

Report From Agency

PROPOSED ORDER OF DEPARTMENT OF HEALTH SERVICES TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (the Department) proposes an order to **repeal** DHS 1.065 (1) (c) (Note); to **amend** DHS 1.065 (3) (d) (Note); and to **repeal and recreate** ch. DHS 1 (Title), DHS 1.01 to 1.06, and 1.07, relating to uniform fee system.

RULE SUMMARY

Statutes interpreted

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

Statutory authority

Section 227.11 (2) (a) and (b), Stats.

Explanation of agency authority

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

Related statute or rule

None.

Plain language analysis

The Department proposes to restate provisions to minimize confusion and inconsistency of interpretation and application of Chapter DHS 1 at the local level.

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

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

Comparison with rules in adjacent states

Provisions relating to similar subjects of the proposed rule are contained in various sections of code from adjacent states. The Department identified that many of the same concepts Wisconsin utilizes, such as ability to pay and calculation of fees, are included in the regulations of adjacent states. See below citations for examples and references.

Illinois

Illinois Admin. Code. tit. 59 §106 (Services Charges). This title covers the calculation of charges for mental health services and determination of ability to pay.

Illinois Admin Code tit. 89 § 20 (Support Responsibility of Relatives). This title covers the obligation of relatives of care recipients.

Illinois Admin Code tit. 89 § 545 (Ratemaking). This title defines how rates patients are charged get established.

Illinois Admin Code tit. 89 § 562 (Customer Financial Participation). This title identifies when a financial analysis should be completed and how it should be utilized.

Iowa

Iowa Administrative Code Rules 441.11 (Collection of Public Assistance Debts). This rule establishes when a claim should be created for services provided, how payments should be applied to that claim, and when tax offsets may be applied.

Iowa Administrative Code Rules 441.36 (Facility Assessments). This rule determines the fees and assessments that will be charged for services.

Iowa Administrative Code Rules 441.95 (Collections). This rule defines the establishment of collection amounts and how they should be applied to accounts.

Michigan

Michigan Admin. Code r. 330.8005-330.8284 (Financial Liability for Mental Health Services). This code establishes liability determination and ability to pay calculations and collections for mental health services.

Minnesota

Minnesota Administrative Rules ch. 9550 Part 9550.6240 (Collections). This rule establishes county and department responsibility for collections.

Minnesota Administrative Rules ch. 9515 Part 9515.2200 (Sources of Income Considered). This rule identifies when insurance, a client's income and/or property should be considered in the ability to pay calculation.

Minnesota Administrative Rules ch. 9515 Part 9515.2600 (Responsible Relative's Ability to Pay). This rule sets limitations of a relative's ability to pay in the event of client liability

Summary of factual data and analytical methodologies

The Department established an advisory committee comprised of representatives from Jackson, Portage, Marathon, Walworth, Green and Outagamie counties, as well as a representative from

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

Analysis and supporting documents used to determine effect on small business

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

Effect on small business

The proposed rule does not affect small business.

Agency contacts

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Statement on quality of agency data

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

Place where comments are to be submitted and deadline for submission

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

RULE TEXT

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

UNIFORM FEES, LIABILITY AND COLLECTIONS

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

DHS 1.01 Authority and purpose.

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

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

DHS 1.02 Definitions.

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

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

(2) “Collection period” means the period of time calculated for each unit of service, which
(3) begins on the day a service is provided and ends as provided in ss. 893.87, 893.40, Stats., when the liability has been paid in full, or as provided under any other applicable statute of limitations. The cause of action accrues the month the service is provided.

(4) “County department” means any of the following:

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

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

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

(6) “Department” means the department of health services.

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

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

“Parent” means any of the following:

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

(b) A resident of the state appointed guardian of a child by a foreign court who brought a child into this state for the purpose of adoption.

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

- (a) Services provided by the department or a county department under ch. 48, subch. III or ch. 49, Stats.
- (b) Community-based juvenile delinquency-related services.
- (c) Juvenile correctional services.
- (d) Services provided to courts.
- (e) Outreach, information, and referral services.
- (f) Services for which the department or a county department determines fee collection would be administratively unfeasible, or assignment of liability for the service would prevent accomplishing the purpose of the service.
- (g) Any other services for which the department or a county department may not legally assess a fee, establish liability, or collect payment.

“Spouse” means any of the following:

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

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

DHS 1.03 Fees.

- (1) The department shall establish fees for services provided. Fee schedules are updated annually each fall for use in the following calendar year. The maximum monthly payment schedule is calculated using the Consumer Price Index for the Midwest region, gross monthly income, and number of persons living in the family.

(Note) Information about fees for services may be found at <https://www.dhs.wisconsin.gov/uniform-fee/index.htm>.

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

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

DHS 1.04 Liability.

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

- (a) A client who is not a minor.
- (b) A spouse.
- (c) A parent.
- (d) A person that a court determines or orders to be liable or otherwise responsible for payment of services provided to a minor.
- (e) Any other persons liable as provided under s. 46.10, Stats.

AMOUNT OF LIABILITY. The amount of liability of any person under sub. (1) for services provided to a client shall be based upon the fee established under s. DHS 1.03, subject to subs. (4) and (5).

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

WAIVER.

(a) The department or a county department may permanently waive the liability for a service rendered to a client for any of the following reasons:

- (3) 1. The client receives Medical Assistance.
- (4) 2. The client receives Social Security Disability or Supplemental Security Income.
- (4) 3. No payments are required under s. DHS 1.05 (4).
- 4. The liability is for a service, meeting the exception in s. DHS 1.02 (9) (f).

(b) Any liability that is waived under par. (a) shall be documented as provided in s. DHS 1.05 (5) (e).

NON-COMPLIANCE. The liability of a person under sub. (1) may not be waived as provided in sub. (4) if the department determines that the person does any of the following:

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

(Note) The financial responsibility form is available by accessing:

<https://www.dhs.wisconsin.gov/forms/f8/f80130.pdf>

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

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

DHS 1.05 Billing.

- (1) **GENERAL.** Each month during the collection period, the department or county department shall, as applicable, issue a billing statement that indicates any outstanding liability to each of the following:
 - (a) A client who is not a minor.
 - (b) Each parent.
 - (c) Each authorized representatives under sub. (3).
- (2) **THIRD-PARTY PAYERS.** The department or a county department shall file a claim with any third-party payers in a manner consistent with s. Ins 3.40. Medical Assistance shall be the payer of last resort.
- (3) **AUTHORIZED REPRESENTATIVE.** Upon receipt of proof of any such relationship, billing statements shall be issued to a legal representative of a client, including a guardian of the estate, a representative payee, or any other person or entity authorized by law or through the client's written consent, to receive such information.
- (4) **AMOUNT.** The monthly payment amount established in s. DHS 1.03 (1) billed and subject to collections, if any, shall be based upon liability established under this chapter, the maximum monthly payment schedule, and ability to pay. All of the following apply in determining the monthly payment amount:

- (a) *Ability to pay.* Ability to pay shall be determined by use of a financial responsibility form that gives due regard to relationship and the present needs of the person or of the lawful dependents. Subject to par. (b) and s. DHS 1.04 (5), ability to pay may be determined at any of the following times during the collection period:
1. Upon receipt of a financial responsibility form by the department or county department from a person liable under s. DHS 1.04 (1).
 2. When the department or a county department receives notice that there has been a change in the financial circumstances of a person liable under s. DHS 1.04 (1).
 3. Every 12 months, while services are being rendered.
 4. At the conclusion of services rendered.

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

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

- (b) *Best able to pay.* After investigation of the liable persons' ability to pay, the department or, if applicable, the county department shall make collection from the person who in the opinion of the department under all of the circumstances is best able to pay as provided in s. 46.10 (3), Stats.
- (c) *Shortcut Method.* A person may be deemed unable to pay under par. (a) if any of the following apply:
1. The person is receiving Medical Assistance.
 2. The person is receiving Social Security Disability or Supplemental Security Income.
- (d) *Services received by a minor without consent.* If a minor receives services without consent of a parent or guardian under s. 51.138 or 51.47, Stats., the department or, if applicable, the county department shall base the fee solely on the minor's ability to pay.
- (e) *Adjustments.* The department may adjust a past determination of ability to pay, looking back 90 days from the date of receipt of a financial responsibility form under par. (4) (a).

(5) **BILLING STATEMENTS.** At a minimum, a billing statement shall include all of the following information:

- (a) An itemization of any services provided during the billing period, including the date the service was provided, the number of units, and the fee amount.
- (b) Any claim filed with a third-party payer and any expected payment on the claim.
- (c) The date and amount of any other payments received during the billing period.
- (d) The total outstanding liability as of the date of the statement.
- (e) Any liability that was waived under s. DHS 1.04 (4).
- (f) The due date and amount of monthly payment required under sub. (4).

OTHER REQUIREMENTS. The department or county department shall:

- (a) Maintain documentation of compliance with this section. Counties shall provide such documentation to the department upon request.
- (b) Establish a documented procedure to periodically review accounts for accuracy and compliance with this chapter.
- (c) Establish a written grievance procedure for actions relating to liability determination, billing, and collections.
- (d) Not issue a billing statement or collect from the parent of a minor client who is receiving treatment for alcohol or drug abuse without the consent of a parent or guardian, as provided in s. 51.47, Stats.

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

DHS 1.06 Collections.

- (1) **GENERAL.** Subject to s. 46.10 (3) and (16), Stats., the department or county department shall collect payment from any liable person, in the amount established under s. DHS 1.05 (4).
- (2) **DELINQUENT ACCOUNT.** A client's account is delinquent, when all of the following have occurred:
 - (a) The amount established under s. DHS 1.05 (4) has not been received for 90 consecutive days.
 - (b) The department or county department has notified all applicable liable persons under s. DHS 1.04 (1) at least 3 times using 30, 60, and 90 day dunning letters or their equivalent of the missed payments and documented each notification attempt.
- (3) **NON-PURSUIT.** The department or county department may not attempt to engage in collection efforts established under this chapter any time that a liable person does not have ability to pay under s. DHS 1.05 (4).
- (4) **ENFORCEMENT.** The department or county department may enter into agreement or settlement with a liable person, or issue an order to compel payment as provided under s. 46.10, Stats. The department or county department shall send an order to compel by certified mail to the last known address of a liable person.
- (5) **USE OF COLLECTION AGENCIES.** The department may establish a written agreement with a collection agency or with the Wisconsin department of revenue to perform any duties and responsibilities under this section, or under ss. 71.93, 71.935. A collection agency shall comply with the requirements specified in s. 218.04, Stats.
- (6) **APPEALS.** A person aggrieved by an order to compel payment, issued by the department under sub. (4), may appeal the order as a contested case under ch. 227, Stats., as follows:
 - (a) A request for appeal must be mailed to the department of administration's division of hearings and appeals, within 30 days after the date of the order.
 - (b) A request shall be deemed filed on the day that it is received by the department of administration's division of hearings and appeals.

(Note) Divisions of Hearings and Appeals
 PO BOX 7875
 4822 Madison Yards Way #5
 Madison, WI 53707-7875

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

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

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

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

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

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

DHS 1.07 **Delegation.**

- (1) GENERAL. The department may delegate duties and responsibilities under this chapter, as provided in ss. 46.03 (18) (e) and 46.10 (16), Stats.
- (2) PROCESS. A request for delegation under sub. (1) shall be submitted to the department. The department shall notify a county requesting any such delegation of its approval or denial, and specify any conditions of such delegation.

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