

CR 83-114

CERTIFICATE

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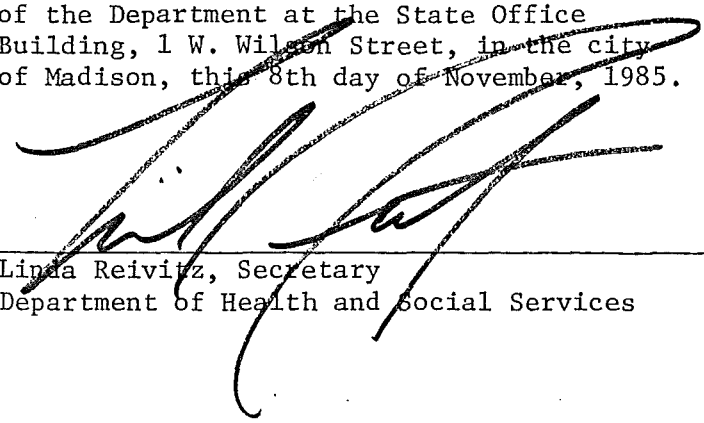
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

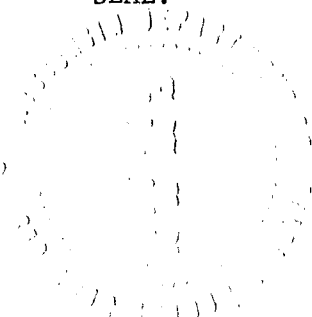
I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed rules relating to definitions of terms used in the administration of Medical Assistance, the obligation to safeguard personal information about Medical Assistance applicants and beneficiaries, and the respective rights and duties of the Department and counties in the administration of the program were duly approved and adopted by this Department on November 8, 1985.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 8th day of November, 1985.

  
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Linda Reivitz, Secretary  
Department of Health and Social Services

SEAL:



3-1-86

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

To renumber HSS 108.02; to amend HSS 108.01 and HSS 108.03 as renumbered; to repeal and recreate HSS 101 and HSS 108 (title); and to create HSS 108.02, relating to definitions of terms used in the administration of Medical Assistance, the obligation to safeguard personal information about Medical Assistance applicants and beneficiaries, and the respective rights and duties of the Department and counties in the administration of the program.

Analysis Prepared by the Department of Health and Social Services

The rules for the Wisconsin Medical Assistance Program (MA), Chapters HSS 101 through 108, Wisconsin Administrative Code, are revised to interpret and implement changes made in ss. 49.43 to 49.497, Stats., and related statutes by Chapters 20, 93 and 317 Laws of 1981 and to accommodate recent change in Federal statutes or regulations including the Omnibus Reconciliation Act of 1981 (P.L. 97-35). Other changes clarify revised and existing administrative policies and procedures and incorporate proposals for policy change in order to enhance program controls.

HSS 101 defines terms used in the administration of the program and in chs. HSS 101 to 108. In the repeal and recreation of ch. HSS 101 60 definitions are deleted to reflect revisions to the text of rules, 47 definitions are added and 91 are revised. Among definitions added are those for activities of daily living, AFDC, ambulatory surgical center, developmental disability, drug index, income disregard, intermittent nursing services, nurse practitioner, and SSI.

Chapter HSS 108 addresses the overall administration of the Wisconsin Medical Assistance Program including confidentiality requirements, the responsibilities of county agencies, and the responsibilities of the Department. Major changes include addition of a section that incorporates budgetary changes expanding departmental rights. The section on responsibility of county agencies has been amended to include the county agencies' responsibility to recover incorrect service payments and to administer a medical support liability program, and it describes the role of the 51.42 agency as a gatekeeper for Medicaid mental health services.

Pursuant to authority vested in the Department of Health and Social Services by s. 49.45(10), Stats., the Department of Health and Social Services hereby renumbers, amends, repeals and recreates, and creates rules interpreting ss. 49.43 to 49.497, Stats., as follows:

SECTION 1. HSS 101 is repealed and recreated to read:

Chapter HSS 101

MEDICAL ASSISTANCE: INTRODUCTION AND DEFINITIONS

HSS 101.01 Authority and purpose

HSS 101.02 Applicability

HSS 101.03 Definitions

HSS 101.01 AUTHORITY AND PURPOSE. This chapter and chs. HSS 102 to 108 are promulgated pursuant to s. 49.45(10), Stats., for the purpose of administering the medical assistance program (MA) in Wisconsin which finances necessary health care services for qualified persons whose financial resources are inadequate to provide for their health care needs.

HSS 101.02 APPLICABILITY. This chapter and chs. HSS 102 to 108 apply to all recipients of MA, all providers of MA and all persons engaged in the administration of MA.

HSS 101.03 DEFINITIONS. In this chapter and chs. HSS 102 to 108:

(1) "Accredited" means approved by a national accrediting agency or association which has been recognized by the U.S. secretary of education.

(2)"Active treatment" means implementation and administration of a professionally developed and supervised individual plan of care, which is developed and implemented no later than 14 days after admission to the facility and is reasonably expected to improve the recipient's condition to the extent that inpatient care is no longer necessary.

Note: The plan of care is designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

(3)"Activities of daily living" means activities relating to the performance of self care, work and leisure or play activities, including dressing, feeding or eating, grooming, mobility and object manipulation.

(4)"Acute mental illness" means a mental illness which is not of life-long duration, which is severe in degree and causes a substantially diminished level of functioning in the activities of daily living and an inability to cope with the ordinary demands of life, and which may lead to an inability to maintain stable adjustment and independent functioning without short-term treatment.

(5)"Administrator" means the person who manages a health care facility.

Note: The administrator should have a bachelor's degree and either experience or specialized training in the administration of health institutions or agencies; or qualifications and experience in one of the professional health disciplines.

(6)"AFDC" means aid to families with dependent children, a public assistance program under Title IV-A of the Social Security Act of 1935, as amended, and ss.49.19 to 49.41, Stats.

(7)"AFDC-related person" means a person who meets one of the conditions under s. HSS 103.03(1)(b).

(8)"Agency" means the county department of social services, public welfare or human services, or a tribal agency which administers income maintenance programs.

(9)"Ambulatory" means able to walk without personal assistance or mechanical aids, and without difficulty.

(10)"Ambulatory surgical center" means a facility that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and that meets the requirements of s.HSS 105.49.

(11)"Ancillary cost" means an extraordinary and unique cost incurred by a nursing home or other qualified provider of services or materials furnished to a nursing home resident, which is not included in calculating the nursing home's daily rate but which MA reimburses separately under s. HSS 107.09 (3)(a).

(12)"ANSI" means American national standards institute.

(13)"AODA treatment services" means alcohol and other drug abuse treatment services provided by a provider certified pursuant to s. HSS 105.22 or 105.23 to assist alcoholics and drug abusers and persons affected by problems related to the abuse of alcohol or drugs.

Note: Examples of AODA treatment services are client evaluation, orientation and motivation, treatment planning, consultation and referral, client education, individual counseling, group counseling and crisis intervention.

(14)"Applicant" means a person who directly or through a representative makes application for MA.

(15)"Application for medical assistance" means the process of completing and signing a department-approved application form by which action a person indicates to the agency authorized to accept the application a desire to receive MA.

(16)"Approved prescription drug products list" means a list prepared by the U.S. food and drug administration that identifies drug products approved on the basis of safety and effectiveness.

(17)"Asset limit" means that limit against which nonexempt assets under ch. HSS 103 are compared to determine financial eligibility for MA.

(18)"Board" means a community mental health board established under s. 51.42, Stats., a developmental disabilities board established under s. 51.437, Stats., or a community human services board established under s. 46.23, Stats.

(19)"Border-status provider" means a provider located outside of Wisconsin who regularly gives service to Wisconsin recipients and who is certified to participate in MA.

(20)"Budgetable income" means earned and unearned income that is considered available for determining financial eligibility for MA under s. 49.46(1) or 49.47(4), Stats. and ch. HSS 103.

(21)"Bureau of health care financing" or "bureau" means the bureau within the division responsible for administration of MA.

(22)"Capitation fee" means a fee the department pays periodically to a provider for each recipient enrolled under a contract with the provider for the provision of medical services, whether or not the recipient receives services during the period covered by the fee.

(23)"Categorically needy" means the group of persons who meet the nonfinancial and financial eligibility conditions to be eligible for the AFDC program or the SSI program.

(24)"Certified occupational therapist assistant" or "COTA" means a person who meets the requirements of s. HSS 105.28(2).

(25)"Chronic mental illness" means a mental illness which may be of life-long duration, which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary activities of daily living and an inability to cope with the ordinary demands of

life, and which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support.

(26)"Claim" means a request from a provider on an approved claim form for payment for services to a recipient.

(27)"Clinical note" means a dated written notation of contact with a patient by a member of a health care team, which contains a description of signs and symptoms, treatment or drugs given, the patient's reaction and any changes in physical or emotional condition.

(28)"Compensation received" means the dollar value that can be attached to what is received in return for property and, without limitation by enumeration, that is in one or more of the following forms:

(a) Cash;

(b) Other assets such as accounts receivable and promissory notes, both of which must be valid and collectible to be of value, and stocks, bonds, and both land contracts and life estates;

(c) Discharge of a debt;

(d) Prepayment of a bona fide and irrevocable contract such as a mortgage, shelter lease or loan, or the prepayment of taxes; or



(e) Services, for which a valuation equal to the cost of purchase on the open market is assigned.

Note: The presumption that services and accommodations rendered to each other by the members of a family or other relatives were gratuitous can be rebutted only by direct and positive evidence of a prior express contract for payment.

(29)"Concurrent review" means the department's informal review of a complaint on the basis of which a fair hearing has been requested, including an investigation into the facts of a recipient's request for a fair hearing, whereby the department attempts to achieve an informal resolution acceptable to the recipient before the fair hearing takes place.

Note: This review does not preclude the recipient's right to a fair hearing.

(30)"Conditional eligibility" means eligibility for MA which is conditional upon the applicant or recipient meeting the financial eligibility standards specified in 20 CFR 416.1240 and 416.1242 within a predetermined period of time.

(31)"Confined to a place of residence" means a recipient's condition resulting from an illness or injury which:

(a) Restricts the recipient's ability to leave his or her place of residence except with the aid of a supportive device such as crutches, a cane, a wheelchair or a walker, the assistance of another person or the use of special transportation;

(b) Is such that leaving the residence is medically contraindicated; or

(c) Requires a considerable and taxing effort to leave the home for medical services.

(32)"Consultation" means communication between 2 or more providers concerning the diagnosis or treatment in a given case, which may include, but is not limited to, history-taking examination of the patient, rendering an opinion concerning diagnosis or treatment, or offering service, assistance or advice.

(33)"Controlling interest or ownership" means that a person:

(a) Possesses a direct or indirect interest in 5% or more of the issued shares of stock in a corporate entity;

(b) Is the owner of an interest of 5% or more in any mortgage, deed of trust, note, or other secured obligation;

(c) Is an officer or director of the corporation; or

(d) Is a partner in the partnership.

(34)"Corrective shoes" means:

(a) Surgical straight case shoes for metatarsus adductus;

(b) Any shoe attached to a brace, not including arch supports, for prosthesis;

(c) Mismatched shoes involving a difference of a full size or more; or

(d) Shoe modifications for a discrepancy in limb length or a rigid foot deformation.

(35) "Covered service" means a service, procedure or item, or supplies, provided by a provider or under a provider's supervision to a recipient of MA for which MA reimbursement is available.

(36) "Daily nursing home rate" means the amount that a nursing home is reimbursed for providing each day of routine health care services to a recipient who is a patient in the home, determined in accordance with s. 49.45(6m)(a), Stats.

(37) "Day treatment" or "day hospital" means a non-residential program in a medically supervised setting that provides case management, medical care, psychotherapy and other therapies, including recreational, physical, occupational and speech therapies, and follow-up services, to alleviate problems related to mental illness or emotional disturbances.

Note: Day treatment services are provided by an interdisciplinary team on a routine, continuous basis for a scheduled portion of a 24-hour day and may include structural rehabilitative activities including training in basic living skills, interpersonal skills and problem-solving skills.

(38) "Deeming" means a process by which income and assets are considered available to applicants or recipients for the purpose of determining financial eligibility for MA under s. 49.46(1) or s. 49.47(4), Stats., and ch. HSS 103.

(39)"Department" means the department of health and social services.

(40)"Department-approved occupancy rate" means a rate of nursing home occupancy established by the department and communicated to providers which is used for purposes of determining whether a bed-hold payment may be made to a nursing home.

(41)"Developmental disability" means mental retardation or a related condition such as cerebral palsy, epilepsy, or autism, but excluding mental illness and infirmities of aging, which is:

- (a) Manifested before the individual reaches age 22;
- (b) Likely to continue indefinitely; and
- (c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
  1. Self-care;
  2. Understanding and use of language;
  3. Learning;
  4. Mobility;
  5. Self-direction;

6. Capacity for independent living; and

7. Economic self-sufficiency.

(42)"Differential diagnostic examination" means an examination and assessment of a recipient's emotional and social functioning which includes one or more of the following: neurologic studies, psychological tests and psychosocial assessments.

(43)"Direct, immediate, on-premises supervision" means supervision with face-to-face contact between the supervisor and the person being supervised, as necessary, with the supervisor being physically present in the same building when the service is being performed by the person being supervised.

(44)"Direct services" mean nursing home services that benefit patient recipients on an individual basis rather than a group basis, including physician visits to patients, therapy modalities, drug dispensing, radiology or laboratory services provided by a certified radiology or laboratory unit, oral exams, and physical examinations. "Direct services" are often referred to as billable services, medical services or professional services.

(45)"Dispensary providers" means providers who dispense drugs, medical supplies or equipment upon a prescription or order from a prescriber authorized under ch. 447 or 448, Stats., to prescribe the items.

Note: Examples of dispensary providers are pharmacies, durable medical equipment suppliers and providers of vision care supplies.

(46)"Divestment" means the disposal of any nonexempt resource for a value received which is less than the net market value.

(47)"Division" means the department's division of health.

(48)"Drug dispensing" means the interpretation of an order for a drug or biological and the proper selection, measuring, labeling, packaging and issuance of the drug or biological for a patient or for a service unit of a hospital or other health care facility.

(49)"Drug index" means the list of covered legend and nonlegend drugs and medical supplies maintained and updated by the department.

(50)"Durable medical equipment" means equipment which can withstand repeated use, is primarily used for medical purposes, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

Note: Examples of "durable medical equipment" are wheelchairs, hospital beds and side rails.

(51)"Earned income" means income received in the form of wages, salary, commissions or profits from activities in which the applicant or recipient is engaged as an employe or as a self-employed person.

(52)"Emergency services" means those services which are necessary to prevent the death or serious impairment of the health of the individual.

(53)"Enrolled recipient" means a recipient who has entered into an agreement to receive services from a provider reimbursed under the terms of a prepaid capitation contract with the department.

(54)"EPSDT" means early and periodic screening, diagnosis and treatment services provided by a provider certified pursuant to s. HSS 105.37.

(55)"EPSDT case management" means those activities necessary to:

- (a) Inform eligible clients of the availability of EPSDT services;
- (b) Make arrangements and assist clients to follow through with diagnosis and treatment; and
- (c) Refer clients, upon request, to the appropriate local agencies for transportation assistance.

(56)"EPSDT provider" means a provider certified under s.HSS105.37 to provide EPSDT health assessment and evaluation services.

(57)"Evaluation in physical therapy" means one or more of the tests or measures indicated in s. HSS 107.16(1)(b).

(58)"Exempt assets" means assets which are not considered in the determination of financial eligibility for medical assistance.

(59)"Exempt income" means income which is not considered when determining financial eligibility for medical assistance.

(60)"Explanation of benefits notice" means the monthly report sent by the department to a recipient containing a summary of the department's record of MA claims paid on the recipient's behalf during that month.

(61)"Eyeglasses" means lenses, including frames where necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye or by a licensed optometrist.

(62)"Fair hearing" has the meaning prescribed in s. PW-PA 20.18(2)(b) [ch. HSS 225].

(63)"Fair market value" means the market value of the property on the date of the transaction.

(64)"Fiscal agent" means the organization under contract to the department to process claims for services provided under MA.



(65)"Fiscal test group" means all members of the medical assistance group and all persons who are financially responsible for members of the medical assistance group who live in the same household as the person for whom they are legally responsible and who are not SSI or AFDC recipients.

(66)"Functional ability" means the skill to perform activities in a normal or acceptable manner with minimal dependence on devices, persons or environment.

(67)"Functional status" means the recipient's skill in performing activities of daily living in a normal or acceptable manner.

(68)"Group occupational therapy treatment" means the delivery of occupational therapy treatment procedures in a group setting, with up to 6 patients supervised by one qualified occupational therapist and more than 6 but no more than 12 patients supervised by 2 qualified occupational therapy staff members one of whom is a registered occupational therapist.

(69)"Group speech/language pathology treatment" means the delivery of speech/language pathology treatment procedures limited to the areas of expressive language, receptive language, and hearing/auditory training (auditory training, lip reading, and hearing-aid orientation), in a group setting for up to 4 MA recipients.

(70)"Health maintenance organization" or "HMO" means a public or private organization organized under ch. 185, 611 or 613, Stats., which makes available to enrolled participants, in consideration of predetermined periodic fixed payments, comprehensive health care services provided by providers who are selected by the organization or who have entered into a referral or

contractual arrangement with the organization and which is certified under s. HSS 105.47.

(71)"Home health agency" means a public agency or private organization, or a subdivision of the agency or organization, which is primarily engaged in providing skilled nursing services and other therapeutic services to a recipient at the recipient's place of residence.

(72)"Home health aide" means an individual employed by or under contract to a certified home health agency to provide home health aide services, as defined in s. HSS 133.02(5), under the supervision of a registered nurse.

(73)"Home health service" means any covered home health service enumerated in s. HSS 107.11(1)(a) and provided by a health worker on the staff of a home health agency or by a health worker under contract or another arrangement with the home health agency.

(74)"Home health visit" means a period of time during which home health services are provided through personal contact in the recipient's place of residence for the purpose of providing a covered home health service, by a health worker on the staff of the home health agency or by a health worker under contract or by other arrangement with the home health agency. The visit includes time spent on record-keeping, travel time to and from the recipient's residence and actual in-home service time.

(75)"Homestead" or "home" means a place of abode and lands used or operated in connection with the place of abode.

Note: In urban situations the home usually consists of a house and lot. There will be situations where the home will consist of a house and more than one lot. As long as the lots adjoin one another, they are considered part of the home. In farm situations, the home consists of the house and building together with the total acreage property upon which they are located and which is considered a part of the farm. There will be farms where the land is on both sides of a road, in which case the land on both sides is considered part of the homestead.

(76)"Hospital" has the meaning prescribed in s. 50.33(2), Stats., except that it excludes those facilities exempted by s. 50.39(3), Stats.

(77)"Hospital visit" means at least an overnight stay by a nursing home recipient in a certified hospital.

(78)"Hysterectomy" means a medical procedure or surgery to remove the recipient's uterus.

(79)"Income disregard" means an earned or unearned income which is not considered in one or more financial tests of eligibility.

(80)"Income limit" means the limit against which budgetable income is compared to determine financial eligibility.

(81)"Independent provider of service" means an individual or agency which is eligible to provide health care services to nursing home recipients, to have a provider number, and to submit claims for reimbursement under MA. "Independent provider of service" includes: a physician, dentist, chiropractor, registered physical therapist, certified occupational therapist, certified

speech therapist, certified audiologist, psychiatrist, pharmacist, ambulance service agency, specialized medical vehicle service agency, psychologist, x-ray clinic and laboratory.

(82)"Indirect services" means nursing home services that benefit patient recipients on a group basis rather than an individual basis, including consulting, in-service training, medical direction, utilization review, and the services of unlicensed or uncertified assistants who are not under direct supervision. "Indirect services" are often referred to as nonbillable services, nonmedical services or nonprofessional services.

(83)"Individual occupational therapy treatment" means delivery by one therapist to one recipient of occupational therapy treatment procedures as prescribed in the individual patient's plan of care for the purpose of restoring, improving or maintaining optimal functioning.

(84)"Individual speech/language pathology treatment" means delivery by one therapist to one recipient of speech/language pathology treatment procedures, as prescribed in the individual recipient's plan of care, for the purpose of restoring, improving, or maintaining optimal speech and language functioning.

(85)"Inmate of a public institution" means a person who has resided for at least a full calendar month in an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control and has received treatment or services there that are appropriate to his or her requirements.

(86)"Institutionalized" means being a patient in a medical institution or a resident of an intermediate care facility or skilled nursing facility.

(87)"Institutionalized individual" means an individual who is:

(a) Involuntarily confined or detained in a rehabilitative facility, such as a psychiatric hospital or other facility for the care and treatment of mental illness, or under a civil or criminal statute in a correctional facility; or

(b) Confined, under a voluntary commitment, in a psychiatric hospital or other facility for the care and treatment of mental illness.

(88)"Institutional provider" means a hospital, nursing home, health maintenance organization, home health agency, 51.42 board-operated facility, rehabilitation agency or other facility meeting the requirements of s. HSS 105.01 (2)(a).

(89)"Intermediate care facility" or "ICF" means a facility that:

(a) Provides, on a regular basis, health-related services to individuals who do not require hospital or skilled nursing facility care but whose mental or physical condition requires services that are above the level of room and board and that can be made available only through institutional facilities;

(b) Is certified under s. HSS 105.11 as an intermediate care facility provider; and

(c) Is licensed pursuant to s. 50.03, Stats., and ch. HSS 132 or H 34 [HSS 134].

(90) "Intermediate care services" means services provided by an intermediate care facility.

(91) "Intermittent nursing services" means nursing services provided to a recipient who has a medically predictable recurring need for skilled nursing services. In most instances, this means that the recipient requires a skilled nursing visit at least once every 60 days.

(92) "Laboratory" or "clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobiassay cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention or treatment of any disease or assessment of a medical condition.

(a) "Independent laboratory" means a laboratory performing diagnostic tests which is independent both of an attending or consulting physician's office and of a hospital.

(b) "Hospital laboratory" means a laboratory operated under the supervision of a hospital or its organized medical staff that serves hospital patients.

(c) "Physician's office laboratory" means a laboratory maintained by a physician for performing diagnostic tests for his or her own patients.

Note: A physician's office laboratory which accepts at least 100 specimens in any category during any calendar year on referral from other physicians is considered an independent laboratory.

(93)"Legally responsible" means liable for the support of a person as specified in s. 52.01, Stats.

(94)"Legend drug" means, for the purposes of MA, any drug requiring a prescription under 21 USC 353(b).

(95)"Medical assistance" or "MA" means the assistance program operated by the department under ss.49.43 to 49.497, Stats., any services or items under ss.49.45 to 49.47 and 49.49 to 49.497, Stats., and this chapter and chs. HSS 102 to 108, or any payment or reimbursement made for these services or items.

(96)"Medical assistance group" or "MA group" means all persons listed on an application for MA who meet nonfinancial eligibility requirements, except that each AFDC recipient, SSI recipient, and each child with no legally responsible relative comprises a separate MA group.

(97)"Medically needy" means the group of recipients who meet the non-financial eligibility conditions for AFDC or SSI, but whose income exceeds the financial eligibility limits for those programs.

(98)"Medicare" means the health insurance program operated by the U.S. department of health and human services under 42 USC 1395 and 42 CFR subchapter B.

(99)"Modality" means a treatment involving physical therapy equipment that does not require the physical therapist's personal continuous attendance during the periods of use but that does require setting up, frequent observation, and evaluation of the treated body part by the physical therapist prior to and after treatment.

(100)"Net income" means the amount of the applicant's income that is left after deductions are made for allowable expenses and income disregards.

(101)"Net market value" means for the purposes of divestment the fair market value of the resource on the date it was disposed of less the reasonable costs of the transaction on the open market.

(102)"Non-billing performing provider number" means the provider number assigned to an individual who is under professional supervision in order to be an eligible provider. A non-billing provider is not directly reimbursed for services rendered to an MA recipient.

(103)"Non-covered service" means a service, item or supply for which MA reimbursement is not available, including a service for which prior authorization has been denied, a service listed as non-covered in ch. HSS 107, or a service considered by consultants to the department to be medically unnecessary, unreasonable or inappropriate.



(104)"Non-financial eligibility" means those eligibility conditions enumerated in s. HSS 103.03.

(105)"Non-institutional provider" means a provider, eligible for direct reimbursement, who is in single practice rather than group practice, or a provider who, although employed by a provider group, has private patients for whom the provider submits claims to MA.

(106)"Non-legally responsible relative case" or "NLRR case" means a case in which there is no legally responsible caretaker relative in the home for a dependent child defined under s. 49.19(1)(a), Stats., but where the caretaker of the child is a qualified relative under s. 49.19(1)(a), Stats.

(107)"Nonprofit agency" means an agency exempt from federal income taxation under s. 501 of the internal revenue code of 1954, as amended.

(108)"Nurse practitioner" means a registered nurse who meets the requirements of s.HSS105.20 (2).

(109)"Nursing home" has the meaning prescribed in s. 50.01(3), Stats.

(110)"Nursing home payment formula" means the prospective payment system for nursing home care established annually by the department.

(111)"Occupational therapist" or "OTR" means a person who meets the requirements of s. HSS 105.28(1), is the primary performing provider of occupational therapy services, is responsible for and signs all billings for occupational therapy services, and is not required to be supervised.

(112)"Occupational therapy procedure" means treatment, with or without equipment , which requires the continuous personal attendance of a registered occupational therapist or a certified occupational therapist assistant.

(113)"Outpatient facility" has the meaning prescribed for outpatient treatment facility in s. 632.89(1)(a), Stats.

(114)"Outpatient physical therapy services" means physical therapy services furnished by a provider of these services, a rehabilitation agency or by others under an arrangement with and supervised by the provider or rehabilitation agency, to an individual on an outpatient basis, which may include services to correct a pathological condition of speech.

(115)"Person" means an individual, corporation, partnership, association, trustee, governmental unit or other entity.

(116)"Personal care services" means those services enumerated in s. HSS 107.11(1)(b) when provided by a provider meeting the certification requirements for a home health agency under s.HSS 105.16.

(117)"Personal care worker" means an individual employed by a home health agency certified under s.HSS 105.16 or under contract to the home health agency to provide personal care services under the supervision of a registered nurse.

(118)"Personal needs allowance" means that amount of monthly unearned income identified in s. 49.45(7)(a), Stats., which may be retained for the personal needs of an institutionalized person.

(119)"Persons with related conditions" means individuals who have epilepsy, cerebral palsy, or another developmental disability.

(120)"Physical therapist" means a person who meets the requirements of s. HSS 105.27(1).

(121)"Physical therapy aide" means a person who provides services under s.HSS 107.16(1)(e).

(122)"Physical therapist assistant" means a person who meets the requirements of s. HSS 105.27(2).

(123)"Physician" means a person licensed under ch. 448, Stats., to practice medicine and surgery, including a graduate of an osteopathic college who holds an unlimited license to practice medicine and surgery.

(124)"Physician assistant" means a person certified by the department to participate in MA who holds the minimum qualifications specified in s.HSS105.05(2).

(125)"Portable x-ray service" means a service provided by a provider certified pursuant to s. HSS 105.44.

(126)"Practical nurse" means a person who is licensed as a practical nurse under ch. 441, Stats., or, if practicing in another state, is licensed as a practical nurse by that state.

(127)"Prepaid health plan" or "PHP" means a plan made available by a provider, other than a health maintenance organization, that provides medical services to enrolled recipients under contract with the department on a capitation fee basis.

(128)"Prescription" means an order for a service for a particular patient, written in accordance with s. HSS 107.06(4)(a)2.

(129)"Presumptive disability" means a non-financial eligibility condition determined under s. HSS 103.03(1)(e).

(130)"Preventive or maintenance occupational therapy" means occupational therapy procedures which are provided to forestall deterioration of the patient's condition or to preserve the patient's current status. Preventive or

maintenance occupational therapy makes use of the procedures and techniques of minimizing further deterioration in areas including, but not limited to, the treatment of arthritic conditions, multiple sclerosis, upper extremity contractures, chronic or recurring mental illness and mental retardation.

(131)"Preventive or maintenance physical therapy" means physical therapy modalities and procedures which are provided to forestall the patient's condition from deteriorating or to preserve the patient's current physical status. Preventive or maintenance physical therapy makes use of the procedures and techniques of minimizing further deterioration in areas including, but not limited to, daily living skills, mobility, positioning, edema control and other physiological processes.

(132)"Primary person" means the person whose name is listed first on the application form as the person applying for MA.

(133)"Primary provider" means a provider who provides health care service in the area in which the recipient resides and is designated by the recipient, with the concurrence of the designated provider, to be the recipient's primary provider.

(134)"Prior authorization" means the written authorization issued by the department to a provider prior to the provision of a service.

Note: Some services are covered only if they are authorized by the department before they are provided. Some otherwise covered services must be prior authorized after certain thresholds have been reached.

(135)"PRO" or "peer review organization" means the organization under contract to the department which makes determinations of medical necessity and reviews quality of services received by recipients of MA, medicare and maternal and child health programs when these recipients are hospitalized.

(136)"Procedure" means a treatment that requires the therapist's personal attendance on a continuous basis.

(137)"Provider" means a person who has been certified by the department to provide health care services to recipients and to be reimbursed by MA for those services.

(138)"Provider agreement" means the contract between a provider and the department which sets forth conditions of participation and reimbursement.

(139)"Provider assistant" means a provider whose services must be performed under the supervision of a certified or licensed professional provider. A provider assistant, while required to be certified, is not eligible for direct reimbursement from MA.

(140)"Provider certification" means the process of approving a provider for participation in the MA program, as specified in s. HSS 105.01.

(141)"Provider handbook" means a publication developed by the department for the use of providers which outlines program policies and includes instructions on claim filing and other aspects of participation in MA.

(142)"Provider's eligibility date" means the first date on which a provider may begin participation in MA which is no earlier than and may be later than the initial date of a signed written application. The applicant has 30 calendar days within which to complete and return the signed application form to the fiscal agent.

(143)"Provider's initial date of application" means the earliest of the following:

(a) The date on which the department receives a letter from a person requesting an application to be a provider;

(b) The date on which the department receives an unsolicited application form from a person wishing to become a provider; or

(c) The date on which the department receives a person's rejected claim which was rejected due to an invalid provider number.

(144)"Psychiatric hospital" or "psychiatric facility" means an institution which is primarily engaged in providing, by or under the supervision of a physician, inpatient psychiatric services for the diagnosis and treatment of mental illness which may include services for the diagnosis and treatment of the abuse of alcohol or other drugs.

(145)"Psychotherapy" means the treatment of an individual who is mentally ill or has medically significant emotional or social dysfunctions by a psychotherapy provider. The treatment is a planned and structured program based on information from a differential diagnostic examination and directed at the

accomplishment of specified goals. The treatment goals may include removing, modifying, or retarding existing symptoms, mediating disturbed patterns of behavior, and promoting positive personal growth and development by enhancing the ability to adapt and cope with internal and external stresses.

(146)"Psychotherapy provider" means a person certified by the department to participate in MA who holds the minimum qualifications specified in s. HSS 105.22.

(147)"Public agency" means an agency operated by the state or a local government.

(148)"Public health agency" means an administrative organization established by the state or a local government, the primary function of which is to maintain the health of the population served by providing environmental health services, preventive medical service and, when necessary, therapeutic medical services.

(149)"Public health nurse" means a registered nurse who has completed a baccalaureate degree program approved by the national league for nursing for public health nursing preparation or post-registered nurse study which includes content approved by the national league for nursing for public health nursing preparation.

(150)"Recipient" means a natural person who is entitled to receive benefits under MA.



(151)"Registered nurse" or "RN" means a person who holds a current certificate of registration as a registered nurse under ch. 441, Stats., or, if practicing in another state, is registered with the appropriate licensing agency in that state.

(152)"Rehabilitation agency" means an agency providing an integrated multidisciplinary program of services designed to upgrade the physical functioning of handicapped, disabled individuals by bringing together as a team specialized rehabilitation personnel to provide these services, the services at a minimum consisting of physical therapy or speech pathology services and a rehabilitation program which, in addition to physical therapy or speech pathology services, includes social or vocational adjustment services.

(153)"Resident" means an individual who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or other medical institution.

(154)"Resident recipient" or "patient recipient" means a person who resides in a nursing home and is eligible to receive or is receiving benefits under MA.

(155)"Resource" means a recipient's homestead and all other personal and real property in which the recipient has a legal interest.

(156)"Restorative occupational therapy" means the application of procedures and techniques to achieve maximum reduction of a physical disability or the

establishment of a patient at the best possible functional level, including but not limited to techniques which improve motor skills, sensory integrative functioning, cognitive skills, the ability to engage in activities of daily living, social interpersonal skills and psychological intrapersonal skills, and those procedures provided to relieve pain, improve cardio-pulmonary function, and adapt orthotic, prosthetic, assistive and adaptive appliances or devices and train the patient in their use.

(157)"Restorative physical therapy" means physical therapy modalities and procedures which are provided for the purpose of achieving maximum reduction of a physical disability or the establishment of the recipient at the best possible functional level. Restorative physical therapy includes but is not limited to exercises to increase range-of-motion, strength, tolerance, coordination and the ability to engage in activities of daily living. Restorative physical therapy also includes those physical therapy modalities and procedures provided to relieve pain, promote wound healing, improve cardio-pulmonary function and adapt orthotic, prosthetic, assistive and adaptive appliances or devices and train the patient in their use.

(158)"Rural health clinic" means an outpatient health clinic located in a rural area designated by the federal department of health and human services as a rural shortage area, which is not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases but which complies with all other appropriate federal, state and local laws.

(159)"Rural shortage area" means a defined geographic area that is not delineated as an urbanized area by the U.S. bureau of the census and that is designated by the federal department of health and human services as having either:

(a) A shortage of personal health services under s.1302(7) of the public health service act; or

(b) A shortage of primary medical care personnel under 42 USC 254e and 42 CFR Part 5, Appendix A.

(160)"Schedule" means, in reference to drugs, those drugs listed in schedules II, III, IV and V of subch. II of the controlled substances act, ss. 161.16, 161.18, 161.20 and 161.22, Stats., and additions made to these schedules by ch. CSB 2.

(161)"Semi-private room" means the lowest cost, multiple-bed accommodation in the section of the hospital appropriate for treatment of the recipient's condition, which is available at the time of admission.

(162)"Skilled nursing facility" or "SNF" means a facility that meets the requirements of s.HSS 105.08.

(163)"Skilled nursing services" means those professional nursing services furnished pursuant to a physician's orders which require the skills of a registered nurse or licensed practical nurse and which are provided either

directly by or under the supervision of the registered nurse or licensed practical nurse.

Note: Examples of services which would qualify as skilled nursing services are:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Levin tube and gastrostomy feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Insertion and sterile irrigation and replacement of catheters;
- (e) Application of dressings involving prescription medications and aseptic techniques;
- (f) Treatment of extensive decubitus ulcers or other widespread skin disorder;
- (g) Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient's progress;
- (h) Initial phases of a regimen involving administration of medical gases; and
- (i) Rehabilitation nursing procedures, including the related teachings and adaptive aspects of nursing that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs.

(164)"Skilled nursing services for individuals age 21 or older" means skilled nursing services that are:

- (a) Needed on a daily basis and required to be provided on an inpatient basis;
- (b) Provided by a facility or distinct part of a facility that is certified under s. HSS 105.08; and
- (c) Ordered by and to be administered under the direction of a physician.

(165)"Skilled rehabilitation services" means those services furnished pursuant to a physician's orders which require the skills of a physical therapist, occupational therapist, speech pathologist or audiologist and which are provided either directly by or under the supervision of the professional personnel.

Note: Skilled rehabilitation services include:

(a) Ongoing assessment of rehabilitation needs and potential, including tests and measurements of range of motion, strength, balance, coordination, endurance, functional ability, activities of daily living, perceptual deficits, speech and language or hearing disorders and sensory integrative abilities;

(b) Therapeutic exercises or activities which, because of the type of exercises employed or the condition of the patient, must be performed by or under the supervision of a qualified physical therapist or occupational therapist to ensure the safety of the patient and the effectiveness of the treatment;

(c) Gait evaluation and training furnished to restore function in a patient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;

(d) Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in loss or restriction of mobility as evidenced by a therapist's notes showing the degree of motion lost and the degree to be restored;

(e) Sensory integrative evaluation and training which, because of the type of training or the condition of the patient, must be performed by or under the supervision of a qualified occupational therapist or physical therapist or other appropriate licensed health care provider to ensure the safety of the patient and the effectiveness of the treatment;

(f) Preventive therapy utilizing the principles or techniques of minimizing further debilitation in the areas of energy preservation, joint protection, edema control, positioning, etc., which requires the specialized knowledge and judgment of a qualified occupational or physical therapist;

(g) Maintenance therapy, when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance;

(h) Ultrasound, shortwave, and microwave therapy treatments by a qualified physical therapist;

(i) Hot pack, hydrocollator, infra-red treatments, paraffin baths, and whirlpool in particular cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and where the skills, knowledge, and judgment of a qualified physical therapist are required;

(j) Therapeutic adaptations, including orthotics, splinting, prosthetics and assistive or adaptive equipment prescribed by a physician and provided by a qualified occupational or physical therapist are required; and

(k) Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(166) "Specialized medical vehicle" or "SMV" means a non-emergency vehicle used to transport a recipient who is confined to a wheelchair or whose condition contraindicates transportation by common carrier, and whose physician has prescribed specialized medical vehicle transportation to a facility at which the recipient primarily receives medical services.

(167) "Spell of illness" means, in relationship to physical therapy, occupational therapy, and speech pathology services, a condition characterized by a demonstrated loss of functional ability to perform daily living skills, caused by a new disease, injury or medical condition or by an increase in the severity of a pre-existing medical condition. For a condition to be classified as a new spell of illness, the recipient must display the potential to reach the skill level that he or she had previously.

(168) "Spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining MA eligibility, as described under s. HSS103.08(2)(a).

(169) "SSI" means supplemental security income, the assistance program under Title XVI of the Social Security Act of 1935, as amended, and s.49.177, Stats.

(170)"SSI-related person" means a person who meets the requirements of s. HSS 103.03(1)(c).

(171)"Stepparent case" means an MA case consisting of a family in which a legal parent, a stepparent and a child under age 18 reside in the home.

(172)"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

(173)"Supervision," unless otherwise indicated in chs. HSS 101 to 108, means at least intermittent face-to-face contact between supervisor and assistant and a regular review of the assistant's work by the supervisor.

(174)"Tape billing service" means a provider or an entity under contract to a provider which provides magnetic tape billing for one or more providers.

(175)"Therapeutic/rehabilitative program" means a formal or structured medical or health care activity which is designed to contribute to the mental, physical or social development of its participants, and is certified or approved, or its sponsoring group is certified or approved, by a national standard-setting or certifying organization when such an organization exists.

(176)"Therapeutic visit" means a visit by a resident recipient to the home of relatives or friends for at least an overnight stay.

(177)"Three-generation case" means an MA case in which there are 3 generations living in the home and the second generation is a never-married minor parent.

(178)"Time out" means time away from positive reinforcement. It is a behavior modification technique in which, in response to undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

(179)"Treatment unit" means, for purposes of reimbursement for therapy services, the time spent in direct treatment services to the individual patient. Time spent in activities not associated with the treatment of the individual patient such as preparation of the patient for treatment, preparation of the treatment area and preparation of the patient for return from the treatment area, otherwise known as "preparation time", shall also be reimbursable for up to 15 minutes per patient per treatment day. Time spent in other activities which are not associated with the treatment of the individual patient, including end of the day clean-up of the treatment area, paperwork, consultations, transportation time and training, is not reimbursable.

(180)"Unearned income" means income which is not the direct result of labor or services performed by the individual as an employe or as a self-employed person.

(181)"Usual and customary charge" means the provider's charge for providing the same service to persons not entitled to MA benefits.



SECTION 2. HSS 108 (title) is repealed and recreated to read:

Chapter HSS 108

MEDICAL ASSISTANCE: GENERAL ADMINISTRATION

HSS 108.01 Safeguarded information (p. 1)

HSS 108.02 Department rights and responsibilities (p. 7)

HSS 108.03 County responsibilities (p. 11)

SECTION 3. HSS 108.01 is amended to read:

HSS 108.01 SAFEGUARDED INFORMATION. (1) Except for purposes directly related to direct program administration, the department ~~shall~~ may not use or disclose any information concerning past or present applicants and recipients of ~~medical-assistance~~ MA.

(2) ~~Direct~~ In this section, "direct program administration of the-medical assistance-program" shall-include-but-not-be-limited-to means:

(a) Determining initial ~~or-continuing-applicant/recipient~~ eligibility of the applicant and continuing eligibility of the recipient;

(b) Determining appropriate services to be covered;

(c) Providing services for recipients;

(d) Processing provider claims for reimbursement;

(e) Auditing provider claims for reimbursement;

(f) Investigating or prosecuting criminal or civil proceedings conducted in connection with program administration;

(g) Seeking third-party payment for services provided to a recipient; and

~~(g)~~ (h) Activity Other activities determined by the department to be necessary for proper and efficient administration of ~~the-medical-assistance-program~~ MA.

(3) The department shall request the attorney general to institute appropriate action when necessary to enforce provisions of this section.

(4) Safeguarded information concerning an individual applicant or recipient shall include but not be limited to:

(a) Name and address;

(b) Social data, including but not limited to:

1. Marital status;

2. Age;

3. Race;

4. Names and MA numbers of family members;

5. Paternity status of children; and

6. Unique identifying characteristics;

(c) Economic data, including but not limited to:

1. Assets;

2. Amount of assistance received;

3. Amount of medical expenses incurred;

4. Sources of payment or support;

5. Past or present employment;

6. Income, regardless of source;

7. Social security number; and

8. Income expense deductions;

(d) Agency evaluation information, including but not limited to:

1. Verification of client information; and

2. Identity of verification sources; and

(e) Medical data, including but not limited to:

1. Past history and medical record content;

2. Diagnosis;

3. Drugs prescribed;

4. Course of treatment prescribed; and

5. Name of provider.

(5) For purposes of direct program administration, the department may permit disclosure to, or use of safeguarded information by, legally qualified persons or agency representatives outside the department. Governmental authorities, the courts, and law enforcement officers are persons outside the department who ~~must~~ shall comply with ~~subsection~~ sub. (6) ~~of this rule.~~

(6) Persons or agency representatives outside the department to whom the department may disclose or permit use of safeguarded information ~~must~~ shall meet the following qualifications:

(a) The purpose for use or disclosure ~~must~~ shall involve direct program administration; and

(b) The person or ~~their~~ the person's agency ~~must~~ shall be bound by law or other legally enforceable obligation to observe confidentiality standards comparable to those observed by the department.

(7) Unless it is related to direct program administration, the department shall respond to a subpoena for a case record or for agency representative testimony regarding an applicant or recipient as follows:

(a) The department shall provide the court and all parties to the proceeding with a copy of ~~the department's rule on safe-guarded information,~~ this section;

(b) The department shall request that the attorney general intervene in the proceeding in a manner which will give effect to ~~the department's rule on safeguarded information,~~ this section; and

(c) The department shall notify in writing applicants or recipients affected by a subpoena for safeguarded information ~~concerning them.~~

(8) The department shall publicize ~~its safeguarded information~~ this section as follows:

(a) Publication in the ~~administrative register.~~ Wisconsin administrative code;

(b) Incorporation by reference in certification procedures for all providers; and

(c) Incorporation in information provided to recipients regarding their rights and responsibilities.

~~--(9) The department shall mail or distribute materials to applicants, recipients or medical providers, as follows:~~

~~--(a) All materials shall be limited to purposes directly related to program administration.~~

~~--(b) Materials prohibited from mailing or distribution shall include:~~

~~--1. Holiday greetings;~~

~~--2. General public announcements;~~

~~--3. Voting information;~~

~~--4. Alien registration notices;~~

~~--5. Names of individuals, unless:~~

~~--a. The named individual is connected with direct program administration; or~~

~~--b--The named individual is identified only in an official agency capacity;~~

and

~~--6--Any material with political implications~~

~~--(c)--Materials permitted for mailing or distribution shall include:~~

~~--1--Information of immediate interest to applicants' or recipients' health and welfare;~~

~~--2--Information regarding the deletion or reduction of covered services;~~

~~--3--Consumer protection information.~~

~~(10)~~ (9) The secretary or a designee shall determine the appropriate application of this section to circumstances not covered expressly herein by this section. Use or disclosure not expressly provided for herein in this section shall may not occur prior to ~~such a~~ this determination.

SECTION 4. HSS 108.02 is renumbered 108.03

SECTION 5. HSS 108.02 is created to read:

HSS 108.02 DEPARTMENT RIGHTS AND RESPONSIBILITIES. (1) DIFFERENT BENEFITS FOR DIFFERENT GROUPS. The department may offer MA benefits to the

categorically needy which are different from the benefits offered to the medically needy, subject to ss. 49.46(2)(a) and 49.47 (6)(a), Stats. For the categorically needy, benefits shall meet federal minimum standards of coverage under 42 CFR 435.100-135. The department need not provide the same benefits that the categorically needy receive to individuals who are determined to be medically needy. The department is not required to provide the same amount, duration and scope of services to all the different groups who make up the medically needy population.

(2) REIMBURSEMENT METHODS AND PAYMENT LEVELS. The department may establish the reimbursement methods and payment levels for program services subject to the requirements of federal and state statutes, regulations and chs. HSS 101 to 107 and this chapter. Notice of specific changes or updates to payment levels shall be communicated to the service providers by the department through periodic publication of provider handbooks.

(3) ADVISORY COMMITTEES. The department may appoint and make use of professional advisory committees on an ad hoc basis to provide expertise for development of service or reimbursement policies.

(4) PROVIDER HANDBOOKS. The department may publish provider handbooks and periodic updates to inform providers of changes in state or federal law, interim policy, departmental interpretation and procedural directives such as billing and prior authorization procedures, specific reimbursement changes and items of general information.



(5) NOTIFICATION OF RECIPIENTS. The department shall publish periodic notification to eligible recipients, as necessary, to provide general information regarding MA program benefits and procedural requirements, and to notify recipients of any benefit or eligibility changes.

(6) NOTICE OF CHANGE IN METHOD OR LEVEL OF REIMBURSEMENT. (a) Except as provided in par. (b), the department shall publish a public notice in the Wisconsin administrative register of any significant proposed change in the statewide method or level of reimbursement for a service, in compliance with 42 CFR 442.205. This notice shall include information on the procedure for obtaining details of the proposed change, why the change is proposed and how to provide public comment to the department.

(b) Changes for which no public notice is required include the following:

1. Changes to conform with medicare methods and federally-invoked upper limits on reimbursement;
2. Changes required of the department by court order; and
3. Changes in wholesalers' or manufacturers' prices of drugs or materials, if the department's method of reimbursement is based on direct or wholesale prices as reported in a national standard such as the American druggist blue book, plus a pharmacy dispensing fee.

(c) Notice in the Wisconsin administrative register shall constitute official notice by the department to its contracted health service providers of a contractual change.

(7) MAILINGS AND DISTRIBUTIONS. The department shall mail or distribute materials to applicants, recipients or medical providers, as follows:

(a) All materials shall be limited to purposes directly related to program administration.

(b) Materials which may not be mailed or distributed include:

1. "Holiday" greetings;
2. General public announcements;
3. Voting information;
4. Alien registration notices;
5. Names of individuals, unless:
  - a. The named individual is connected with direct program administration; or
  - b. The named individual is identified only in an official agency capacity;

and

6. Any material with political implications.

(c) Materials which may be mailed or distributed include:

1. Information of immediate interest to applicants' or recipients' health and welfare;

2. Information regarding the deletion or reduction of covered services; and
3. Consumer protection information.

SECTION 6. HSS 108.03, as renumbered, is amended to read:

HSS 108.03 COUNTY RESPONSIBILITIES. (1) DETERMINATION OF ELIGIBILITY.

~~Pursuant to s. 49.45(2)(a)3, Stats., county agencies~~ Agencies shall be responsible for determination of eligibility for ~~medical assistance~~ MA. These determinations shall ~~be in conformity~~ comply with standards for eligibility found in ~~ss. 49.49(1)(h),~~ 49.46(1) and 49.47(4), Stats., and ~~these regulations.~~ ch. HSS 103.

(2) INFORMING RECIPIENTS OF RIGHTS AND DUTIES. ~~County agencies~~ Agencies shall inform recipients of the recipients' rights and duties under the program, including those rights enumerated in s. HSS 106.04(2)(3).

(3) RECOVERY OF INCORRECT PAYMENTS (a) Agencies shall begin recovery action, as provided by statute for civil liabilities, on behalf of the department against any MA recipient to whom or on whose behalf an incorrect payment was made.

(b) The incorrect payment shall have resulted from a misstatement or omission of fact by the person supplying information during an application for MA benefits, or failure by the recipient, or any other person responsible for giving information on the recipient's behalf, to report income or assets in an amount which would affect the recipient's eligibility for benefits.

(c) The amount of recovery may not exceed the amount of the MA benefits incorrectly provided.

(d) Records of payment for the period of ineligibility, provided to the agency by the MA fiscal agent, shall be evidence of the amounts paid on behalf of the recipient.

(e) The agency shall notify the recipient or the recipient's representative of the period of ineligibility and the amounts incorrectly paid, and shall request arrangement of repayment within a specified period of time.

(f) If the effort to recover incorrect payments under par. (e) is not successful, the agency shall refer cases of possible recovery to the district attorney or corporation counsel for investigation and the district attorney or corporation counsel may bring whatever action may be appropriate for prosecution for fraud or collection under civil liability statutes. Judgments obtained in these actions shall be filed as liens against property in any county in which the recipient is known to possess assets, if not satisfied at the time the judgment or order for restitution is rendered. Execution may be taken on the judgments as otherwise provided in statute.

(g) The agency may seek recovery through an order for restitution by the court of jurisdiction in which the recipient or former recipient is being prosecuted for fraud.

(h) The agency's decision concerning ineligibility and amounts owed may be appealed pursuant to s.PW-PA 20.18, [ch. HSS 225]. During the appeal process

the agency may take no further recovery actions pending a decision. Benefits shall be continued pending the decision on the appeal. When the hearing decision is subsequently adverse to the client the benefits paid pending a decision on the appeal shall be collectable as incorrect payments.

(i) The agency shall immediately deposit monies collected under this subsection to a designated bank account. The collection shall be reported to the department in the manner and on forms designated by the department within 30 days following the end of the month in which the collection is made, and shall be transmitted to the state in accordance with departmental instructions.

(4) AUTHORIZATION OF PAYMENTS (a) The board created under s. 46.23 or 51.42, Stats., in the county in which the recipient resides shall authorize payment by the department for outpatient mental health services funded by the MA program, as well as inpatient psychiatric services for persons in the age group 22 to 64. The board shall be liable for a portion of the cost of services as designated in s. 49.46(2)(b)6 f and 7, Stats.

(b) As part of its function of managing the provision of mental health services, the board shall contract with a sufficient number of psychotherapy providers qualified to meet the standards of s. HSS 105.22, to serve recipients in each county who require psychotherapy.

(c) The board shall review all claims and prior authorization requests for mental health services, and shall note the completion of the review on the provider's request in accordance with the guidelines in s. HSS 107.13.

(d) In the case of inpatient psychiatric services for persons age 22 through 64 in a psychiatric hospital, the county shall be responsible for the state's share of MA costs for the calendar month in which the recipient is admitted.

(5) ESTABLISHING A PROGRAM OF MEDICAL SUPPORT LIABILITY. Pursuant to s. 59.07(97), Stats., counties shall contract with the department to implement and administer the child support collection program under Title IV-D of the Social Security Act of 1935, as amended. One of the responsibilities of a county's child support agency defined in s. HSS 215.02(1) is to establish a program of medical support liability along with the child and spousal support and paternity establishment program.

The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Department of Health and Social Services

Dated: November 8, 1985

By

  
Linda Reivitz, Secretary

