



## 2001 SENATE BILL 406

January 29, 2002 - Introduced by Senators M. MEYER, WIRCH, SCHULTZ and ROESSLER, cosponsored by Representatives JOHNSRUD, MUSSER, HUBER, J. LEHMAN, SYKORA, URBAN, STARZYK, HINES and ALBERS. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1     **AN ACT** *to repeal* 20.435 (4) (iL), 49.45 (2) (a) 10. b., 49.45 (2) (a) 10. c., 49.45 (2)  
2           (a) 11. b., 49.45 (2) (a) 12. b., 49.45 (2) (b) 6m., 49.45 (2) (b) 7., 49.45 (2) (b) 8.,  
3           49.45 (2) (b) 9., 49.45 (3) (g) 2., 49.45 (3) (h) 1n., 49.45 (21) (ag) and 49.45 (21)  
4           (e); *to renumber and amend* 49.45 (2) (a) 10. a., 49.45 (2) (a) 11. a., 49.45 (2)  
5           (a) 12. a., 49.45 (3) (g) 1., 49.45 (3) (h) 1m. and 49.45 (21) (ar); *to amend* 49.45  
6           (2) (a) 9., 49.45 (2) (a) 14., 49.45 (21) (title), 49.45 (21) (b), 49.85 (2) (a), 49.85 (3)  
7           (a) 1., 71.93 (1) (a) 3. and 227.43 (1) (bg); *to create* 49.45 (3) (h) 1. and 49.45 (3)  
8           (h) 2. of the statutes; and *to affect* 2001 Wisconsin Act 16, section 9323 (18k),  
9           (18m), (18n), (18pk), (18pm) and (18pn) and 2001 Wisconsin Act 16, section  
10          9423 (18k); **relating to:** providers of medical assistance and requiring the  
11          exercise of rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Under 2001 Wisconsin Act 16 (the biennial budget act), numerous changes were made, effective January 1, 2003, to provisions relating to procedures for the recovery by the department of health and family services (DHFS) of alleged medical assistance (MA) provider overpayments or improper or erroneous payments, access

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by DHFS to provider records, and liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers his or her business. In addition, the biennial budget act created provisions concerning limitations on the number of MA providers, conditions for certification of providers, and fees chargeable to certain providers. As further affected by the biennial budget act, each of these changes or new provisions requires rule making by DHFS for implementation. The changed or new provisions are as follows:

1. After providing reasonable notice and the opportunity for a hearing, DHFS is authorized to charge a fee to an MA provider that has repeatedly been subject to recoveries of MA payments because of the provider's failure to follow identical or similar billing procedures or to follow other identical or similar MA requirements. The fee must be used to defray in part the costs of audits and investigations by DHFS of medicaid or MA violations and to verify service provision and the appropriateness and accuracy of reimbursement claims. The fee may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. DHFS may recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider; the attorney general may collect the fees. Failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. DHFS must deposit the fees into an appropriation of program revenue for performance by DHFS of MA audits and investigations.

2. DHFS may require certain MA providers, as a condition of certification, to file with DHFS a surety bond, payable to DHFS, under terms and in an amount specified by DHFS by rule, that would reasonably pay the amount of a recovery and DHFS' costs to pursue recovery of overpayments or to investigate and pursue allegations of false claims or statements. Providers who are required to file the surety bonds are those who provide MA services, as specified by DHFS by rule, for which providers have demonstrated significant potential to violate fraud prohibitions, to require recovery of overpayments, or to need certain additional sanctions.

3. DHFS, if it first makes specified findings, may limit the number of providers of particular services that may receive MA certification or limit the amount of resources, including employees and equipment, that a certified provider may use to provide MA services and items.

4. Procedures for the recovery by DHFS of alleged MA provider overpayments or improper or erroneous payments include the opportunity for a provider to present information and argument to DHFS staff, a deadline for payment of recoveries, and payment of interest on delinquent amounts. (Former law required a hearing before recovery could be made.) If certain criteria are met, DHFS may suspend certification for a provider pending a hearing on whether the provider must be decertified for violation of federal or state laws. Lastly, DHFS may compel access to provider records, and a provider's failure to provide access constitutes grounds for decertification.

5. With respect to liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers ownership of his or her business, before a person may take over the operations of an MA provider, the person must

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obtain MA certification with respect to the provider's operation, regardless of whether the person is currently certified. Also, before a person may take over the operation of an MA provider that is liable for repayment of improper or erroneous MA payments or overpayments, full repayment must be made. DHFS must, upon request, notify the person or provider as to whether the provider is liable. If, notwithstanding the prohibition, the person takes over the provider's operation, and the outstanding repayment is not made, DHFS may withhold certification from the person and may proceed against the provider or person. If, within 30 days after DHFS provides notice to the certified provider, the repayment is not paid in full, DHFS may bring an action to compel payment, to decertify a provider, or to do both.

Also under current law, DHFS must periodically set forth conditions of participation and reimbursement in a contract with an MA provider.

Effective January 1, 2003, this bill eliminates provisions created and changes made under the biennial budget act concerning MA providers, including charging a fee to an MA provider who has repeatedly been subject to recoveries of MA payments; the required filing of a surety bond as a condition of certification; authority for DHFS to limit the number of MA providers; and changes to procedures for recovery of alleged MA overpayments or improper or erroneous payments. The bill, instead, restores provisions that existed before enactment of the biennial budget act. The restored provisions include all of the following:

1. The requirement for DHFS to provide written notice and a hearing for sanctions, including decertification or suspension from the MA program, against providers who fail to comply with MA requirements or to whom MA payments have been improperly or erroneously made or overpayments have been made; the bill additionally requires that the hearing be conducted as a class 2 proceeding under the laws relating to administrative procedure.

2. If a provider who is liable for repayment of improper or erroneous MA payments or overpayments sells or otherwise transfers ownership of his or her business, the seller and transferee are each liable for the repayment. The transferee must contact DHFS to ascertain whether the seller has an outstanding amount owing. DHFS may bring an action to compel payment against either the seller or transferee if a sale or other transfer occurs and the amount has not been repaid.

3. The secretary of health and family services is authorized to sign and issue subpoenas for the production of books, patient records, and other information.

With respect to the requirement that DHFS periodically set forth conditions of participation and reimbursement, the bill requires that DHFS promulgate rules that specify criteria for and required procedures for submittal of appropriate claims for reimbursement.

Lastly, the bill eliminates the appropriation of program revenue for moneys received from fees imposed against noncomplying MA providers and transfers moneys in the appropriation to the general fund as of January 1, 2003.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 20.435 (4) (iL) of the statutes, as created by 2001 Wisconsin Act 16,  
2 is repealed.

3           **SECTION 2.** 49.45 (2) (a) 9. of the statutes is amended to read:

4           49.45 (2) (a) 9. Periodically set forth conditions of participation and  
5 reimbursement ~~in a contract with provider~~ for contracts with providers of service  
6 under this section. The department shall promulgate rules that specify criteria for  
7 and required procedures for submittal of appropriate claims for reimbursement.

8           **SECTION 3.** 49.45 (2) (a) 10. a. of the statutes, as affected by 2001 Wisconsin Act  
9 16, is renumbered 49.45 (2) (a) 10. and amended to read:

10           49.45 (2) (a) 10. After reasonable notice and opportunity for a hearing  
11 conducted as a class 2 proceeding under ch. 227, recover money improperly or  
12 erroneously paid or overpayments to a provider by offsetting or adjusting amounts  
13 owed the provider under the program, crediting against a provider's future claims  
14 for reimbursement for other services or items furnished by the provider under the  
15 program, or requiring the provider to make direct payment to the department or its  
16 fiscal intermediary.

17           **SECTION 4.** 49.45 (2) (a) 10. b. of the statutes, as created by 2001 Wisconsin Act  
18 16, is repealed.

19           **SECTION 5.** 49.45 (2) (a) 10. c. of the statutes, as created by 2001 Wisconsin Act  
20 16, is repealed.

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1           **SECTION 6.** 49.45 (2) (a) 11. a. of the statutes, as affected by 2001 Wisconsin Act  
2           16, is renumbered 49.45 (2) (a) 11. and amended to read:

3           49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of  
4           medical assistance and, except as provided in ~~par. (b) 6m. and s. 49.48, and subject~~  
5           to ~~par. (b) 7. and 8.~~, certify providers who meet the criteria.

6           **SECTION 7.** 49.45 (2) (a) 11. b. of the statutes, as created by 2001 Wisconsin Act  
7           16, is repealed.

8           **SECTION 8.** 49.45 (2) (a) 12. a. of the statutes, as affected by 2001 Wisconsin Act  
9           16, is renumbered 49.45 (2) (a) 12. and amended to read:

10          49.45 (2) (a) 12. Decertify or suspend under this subdivision a provider from  
11          ~~or restrict a provider's participation in~~ the medical assistance program, if after  
12          giving reasonable notice and opportunity for hearing the department finds that the  
13          provider has violated a federal statute or regulation or a state statute or  
14          administrative rule and the violation is by statute, regulation, or rule grounds for  
15          decertification or restriction. ~~The department shall suspend the provider pending~~  
16          ~~the hearing under this subdivision if the department includes in its decertification~~  
17          ~~notice findings that the provider's continued participation in the medical assistance~~  
18          ~~program pending hearing is likely to lead to the irretrievable loss of public funds and~~  
19          ~~is unnecessary to provide adequate access to services to medical assistance~~  
20          ~~recipients. As soon as practicable after the hearing, the department shall issue a~~  
21          ~~written decision~~ suspension. No payment may be made under the medical assistance  
22          program with respect to any service or item furnished by the provider subsequent to  
23          decertification or during the period of suspension.

24          **SECTION 9.** 49.45 (2) (a) 12. b. of the statutes, as created by 2001 Wisconsin Act  
25          16, is repealed.

**SENATE BILL 406****SECTION 10**

1           **SECTION 10.** 49.45 (2) (a) 14. of the statutes is amended to read:

2           49.45 (2) (a) 14. Assure due process in implementing subds. 12. and 13. by  
3 providing written notice, ~~a fair hearing and a written decision~~ and a hearing  
4 conducted as a class 2 proceeding under ch. 227.

5           **SECTION 11.** 49.45 (2) (b) 6m. of the statutes, as created by 2001 Wisconsin Act  
6 16, is repealed.

7           **SECTION 12.** 49.45 (2) (b) 7. of the statutes, as created by 2001 Wisconsin Act  
8 16, is repealed.

9           **SECTION 13.** 49.45 (2) (b) 8. of the statutes, as created by 2001 Wisconsin Act  
10 16, is repealed.

11           **SECTION 14.** 49.45 (2) (b) 9. of the statutes, as created by 2001 Wisconsin Act  
12 16, is repealed.

13           **SECTION 15.** 49.45 (3) (g) 1. of the statutes, as affected by 2001 Wisconsin Act  
14 16, is renumbered 49.45 (3) (g) and amended to read:

15           49.45 (3) (g) The secretary may authorize personnel to audit or investigate and  
16 report to the department on any matter involving violations or complaints alleging  
17 violations of statutes, regulations, or rules applicable to the medical assistance  
18 program and to perform such investigations or audits as are required to verify the  
19 actual provision of services or items available under the medical assistance program  
20 and the appropriateness and accuracy of claims for reimbursement submitted by  
21 providers participating in the program. Department employees authorized by the  
22 secretary under this paragraph shall be issued, and shall possess at all times while  
23 they are performing their investigatory or audit functions under this section,  
24 identification, signed by the secretary, that specifically designates the bearer as  
25 possessing the authorization to conduct medical assistance investigations or audits.

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1 Under the request of a designated person and upon presentation of the person's  
2 authorization, providers and medical assistance recipients shall accord the person  
3 access to any ~~provider personnel~~, records, books, or documents or other information  
4 needed. Under the written request of a designated person and upon presentation of  
5 the person's authorization, providers and recipients shall accord the person access  
6 to any needed patient health care records of a recipient. Authorized employees may  
7 hold hearings, administer oaths, take testimony, and perform all other duties  
8 necessary to bring the matter before the department for final adjudication and  
9 determination.

10 **SECTION 16.** 49.45 (3) (g) 2. of the statutes, as created by 2001 Wisconsin Act  
11 16, is repealed.

12 **SECTION 17.** 49.45 (3) (h) 1. of the statutes is created to read:

13 49.45 (3) (h) 1. For purposes of any audit, investigation, examination, analysis,  
14 review, or other function authorized by law with respect to the medical assistance  
15 program, the secretary shall have the power to sign and issue subpoenas to any  
16 person requiring the production of any pertinent books, records, patient health care  
17 records, or other information. Subpoenas so issued shall be served by anyone  
18 authorized by the secretary by delivering a copy to the person named in the  
19 subpoena, or by registered mail or certified mail addressed to the person at his or her  
20 last-known residence or principal place of business. A verified return by the person  
21 serving the subpoena setting forth the manner of service, or, in the event service is  
22 by registered or certified mail, the return post-office receipt signed by the person  
23 served constitutes proof of service.

24 **SECTION 18.** 49.45 (3) (h) 1m. of the statutes, as affected by 2001 Wisconsin Act  
25 16, is renumbered 49.45 (3) (h) 3. and amended to read:

**SENATE BILL 406****SECTION 18**

1           49.45 (3) (h) 3. The failure or refusal of a provider to accord department  
2           auditors or investigators access as required under par. (g) to any provider personnel,  
3           records, books, patient health care records of medical assistance recipients, or  
4           documents or other information requested constitutes person to purge himself or  
5           herself of contempt found under s. 885.12 and perform the act as required by law  
6           shall constitute grounds for decertification or suspension of the provider that person  
7           from participation in the medical assistance program. No payment may be made for  
8           services rendered by the provider that person following decertification, or during the  
9           period of suspension, or during any period of provider failure or refusal to accord  
10          access as required under par. (g).

11           **SECTION 19.** 49.45 (3) (h) 1n. of the statutes, as created by 2001 Wisconsin Act  
12          16, is repealed.

13           **SECTION 20.** 49.45 (3) (h) 2. of the statutes is created to read:

14           49.45 (3) (h) 2. In the event of contumacy or refusal to obey a subpoena issued  
15          under this paragraph and duly served upon any person, any judge in a court of record  
16          in the county in which the person was served may enforce the subpoena in accordance  
17          with s. 885.12.

18           **SECTION 21.** 49.45 (21) (title) of the statutes, as affected by 2001 Wisconsin Act  
19          16, is amended to read:

20           49.45 (21) (title) ~~TAKING OVER PROVIDER'S OPERATION~~ TRANSFER OF BUSINESS,  
21          LIABILITY FOR; REPAYMENTS REQUIRED.

22           **SECTION 22.** 49.45 (21) (ag) of the statutes, as created by 2001 Wisconsin Act  
23          16, is repealed.

24           **SECTION 23.** 49.45 (21) (ar) of the statutes, as affected by 2001 Wisconsin Act  
25          16, is renumbered 49.45 (21) (a) and amended to read:



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1           49.45 (21) (a) ~~Before a person may take over the operation of a provider that~~  
2     is If any provider liable for repayment of improper or erroneous payments or  
3     overpayments under ss. 49.43 to 49.497, ~~full repayment shall be made.~~ Upon  
4     request, the department shall notify the provider or the person that intends to take  
5     over the operation of the provider as to whether the provider sells or otherwise  
6     transfers ownership of his or her business or all or substantially all of the assets of  
7     the business, the transferor and transferee are each liable for the repayment. Prior  
8     to final transfer, the transferee is responsible for contacting the department and  
9     ascertaining if the transferor is liable under this paragraph.

10           **SECTION 24.** 49.45 (21) (b) of the statutes, as affected by 2001 Wisconsin Act 16,  
11     is amended to read:

12           49.45 (21) (b) ~~If, notwithstanding the prohibition under par. (ar), a person takes~~  
13     ~~over the operation of a provider~~ If a transfer occurs and the applicable amount under  
14     par. (ar) (a) has not been repaid, the department may, ~~in addition to withholding~~  
15     ~~certification as authorized under sub. (2) (b) 8.,~~ proceed against the provider or the  
16     person either the transferor or the transferee. Within 30 days after ~~the certified~~  
17     ~~provider receives~~ receiving notice from the department, the transferor or the  
18     transferee shall pay the amount shall be repaid in full. If the amount is not repaid  
19     ~~in full~~ Upon failure to comply, the department may bring an action to compel  
20     payment, If a transferor fails to pay within 90 days after receiving notice from the  
21     department, the department may proceed under sub. (2) (a) 12., or may do both.

22           **SECTION 25.** 49.45 (21) (e) of the statutes, as created by 2001 Wisconsin Act 16,  
23     is repealed.

24           **SECTION 26.** 49.85 (2) (a) of the statutes, as affected by 2001 Wisconsin Act 16,  
25     is amended to read:

**SENATE BILL 406****SECTION 26**

1           49.85 (2) (a) At least annually, the department of health and family services  
2 shall certify to the department of revenue the amounts that, based on the  
3 notifications received under sub. (1) and on other information received by the  
4 department of health and family services, the department of health and family  
5 services has determined that it may recover under s. ~~49.45 (2) (a) 10.~~ or 49.497, except  
6 that the department of health and family services may not certify an amount under  
7 this subsection unless it has met the notice requirements under sub. (3) and unless  
8 its determination has either not been appealed or is no longer under appeal.

9           **SECTION 27.** 49.85 (3) (a) 1. of the statutes, as affected by 2001 Wisconsin Act  
10 16, is amended to read:

11           49.85 (3) (a) 1. Inform the person that the department of health and family  
12 services intends to certify to the department of revenue an amount that the  
13 department of health and family services has determined to be due under s. ~~49.45~~  
14 ~~(2) (a) 10.~~ or 49.497, for setoff from any state tax refund that may be due the person.

15           **SECTION 28.** 71.93 (1) (a) 3. of the statutes, as affected by 2001 Wisconsin Act  
16 16, is amended to read:

17           71.93 (1) (a) 3. An amount that the department of health and family services  
18 may recover under s. ~~49.45 (2) (a) 10.~~ or 49.497, if the department of health and  
19 family services has certified the amount under s. 49.85.

20           **SECTION 29.** 227.43 (1) (bg) of the statutes is amended to read:

21           227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review  
22 under ss. 49.45 (2) (a) 10. and 14., 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16  
23 (5), 86.195 (9) (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b),  
24 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12)  
25 (b), 218.0116 (2), (4), (7) (a), (8) (a), and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22

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1 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d),  
2 342.26, 343.69, and 348.25 (9).

3 **SECTION 30.** 2001 Wisconsin Act 16, section 9323 (18k), (18m), (18n), (18pk),  
4 (18pm) and (18pn) are repealed.

5 **SECTION 31.** 2001 Wisconsin Act 16, section 9423 (18k) is repealed.

6 **SECTION 32. Nonstatutory provisions.**

7 (1) **MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE; RULES.** The department of  
8 health and family services shall submit in proposed form the rules required under  
9 section 49.45 (2) (a) 9. of the statutes, as affected by this act, to the legislative council  
10 staff under section 227.15 (1) of the statutes no later than the first day of the 7th  
11 month beginning after the effective date of this subsection.

12 **SECTION 33. Appropriation changes.**

13 (1) **MEDICAL ASSISTANCE AUDITS AND INVESTIGATIONS; LAPSE.** Notwithstanding  
14 section 20.001 (3) (c) of the statutes, on January 1, 2003, there is lapsed to the general  
15 fund the unencumbered balance in the appropriation under section 20.435 (4) (iL)  
16 of the statutes immediately before the effective date of the repeal of section 20.435  
17 (4) (iL) of the statutes.

18 **SECTION 34. Initial applicability.**

19 (1) **LIABILITY FOR TRANSFER OF BUSINESS.** The treatment of section 49.45 (2) (b)  
20 8. and (21) (title), (ag), (ar), (b), and (e) of the statutes first applies to sales or other  
21 transfers completed on the effective date of this subsection.

22 (2) **ASSESSMENT FOR REPEATED RECOVERIES AGAINST PROVIDERS OF MEDICAL**  
23 **ASSISTANCE.** The treatment of section 49.45 (2) (b) 9. of the statutes first applies to  
24 repeated recoveries from the identical provider that are made on the effective date  
25 of this subsection.

