

Clearinghouse Rule 08-017

PROPOSED ORDER OF DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes to **repeal** HFS 65.02 (6) and (9); to **amend** HFS 1.01 (1) and (2) (j), 1.02 (6) (d), 1.03 (12) (c) (intro.) and (21) (intro.), and 65.04 (1) (d); to **repeal and recreate** HFS 65.05 (7); and to **create** HFS 1.02 (6) (f) and 1.065, relating to determining parental payment limits for children's long term support services and family support services.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 46.011 (1g), 46.27 (11), 46.275, 46.277, 46.278, Stats.

Statutory authority: Sections 46.03 (18), 46.10 (1) to (14) (a), s. 46.27 (2) (h) 1., 46.985, (2) (a) 8., and 227.11 (2), Stats.

Explanation of agency authority:

- Section 46.03 (18), Stats., requires the Department to establish a uniform system of fees for services provided or purchased by the Department, or a county department under s. 46.215, 46.22, 51.42, or 51.437, Stats.
- Section 46.10 (1) to (14) (a), Stats., establishes parental liability for services provided or purchased by the Department or county department for minor children and requires fees for services received by minor children to be paid in accordance with the fee schedule established by the department. Section 46.10 (1) to (14) (a) also establishes requirements for fee collection.
- Section 46.27 (2) (h) 1., Stats., requires rules for long-term community support service fee schedule be part of the uniform fee schedule under s. 46.03 (18), Stats.
- Section 46.985, (2) (a) 8., Stats., requires the Department to promulgate rules for determining a family's ability to bear the cost of the services and goods it needs under the family support program.
- Section 227.11 (2), Stats., provides state agencies with general rulemaking authority.

Related statute or rule: See the "Statute interpreted" section.

Plain language analysis:

Families with children who have long-term care support needs receive services from a number of programs implemented by county human and social services agencies under the Children's Long-Term Support (CLTS) Waivers; the Community Integration Program (CIP1); the Community Options Program (COP); and the Family Support Program (FSP). As required under s. 46.10 (1) to (14) (a), Stats., parents of children who receive these services pay a portion of the costs for these services.

The Department's order proposes to create rules under ch. HFS 1, to codify, in administrative rule, the schedule by which county agencies determine the limits on parental payments required under s. 46.10 (1) to (14) (a), Stats., for services received by children with long-term support needs under the various programs. The Department established the parental payment limits for services received under these programs in 2005. The parental payment limits are currently implemented under s. HFS 1.03 (13m). The proposal to codify the parental payment limits in rules only slightly modifies the schedule pursuant to which the limits are determined. This was done to assure a consistent application across family size.

The Department also proposes to provide that counties using s. HFS 65.05 (7), to determine parental payment limits for services received by families under the Family Support Program be determined using the same schedule as is applicable to the services identified in the preceding paragraph. Under s. HFS 65.05 (7), counties assess parental payment limits after calculating parent's annual gross income, which is adjusted by a budget allowance for the family size according to Federal Poverty Level (FPL) guidelines, liability for medical expenses, any amounts payable by parents for other services under ch. HFS 1, and other reductions as determined by the county implementing the program.

Under the proposed rule, counties which currently collect fees under s. HFS 65.05 (7) would assess parents who have annual incomes at or above 330% of the FPL a percentage (which could range from a minimum 1% to a maximum 41%) of the child's plan costs. The parental payment limits for these families would be determined by counties after calculating the parent's annual gross income, adjusted by a standard allowance; or actual medical or dental expenses claimed on the parent's federal income tax form Schedule A, whichever is higher, the family's poverty level for the family size, and the child's service plan costs. Under this schedule, counties would not collect parental payments from families who have annual incomes below 330% of the FPL.

Overall, the proposed change in the manner in which the parental payment limits are calculated for services provided under the Family Support Program would result in parents paying in proportion to their income levels and a unified system for calculating parental payments for children's long term support services.

The proposed rules would not result in a loss of services nor any changes to services to families.

Summary of, and comparison with, existing or proposed federal regulations:

There are no proposed or existing federal regulations that are similar to the proposed rules.

Comparison with rules in adjacent states:

Illinois:

There are no proposed or existing state regulations that are similar to the proposed rules.

Iowa:

There are no proposed or existing state regulations that are similar to the proposed rules.

Michigan:

There are no proposed or existing state regulations that are similar to the proposed rules.

Minnesota:

There are no proposed or existing state regulations that are similar to the proposed rules.

Summary of factual data and analytical methodologies:

Prior to the implementation of the parental payment limit in July 2005, the Department sought and received input regarding the parental payment limit for all children's long-term support programs including the family support program, and the community options program from the Council for Children with Long-Term Support Needs, which provides recommendations to the Department regarding administrative infrastructure, accountability measures and mechanisms, financing systems, training programs, and program design elements that address the needs of children with long-term support needs. The Department also sought and received input from the Wisconsin Human Services Association, Wisconsin Counties' Association, and Disability Rights Wisconsin.

Analysis and supporting documents used to determine effect on small business:

The proposed rule would not affect businesses.

Effect on small business:

The proposed rule would not affect businesses.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments are currently being accepted by the Department and may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. HFS 1.01 (1) and (2) (j) are amended to read:

HFS 1.01 (1) Sections HFS 1.01 to ~~4.061.065~~ are promulgated under the authority of ss. 46.03 (18), 46.10 (1) to (14) (a) and 227.11 (2), Stats., to implement ss. 46.03 (18), 46.011 (1g), 46.10 (1) to (14) (a), 46.27 (11), 46.275, 46.277, 46.278, 46.985 (2) (a) 8., 48.837 (7), 48.839 (1) and 51.30 (4) (b) 2., Stats. Sections HFS 1.01 to ~~4.061.065~~ standardize on a statewide basis the determination of liability and ability to pay and otherwise regulate billing and collection activities for care and services provided or purchased by the department, a county department of social services or a county department established under s. 46.23, 51.42 or 51.437, Stats.

(2) (j) "Parental payment limit" means the amount established or approved by the department under s. HFS 1.03 (21) or s. HFS 1.065 as the maximum daily or monthly amount that parents may be billed for care or services provided to their minor children.

SECTION 2. HFS 1.02 (6) (d) is amended to read:

HFS 1.02 (6) (d) For all other care and services, the liability of responsible parties may be discharged by less than full payment if they pay the lesser of liability remaining after crediting third party payments each month or the monthly payment rate as calculated under s. HFS 1.03 (12) or (13) and adjusted, as appropriate, under s. HFS 1.03 (14) or under s. HFS 1.065. When inpatient clients are minors who receive medical assistance, parents shall be billed before the medical assistance program is billed, and medical assistance claims shall be reduced by the amount of parental payments.

SECTION 3. HFS 1.02 (6) (f) is created to read:

HFS 1.02 (6) (f) When a child participates simultaneously in multiple human service programs subject to parental liability under this chapter, the parents are responsible for the financial obligation of the program with the greatest parental financial obligation.

SECTION 4. HFS 1.03 (12) (c) (intro.) and (21) (intro.) are amended to read:

HFS 1.03 (12) (c) *Other services for children.* ~~For~~ Except as provided in s. HFS 1.065, for other services to children, the maximum monthly payment for a parent shall be computed as follows:

(21) PARENTAL PAYMENT LIMIT. ~~Parental~~ Except as provided in s. HFS 1.065, parental payment limits shall be determined as follows:

SECTION 5. HFS 1.065 is created to read:

HFS 1.065 Children's long-term support parental payment limits. (1) AUTHORITY, PURPOSE AND SCOPE. (a) This section establishes a parental payment limit for certain children's long-term support services identified in this subsection. These provisions apply to all county administrative agencies that administer the services to which this section applies.

(b) This section applies to children's services of a type that may be reimbursed under a waiver under the disabled children's long-term support program as defined in s. 46.011 (1g), Stats., regardless whether those services are actually reimbursed under that program, under the

community integration program waivers under s. 46.275, 46.277 or 46.278, Stats., under the community options program waiver under s. 46.27 (11), Stats., or otherwise with federal, state or county funds.

(c) This section applies to services for children under the family support program under s. 46.985, Stats.

(2) DEFINITIONS. In this section:

(a) “*County administrative agency*” means the county department designated to administer and provide or contract for children’s services covered by this section in that county.

(b) “*Service plan*” means a written plan for providing services covered by this section.

(3) DETERMINING PARENTAL PAYMENT LIMITS. The county administrative agency shall determine the parental payment limit for each child receiving services covered by this section. Notwithstanding s. HFS 1.03 (12) (c) and (21), the county administrative agency shall determine the parental payment limit for services covered by this section in the following manner:

(a) Determine the annual parental income. If the parents live in separate households and the child receiving services covered by this section resides in both households, determine a separate parental payment limit for each household.

(b) Subtract the higher of the following:

1. The department’s standard disability allowance.

2. Allowable medical or dental expenses claimed for the child on Schedule A of the parent’s most recent internal revenue service tax form 1040 that was filed with the internal revenue service.

Note: The Internal Revenue Service (IRS) has a web-based guide to assist in identifying which expenses may be claimed to Schedule A of the 1040 form for allowable medical and dental expenses that would qualify as itemized deductions. Please see IRS Publication 502 at the following address <http://www.irs.gov/publications/p502/index.html>

Note: The Department’s standard disability allowance can be found on the Department’s website at <http://dhfs.wisconsin.gov/bdds/clts/ppl.htm>.

(c) Determine the federal poverty level based on current federal poverty guidelines for the family size. If the parents live in separate households and the child resides in both households, determine the family size and federal poverty level for each household.

(d) Determine whether the income, adjusted as provided in under par. (b) is at or above 330% of the federal poverty level and identify the percentage of the annual service plan costs owed based on the most current CLTS Parental Payment Limit Worksheet provided by the department. Use Table HFS 1.065 to determine the percentage of service plan costs for which the parents may be liable.

Table HFS 1.065

Adjusted Gross Income (% of FPL)			Percentage of Service Plan Cost
Less than 300% FPL			0.0%
330%	to less than	355%	1.0%
355%	to less than	380%	1.8%
380%	to less than	405%	2.6%
405%	to less than	430%	3.4%
430%	to less than	455%	4.2%
455%	to less than	480%	5.0%
480%	to less than	505%	5.8%
505%	to less than	530%	6.6%
530%	to less than	555%	7.4%
555%	to less than	580%	8.2%
580%	to less than	605%	9.0%
605%	to less than	630%	9.8%
630%	to less than	655%	10.6%
655%	to less than	680%	11.4%
680%	to less than	705%	12.2%
705%	to less than	730%	13.0%
730%	to less than	755%	13.8%
755%	to less than	780%	14.6%
780%	to less than	805%	15.4%
805%	to less than	830%	16.2%
830%	to less than	855%	17.0%
855%	to less than	880%	17.8%
880%	to less than	905%	18.6%
905%	to less than	930%	19.4%
930%	to less than	955%	20.2%
955%	to less than	980%	21.0%
980%	to less than	1005%	21.8%
1005%	to less than	1030%	22.6%
1030%	to less than	1055%	23.4%
1055%	to less than	1080%	24.2%
1080%	to less than	1105%	25.0%
1105%	to less than	1130%	25.8%
1130%	to less than	1155%	26.6%
1155%	to less than	1180%	27.4%
1180%	to less than	1205%	28.2%
1205%	to less than	1230%	29.0%
1230%	to less than	1255%	29.8%
1255%	to less than	1280%	30.6%
1280%	to less than	1305%	31.4%
1305%	to less than	1330%	32.2%
1330%	to less than	1355%	33.0%
1355%	to less than	1380%	33.8%

1380%	to less than	1405%	34.6%
1405%	to less than	1430%	35.4%
1430%	to less than	1455%	36.2%
1455%	to less than	1480%	37.0%
1480%	to less than	1505%	37.8%
1505%	to less than	1530%	38.6%
1530%	to less than	1555%	39.4%
1555%	to less than	1580%	40.2%
1580% and above			41.0%

Note: The federal poverty guidelines are adjusted yearly by the federal Office of Management and Budget under 42 USC § 9902 (2) and are published annually in the Federal Register. The federal poverty guidelines and the CLTS Parental Payment Limit Worksheet are distributed annually by the Department to counties for use in calculating the parental payment limit. To receive the current federal poverty guidelines and the CLTS Parental Payment Limit Worksheet, contact the Children's Services Section, at the Division of Long Term Care, P.O. Box 7851, Madison, WI 53707-7851, or call 608-261-78208276, or fax 608-261-8884 or visit the Department's website at <http://dhfs.wisconsin.gov/bdds/clts/index.htm>

(e) Compute the annual cost of the child's service plan. Subtract administrative and support and service coordination functions.

(f) For families with an income over 330% of the federal poverty level, multiply the percentage established in par. (d) by the amount established in par. (e).

(g) The parental payment limit is the amount calculated under par. (f).

(h) If a parent refuses to provide financial information to the administering agency, then their parental payment limit shall be 41% of the annual cost of the child's service plan.

(i) A county may consider a family's financial hardship when determining the parental payment limit.

(4) NOTIFICATION OF PARENTAL FINANCIAL OBLIGATION. The county administrative agency shall provide written notice to the parents of the amount of annual parental financial obligation due before the service plan is implemented, or as soon thereafter as administratively possible, that includes all of the following:

(a) The date of the implementation of the parental financial obligation, which is the start date on the service plan.

(b) The annual amount due, with a breakdown of monthly minimum requirements.

(c) Procedures offered by the county administrative agency for reconsideration of the parental financial obligation.

SECTION 6. HFS 65.02 (6) and (9) are repealed.

SECTION 7. HFS 65.04 (1) (d) is amended to read:

HFS 65.04 (1) (d) The family agrees to provide to the administering agency full financial information necessary for assessing the family's ability to pay under s. HFS 65.05 (7) as defined in s. HFS 1.01 (2) (g).

SECTION 8. HFS 65.05 (7) is repealed and recreated to read:

HFS 65.05 (7) PARENTAL PAYMENT LIMIT. The administering agency shall determine the parental payment limit for family support services in accordance with s. HFS 1.065.

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

Wisconsin Department of Health and Family
Services

Dated:

Kevin R. Hayden, Department Secretary

SEAL: