applies. If the individual fails to comply, before the department certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual has failed to comply with a subpoena or warrant, the department or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of the failure to comply with a subpoena or warrant will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of safety and professional services.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 6 months any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That certification will not be made if the individual satisfies the requirements under the subpoena or warrant. The notice shall inform the individual of how he or she may satisfy those requirements.

(bm) If an individual, after receiving notice under par. (b), does not satisfy the requirements under the subpoena or warrant, the department shall place the individual's name on a certification list.

(c) If the department of children and families provides a certification list to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of safety and professional services, upon receipt of the list the licensing authority if the licensing authority agrees, the licensing agency or, with respect to a credential granted by a credentialing board, the department of safety and professional services shall do all of the following:

1. In accordance with a memorandum of understanding entered into under sub. (2) (b), restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license if the individual holding or applying for the license is included on the list.

2. Provide notice to the individual by regular mail of the action taken under subd. 1.

(d) 1. Subject to sub. (2) (d), if an individual who, on the basis of delinquent support, is denied a license or whose license, on the basis of delinquent support, is restricted, limited, suspended, or refused renewal or revalidation under a memorandum of understanding entered into under sub. (2) (b) pays the delinquent amount of support in full or makes satisfactory alternative payment arrangements, the department of children and families shall immediately notify the licensing authority or licensing agency to

issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of safety and professional services shall, upon notice by the department of children and families, notify the credentialing board to grant or reinstate the individual's credential.

2. Subject to sub. (2) (d), if an individual who, on the basis of a failure to comply with a subpoena or warrant, is denied a license or whose license, on the basis of a failure to comply with a subpoena or warrant, is restricted, limited, suspended, or refused renewal or revalidation under a memorandum of understanding entered into under sub. (2) (b) satisfies the requirements under the subpoena or warrant, the department of children and families shall immediately notify the licensing authority or licensing agency to issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of safety and professional services shall, upon notice by the department of children and families, notify the credentialing board to grant or reinstate the individual's credential.

(4) Each licensing agency shall enter into a memorandum of understanding with the department of children and families under sub. (2) (b) and shall cooperate with the department of children and families in its administration of s. 49.22. The department of safety and professional services shall enter into a memorandum of understanding with the department of children and families on behalf of a credentialing board with respect to a credential granted by the credentialing board.

(5) The restriction, limitation, suspension, withholding or denial of, or the refusal to grant, issue, renew or revalidate, a license under a memorandum of understanding entered into under sub. (2) (b) is not subject to administrative review under ch. 227.

History: 1997 a. 191; 1999 a. 9, 31, 32, 186; 2001 a. 56, 61; 2005 a. 25; 2007 a. 20, 130, 196; 2009 a. 2, 3, 344, 405; 2011 a. 32; 2013 a. 20; 2015 a. 55.

Administrative Enforcement: A New Tool to Collect Support Arrears. Hickey. Wis. Law. Dec. 1998.

49.858 General provisions related to administrative support enforcement. (1) DEFINITION. In this section:

(a) "Department" means the department of children and families.

(b) "Support" has the meaning given in s. 49.857 (1) (g).

(2) RULES. For the procedures under this subchapter for the administrative enforcement of support obligations, the department shall promulgate rules related to all of the following:

(a) Establishing guidelines for appropriate payment plans or alternative payment arrangements for the payment by obligors of delinquent support.

(b) Providing notice of administrative support enforcement proceedings to obligees of delinquent support. The department may provide that notice be given to the obligee of the delinquent support whenever an enforcement proceeding under this subchapter is initiated or that notice be provided only upon request.

(c) Specifying the level of support that is overdue before an individual is considered to be delinquent in the payment of support for purposes of the administrative support enforcement proceedings under this subchapter. The rules shall provide that, for support that is payable on a periodic basis, an amount equal to at least 100 percent of the amount due in one month must be in arrears before the department may initiate any administrative support enforcement proceeding under this subchapter.

(3) REVIEW OF CIRCUIT COURT COMMISSIONER DECISIONS. If a circuit court commissioner conducts a hearing in any administrative support enforcement proceeding under s. 49.852, 49.856 or 49.857, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the matter.

History: 1997 a. 191; 2001 a. 61; 2007 a. 20.

Cross−reference: See also ch. DCF 152, Wis. adm. code.

49.86 Disbursement of funds and facsimile signatures. (1) In this section:

(a) "Department" means the department of children and families.

(b) "Secretary" means the secretary of children and families.

(2) Withdrawal or disbursement of moneys deposited in a public depository, as defined in s. 34.01 (5), to the credit of the department or any of its divisions or agencies shall be by check, share draft, or other draft signed by the secretary or by one or more persons in the department designated by written authorization of the secretary. Such checks, share drafts, and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary or his or her designees for affixing a facsimile signature. Any public depository shall be fully warranted and protected in making payment on any check, share draft, or other draft bearing such facsimile signature notwithstanding that the facsimile may have been placed thereon without the authority of the secretary or his or her designees.

History: 1995 a. 27 ss. 3213, 9130 (4); 1997 a. 3; 2007 a. 20.

49.89 Third party liability. (1) DEFINITION. In this section, "insurer" includes a sponsor, other than an insurer, that contracts to provide health care services to members of a group.

(2) SUBROGATION. The department of health services, the department of children and families, a county, or an elected tribal governing body that provides any public assistance under this chapter or under s. 253.05 as a result of the occurrence of an injury, sickness, or death that creates a claim or cause of action, whether in tort or contract, on the part of a public assistance recipient or beneficiary or the estate of a recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may make a claim or maintain an action or intervene in a claim or action by the recipient, beneficiary, or estate against the 3rd party. Subrogation under this subsection because of the provision of medical assistance under subch. IV constitutes a lien, equal to the amount of the medical assistance provided as a result of the injury, sickness, or death that gave rise to the claim. The lien is on any payment resulting from a judgment or settlement that may be due the obligor. A lien under this subsection continues until it is released and discharged by the department of health services.

(3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter or under s. 253.05, an applicant assigns to the state department, the county department or the tribal governing body that provided the assistance the right to make a claim to recover an indemnity from a 3rd party, including an insurer, if the assistance is provided as a result of the occurrence of injury, sickness or death that results in a possible recovery of an indemnity from the 3rd party.

(3m) NOTICE REQUIREMENTS. (a) An attorney retained to represent a current or former recipient of assistance under this chapter, or the recipient's estate, in asserting a claim that is subrogated under sub. (2) or assigned under sub. (3) shall provide notice under par. (c).

(b) If no attorney is retained to represent a current or former recipient of assistance under this chapter, or the recipient's estate, in asserting a claim that is subrogated under sub. (2) or assigned under sub. (3), the current or former recipient or his or her guardian or, if the recipient is deceased, the personal representative of the recipient's estate, shall provide notice under par. (c).

(bm) A person against whom a claim that is subrogated under sub. (2) or assigned under sub. (3) is made, or that person's attorney or insurer, shall provide notice under par. (c), if that person, attorney or insurer knows, or could reasonably determine, that the claimant is a recipient or former recipient of medical assistance under subch. IV, or is the estate of a former recipient of medical assistance under subch. IV.

(c) If a person is required to provide notice under this paragraph, the person shall provide notice by certified mail to the department that provided the assistance as soon as practicable

after the occurrence of each of the following events for a claim under par. (a) or (b):

1. The filing of the action asserting the claim.
2. Intervention in the action asserting the claim.
3. Consolidation of the action asserting the claim.
4. An award or settlement of all or part of the claim.

(4) CONTROL OF ACTION. The applicant or recipient or any party having a right under this section may make a claim against the 3rd party or may commence an action and shall join the other party as provided under s. 803.03 (2). Each shall have an equal voice in the prosecution of such claim or action.

(5) RECOVERY; HOW COMPUTED. Reasonable costs of collection including attorney fees shall be deducted first. The amount of assistance granted as a result of the occurrence of the injury, sickness or death shall be deducted next and the remainder shall be paid to the public assistance recipient or other party entitled to payment.

(6) DEPARTMENTS' DUTIES AND POWERS. The department of health services and the department of children and families shall enforce their rights under this section and may contract for the recovery of any claim or right of indemnity arising under this section.

(7) PAYMENTS TO LOCAL UNITS OF GOVERNMENT. (a) Except as provided in par. (f), any county or elected tribal governing body that has made a recovery under this section shall receive an incentive payment from the sum recovered as provided under this subsection.

(b) The incentive payment shall be an amount equal to 15 percent of the amount recovered because of benefits paid under s. 49.46, 49.465, 49.468, 49.47, or 49.471. The incentive payment shall be taken from the federal share of the sum recovered as provided under 42 CFR 433.153 and 433.154.

(bm) The incentive payment shall be an amount equal to 15 percent of the amount recovered because of benefits paid as state supplemental payments under s. 49.77. The incentive payment shall be taken from the state share of the sum recovered.

(c) The incentive payment shall be an amount equal to 15 percent of the amount recovered because of benefits paid under s. 49.20, 1997 stats., or s. 49.19, 49.785, or 253.05. The incentive payment shall be taken from the state share of the sum recovered, except that the incentive payment for an amount recovered because of benefits paid under s. 49.19 shall be considered an administrative cost under s. 49.19 for the purpose of claiming federal funding.

(d) 1. Any county or elected tribal governing body that has made a recovery under this section for which it is eligible to receive an incentive payment under par. (b) or (bm) shall report such recovery to the department of health services within 30 days after the end of the month in which the recovery is made in a manner specified by the department of health services.

2. Any county or elected tribal governing body that has made a recovery under this section for which it is eligible to receive an incentive payment under par. (c) shall report such recovery to the department of children and families within 30 days after the end of the month in which the recovery is made in a manner specified by the department of children and families.

(e) The amount of the recovery remaining after payments are made under pars. (b) to (c) shall be deposited in the state treasury and credited to the appropriation from which the assistance was originally paid.

(f) The amount of any incentive payment to which Milwaukee County would otherwise be entitled under this subsection for a recovery under this section due to the efforts of an employee or officer of the department of health services, or a county employee or officer under the management of the department of health services, shall be credited to the appropriation account under s. 20.435 (4) (im).

(8) WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT'S RELEASE. (a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter or under s. 253.05 as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party's insurer from liability to the units of government specified in sub. (2). Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance.

(b) Liability under par. (a) is to the extent of assistance payments under this chapter or under s. 253.05 resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

(9) POWERS OF HEALTH MAINTENANCE ORGANIZATIONS. A health maintenance organization or other prepaid health care plan has the powers of the department of health services under subs. (2) to (5) to recover the costs which the organization or plan incurs in treating an individual if all of the following circumstances are present:

(a) The costs result from an occurrence of an injury or sickness of an individual who is a recipient of medical assistance.

(b) The occurrence of the injury or sickness creates a claim or cause of action on the part of the recipient or the estate of the recipient.

(c) The medical costs are incurred during a period for which the department of health services pays a capitation or enrollment fee for the recipient.

History: 1977 c. 29; 1979 c. 221; 1981 c. 20; 1983 a. 27, 465; 1985 a. 29 ss. 1051, 1052, 3200 (23); 1987 a. 27 s. 3202 (24); 1989 a. 31; 1995 a. 27 ss. 3152 to 3177, 3214, 3215, 9126 (19), 9130 (4); Stats. 1995 s. 49.89; 1995 a. 407; 1997 a. 3; 1999 a. 9; 2007 a. 20 ss. 1750 to 1753, 9121 (6) (a); 2007 a. 96; 2009 a. 15.

Counties were entitled to be reimbursed for medical assistance from insurance settlements obtained by accident victims despite the fact that neither victim had been fully compensated. Waukesha County v. Johnson, 107 Wis. 2d 155, 320 N.W.2d 1 (Ct. App. 1982).

A county could recoup medical assistance payments from a recipient who was minor. Perkins v. Utnehmer, 122 Wis. 2d 497, 361 N.W.2d 739 (Ct. App. 1984).

This section, not s. 49.45 (19) (a) 2., specifically addresses the assignment of actions and subrogation of rights by a public assistance recipient who is injured and has a tort claim against a 3rd party. Ellsworth v. Schelbrock, 2000 WI 63, 235 Wis. 2d 678, 611 N.W.2d 764, 98−0294.

An Arkansas law that automatically imposed a lien on tort settlements in an amount equal to the state's Medicaid's costs incurred on behalf of the settlement recipient, including settlement proceeds meant to compensate the recipient for damages distinct from medical costs like pain and suffering, lost wages, and loss of future earnings contravened federal law and was therefore unenforceable. A state cannot lay claim to more than the portion of the settlement that represents medical expenses. Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 164 L. Ed. 2d 459, 126 S. Ct. 1752 (2006).

Attorney's fees are not chargeable against public assistance recovered in an action under this section. 70 Atty. Gen. 61.

49.90 Liability of relatives; enforcement. (1) (a) 1. The parent and spouse of any dependent person who is unable to maintain himself or herself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no parent shall be required to support a child 18 years of age or older.

2. Except as provided under subs. (11) and (13) (a), the parent of a dependent person under the age of 18 shall maintain a child of the dependent person so far as the parent is able and to the extent that the dependent person is unable to do so. The requirement under this subdivision does not supplant any requirement under subd. 1. and applies regardless of whether a court has ordered maintenance by the parent of the dependent person or established a level of maintenance by the parent of the dependent person.

(b) For purposes of this section those persons receiving benefits under federal Title XVI or under s. 49.77 shall not be deemed dependent persons.

(c) For the purpose of determining the ability of a parent or spouse to maintain a dependent person or the ability of a parent to support the child of his or her dependent child under the age of 18, credit granted under subch. VIII of ch. 71 shall not be considered.

(1m) Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and chs. 48 and 938. Each parent of a dependent person under the age of 18 has an equal obligation to support the child of the dependent person as provided under sub. (1) (a) 2.

(2) Upon failure of these relatives to provide maintenance the authorities or board shall submit to the corporation counsel a report of its findings. Upon receipt of the report the corporation counsel shall, within 60 days, apply to the circuit court for the county in which the dependent person under sub. (1) (a) 1. or the child of a dependent person under sub. (1) (a) 2. resides for an order to compel the maintenance. Upon such an application the corporation counsel shall make a written report to the county department under s. 46.215, 46.22, or 46.23, with a copy to the chairperson of the county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with a multicounty department, and to the department of health services or the department of children and families, whichever is appropriate.

(2g) In addition to the remedy specified in sub. (2), upon failure of a grandparent to provide maintenance under sub. (1) (a) 2., another grandparent who is or may be required to provide maintenance under sub. (1) (a) 2., a child of a dependent minor or the child's parent may apply to the circuit court for the county in which the child resides for an order to compel the provision of maintenance. A county department under s. 46.215, 46.22, or 46.23, a county child support agency under s. 59.53 (5), or the department of children and families may initiate an action to obtain maintenance of the child by the child's grandparent under sub. (1) (a) 2., regardless of whether the child receives public assistance.

(2r) An action under sub. (2) or (2g) for maintenance of a grandchild by a grandparent may be joined with an action to determine paternity under s. 767.80 (1) or an action for child support under s. 767.001 (1) (f) or (j) or 767.501, or both.

(3) At least 10 days prior to the hearing on the application under sub. (2) or (2g), notice of the hearing shall be served upon the grandparent or other relative who is alleged not to have provided maintenance, in the manner provided for the service of summons in courts of record.

(4) The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability, considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age, in the following order: First the husband or wife; then the father and the mother; and then the grandparents in the instances in which sub. (1) (a) 2. applies. The order shall specify a sum which will be sufficient for the support of the dependent person under sub. (1) (a) 1. or the maintenance of a child of a dependent person under sub. (1) (a) 2., to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person or the child, but is able to contribute to the person's support or the child's maintenance, the court may direct 2 or more of the relatives to maintain the person or the child and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person or the child, but are able to contribute to the person's support or the child's maintenance, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health services or the department of children and families, whichever is appropriate, and distributed as required by state and federal law. An order under this subsection that relates to maintenance required under sub. (1) (a) 2. shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses, subject to the limitations under subs. (1) (a) 2. and (11). Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

(5) Any party aggrieved by such order may appeal therefrom but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

(6) If any relative who has been ordered to maintain an institutionalized dependent person or an institutionalized child of a dependent person under 18 years of age neglects to do as ordered, the authorities in charge of the dependent or child or in charge of the institution may recover in an action on behalf of the relief agency or institution for relief or support accorded the dependent person or child against such relative while the order was disobeyed and up to the time of judgment, with costs.

(7) When the income of a responsible relative is such that the relative would be expected to make a contribution to the support of the recipient and such recipient lives in the relative's home and requires care, a reasonable amount may be deducted from the expected contribution in exchange for the care provided.

(9) In any action under this section the court may impose any sum ordered paid by a party as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment or order.

(10) If an action under this section relates to support or maintenance of a child, to the extent appropriate the court shall determine maintenance or support in the manner in which support is determined under s. 767.511.

(11) Except as provided in sub. (13) (b), the parent of a dependent person who is under the age of 18 and is alleged to be the father of a child is responsible for maintenance of that child only if the paternity of the child has been determined to be that of the dependent person as provided in subch. VIII of ch. 48 or under subch. IX of ch. 767. Subject to the limitations under sub. (1) (a), if a parent of a dependent person is liable for the health care expenses of the dependent person's child under sub. (4), this liability extends to all expenses of the child's medical care and treatment, including those associated with the childbirth, regardless of whether they were incurred prior to the determination of paternity and regardless of whether the determination of paternity is made after the child's father attains 18 years of age, except that the period for which maintenance payment is ordered for the parent of a dependent person may not extend beyond the date on which the dependent person attains 18 years of age. The court may limit the liability of the dependent person's parent for the child's medical expenses if the expenses exceed 5 percent of the parent's federal adjusted gross income for the previous taxable year, if the parent files separately, or 5 percent of the sum of the parents' federal adjusted gross income for the previous taxable year, if the parents file jointly.

(12) The parent of a dependent person who maintains a child of the dependent person under sub. (1) (a) 2. may, after the dependent person attains the age of 18, apply to the circuit court for the county in which the child resides for an order to compel restitution by the dependent person of the amount of maintenance provided to the dependent person's child by that parent. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and the future ability of the dependent person to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the

parties, the court may modify the order. The parent of the dependent person may file a restitution order with the clerk of circuit court. Upon payment of the fee under s. 814.61 (5) (a), the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent of the dependent person may enforce the order against the dependent person in the same manner as for a judgment in a civil action.

(13) (a) The parent of a dependent person who is the victim of a sexual assault under s. 940.225 (1) (a) for which a conviction is obtained and which results in the birth of a child before the dependent person attains the age of 18 is not responsible under sub. (1) (a) 2. for the maintenance of that child of the dependent person.

(b) If a dependent person is convicted at any time of causing a pregnancy under s. 940.225 (1) (a) which results in the birth of a child before the dependent person attains the age of 18, the parent of that dependent person is solely liable under the requirements of sub. (1) (a) 2. for the maintenance of the dependent person's child.

(c) If the parent of the dependent person specified in par. (a) provides maintenance to the dependent person's child and if par. (b) applies, the parent may apply to the circuit court for the county in which the child resides for an order to compel restitution by the parent specified in par. (b) of the amount of maintenance provided. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and future ability of the parent of the dependent person specified in par. (b) to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the parties, the court may modify the order. The parent specified in par. (a) may file a restitution order with the clerk of circuit court. Upon payment of a fee under s. 814.61 (5) (a), the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent specified in par. (a) may enforce the order against the parent specified in par. (b) in the same manner as for a judgment in a civil action.

History: 1973 c. 90 ss. 296e, 560 (2); 1973 c. 147, 336; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 82, 199; 1977 c. 271, 449; 1979 c. 221, 352; 1981 c. 317; 1983 a. 186; 1985 a. 29 ss. 1055m, 1108 to 1114, 3200 (23); 1985 a. 56, 176, 311, 332; Stats. 1985 s. 49.90; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 316; 1995 a. 27 ss. 3216 to 3219b, 9126 (19); 1995 a. 77, 224, 404; 1997 a. 3, 27; 2005 a. 443 s. 265; 2007 a. 20 ss. 1756 to 1758, 9121 (6) (a).

Sub. (1) (a) 2. is a substantive provision and legislative intent indicates it is to have prospective effect only. In re Paternity of C.J.H., 149 Wis. 2d 624, 439 N.W.2d 615 (Ct. App. 1989).

Sub. (1) (a) 1. obligates a spouse to support a dependent spouse who is unable to financially care for him or herself while residing in an institution, but must give way to the more specific terms of s. 49.455 (2) and (3) (a), which are specifically concerned with the allocation of income from a community spouse to an institutionalized spouse receiving medical assistance benefits. Section 49.455 (2) applies in determining eligibility for medical assistance and the required contribution to an institutionalized person's care and s. 49.455 (3) (a) declares that the income of a community spouse is not available to the institutionalized spouse, when, with specific exceptions, a community spouse's income is paid solely to the spouse. Chippewa County Department of Human Services v. Bush, 2007 WI App 184, 305 Wis. 2d 181, 738 N.W.2d 562, 05−1113.

49.96 Assistance grants exempt from levy. All grants of aid to families with dependent children, payments made under ss. 48.57 (3m) or (3n), 49.148 (1) (b) 1. or (c) or (1m) or 49.149 to 49.159, payments made for social services, cash benefits paid by counties under s. 59.53 (21), and benefits under s. 49.77 or federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and shall be inalienable.

History: 1973 c. 147; 1987 a. 27, 399; 1989 a. 278; 1995 a. 27 s. 2940; Stats. 1995 s. 49.96; 1995 a. 201, 289; 1997 a. 27, 35, 105.

AFDC money did not lose its exemption from garnishment when it was deposited in a checking account. Northwest Engineering Credit Union v. Jahn, 120 Wis. 2d 185, 353 N.W.2d 67 (Ct. App. 1984).

A support order against actual AFDC grants is prohibited, but an order against earned income of one who also receives AFDC is not. In Support of B., L., T. & K. 171 Wis. 2d 617, 492 N.W.2d 350 (Ct. App. 1992).