

## CHAPTER 49

## PUBLIC ASSISTANCE

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**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

## SUBCHAPTER I

## DEFINITIONS

**49.001 Definitions.** In this chapter:

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

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

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

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

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

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

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

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

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

(7) “Treatment foster home” has the meaning given in s. 48.02 (17q).

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

**NOTE:** Sub. (8) is affected by 2005 Wis. Acts 264 and 387. The 2 treatments are mutually inconsistent. Sub. (8) is shown as affected by the last enacted act, 2005 Wis. Act 387. As affected by 2005 Wis. Act 264, it reads:

(8) “Voluntary” means according to an individual’s free choice, if competent, or, if incompetent, by choice of a guardian, unless the individual is subject to a court-ordered placement under ch. 55, is placed by an agency having a court-ordered involuntary commitment of the individual under ch. 51, or is involuntarily committed to the department of corrections or to the department under ch. 971 or 980.

(9) “Wisconsin works agency” means a person under contract under s. 49.143 to administer Wisconsin works under ss. 49.141 to 49.161. If no contract is awarded under s. 49.143, “Wisconsin works agency” means the department of workforce development.

**History:** 1995 a. 27 ss. 2639, 2644, 2654 to 2666, 3083; 1995 a. 289; 1997 a. 3; 2005 a. 264, 387.

## SUBCHAPTER II

## RELIEF BLOCK GRANTS

**49.002 Legislative declaration.** It is the declared legislative policy that a county receiving a relief block grant is the payer of last resort in all cases, except those cases involving crime victim awards under s. 949.06, where a benefit is covered by relief funded by a relief block grant in a county and where a dispute may arise over payment for costs associated with providing health care services to recipients of relief funded by a relief block grant.

**History:** 1983 a. 27; 1985 a. 29 ss. 931, 3200 (23); 1991 a. 39, 322; 1995 a. 27.

**49.01 Definitions.** As used in this subchapter:

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

(1m) “Department” means the department of health and family services.

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

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

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

(3m) “Relief agency” means the following if a county or tribal governing body operates a relief program funded by a relief block grant:

(a) A county department under s. 46.215, 46.22 or 46.23 or an agency under contract with a county department to administer relief.

(b) A tribal governing body or an agency under contract with the governing body to administer relief.

(8j) “Secretary” means the secretary of health and family services.

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

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

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

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

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

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

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

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

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

1. The individual was born in this state.

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

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

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

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

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

**(2m) INELIGIBILITY DUE TO MEDICAL ASSISTANCE DIVESTMENT.** Any person found ineligible for medical assistance because of the divestment provisions under s. 49.453 is ineligible for relief funded by a relief block grant for the same period during which ineligibility exists under s. 49.453.

**(3) WAIVER OF CERTAIN ELIGIBILITY REQUIREMENTS.** (a) A relief agency may waive the requirement under sub. (1) (a) for an individual receiving health care services from a trauma center that meets the criteria established by the American College of Surgeons for classification as a Level I trauma center. If the county waives the requirement under sub. (1) (a) for an individual, the county may seek reimbursement from the individual's county of residence if that county operates a program funded by a relief block grant.

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

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

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

Constitutional law: residency requirements. 53 MLR 439.

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

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

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

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

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

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

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

4. In the case of a county submitting a plan for a relief block grant under s. 49.027, whether the county will provide services other than health care services and, if such services are offered, how the county will determine what services will be provided to a dependent person.

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

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

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

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

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

(c) The contract between the relief agency and the private health care provider provides that any payments under s. 49.45 (6y) and (6z) made to the health care provider shall be used to offset the liability of the relief agency for the costs of the health care services provided under the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Cross Reference:** See also chs. [HFS 250](#) and [251](#), Wis. adm. code.

**49.025 Relief block grants to counties with a population of 500,000 or more; medical relief. (1) APPLICABILITY.** This section applies only to a county having a population of 500,000 or more.

**(2) AMOUNT OF RELIEF BLOCK GRANT.** (a) If a county is eligible to receive a relief block grant in a year, the department shall pay to the county, in accordance with s. [49.031](#), from the appropriation under s. [20.435 \(4\) \(bt\)](#), an amount for that year determined as follows:

1. The department shall determine the lesser of the following:

- For 1996, \$17,600,000, and for each year thereafter, \$16,600,000.

- For any year, 45% of the total amount expended by the county in that year as relief for health care services provided to dependent persons, including the amount transferred to the appropriation account under s. [20.435 \(4\) \(h\)](#) in that year and the amount estimated to be received from the federal government as a match to the funds expended from the appropriation account under s. [20.435 \(4\) \(h\)](#).

2. The department shall subtract from the amount determined under subd. 1. amounts paid to hospitals in that county under s. [49.45 \(6y\)](#) and [\(6z\)](#) in that year. If the amount determined under this subdivision is less than zero, the amount of the relief block grant is \$0.

(b) In calculating the total amount expended by the county under par. (a), the department may exclude any amount expended as a result of a waiver determined to be inappropriate under rules promulgated by the department under s. [49.02 \(7m\) \(d\)](#).

**(3) USE OF RELIEF BLOCK GRANT FUNDS.** A county may use moneys received as a relief block grant only for the purpose of providing health care services to dependent persons.

**History:** 1995 a. 27; 1997 a. 27, 35; 1999 a. 9.

**49.027 Relief block grants to counties having a population of less than 500,000; medical and nonmedical relief. (1) APPLICABILITY.** This section applies only to a county having a population of less than 500,000.

**(2) AMOUNT OF RELIEF BLOCK GRANT.** (a) If a county is eligible to receive a relief block grant in a year, the department shall pay to the county, in accordance with s. [49.031](#) and subject to par. (c), from the appropriation under s. [20.435 \(4\) \(bt\)](#), an amount for that year determined as follows:

2. The department shall calculate the sum of the following:

- For any year, 50% of the total costs incurred by the county for health care services provided to dependent persons as relief in that year.

- For any year, 40% of the total costs incurred by the county for cash benefits, and for services other than health care services, provided to dependent persons as relief in that year.

4. From the amount determined under subd. 2., the department shall subtract amounts paid to hospitals in that county under s. [49.45 \(6y\)](#) and [\(6z\)](#) for that calendar year.

(b) In calculating the total costs incurred by the county under par. (a) 2., the department may exclude any amount expended as relief by the county in that year as a result of a waiver determined by the department to be inappropriate under rules promulgated by the department under s. [49.02 \(7m\) \(d\)](#).

(c) If sufficient funds are not available to pay all of the relief block grants calculated under par. (a), the department shall prorate the available funds among the eligible counties in proportion to the amounts calculated under par. (a).

**(3) USE OF RELIEF BLOCK GRANT FUNDS.** A county may use moneys received as a relief block grant to provide services only as follows:

(a) To provide health care services to dependent persons.

(b) If the county provides health care services to dependent persons, to provide cash benefits, or services other than health care services, to dependent persons.

**(4) WORK COMPONENT.** If a county provides cash benefits, or services other than health care services, as relief, the county may include a work component as part of its relief program funded under this section. If a county includes a work component under this subsection, the county may require a dependent person to participate in the work component as a condition for receiving cash benefits, or services other than health care services.

**History:** 1995 a. 27, 417; 1997 a. 27; 1999 a. 9; 2001 a. 16.

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

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

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

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

**Cross Reference:** See also ch. [HFS 250](#), Wis. adm. code.

**49.031 Payment of relief block grants to counties.**

**(1) FILING OF RELIEF BLOCK GRANT REPORT.** Each county that is eligible for a relief block grant under s. [49.02 \(1\)](#) in a year shall prepare a report, in accordance with rules promulgated by the department under s. [49.02 \(7m\) \(c\)](#), detailing the costs incurred for relief provided to dependent persons in that year. The report shall be filed with the department by March 1 of the year immediately following the year in which the costs were incurred.

**(2) DEADLINE FOR PAYMENT OF RELIEF BLOCK GRANTS.** The department shall pay a relief block grant to each eligible county by July 31 of the year immediately following the year for which the relief block grant is made or within 30 days after the effective date of the act that provides funding, for that year, for the appropriation from which relief block grant moneys are paid, whichever is later.

**History:** 1995 a. 27.

**49.08 Recovery of relief and other assistance.** If any person is the owner of property at the time of receiving general relief under ch. [49](#), 1993 stats., relief funded by a relief block grant or other assistance as an inmate of any county or municipal institution in which the state is not chargeable with all or a part of the inmate's maintenance or as a tuberculosis patient provided for in ss. [252.07](#) to [252.10](#), or at any time thereafter, or if the person becomes self-supporting, the authorities charged with the care of the dependent, or the board in charge of the institution, may sue for the value of the relief or other assistance from the person or the person's estate. Except as otherwise provided in this section, the 10-year statute of limitations may be pleaded in defense in an action to recover relief or other assistance. Where the recipient of relief or other assistance is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. [859.02](#) shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse, surviving spouse or child is dependent on the property for

support. The court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records kept by the municipality, county or institution are prima facie evidence of the value of the relief or other assistance furnished.

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

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

### SUBCHAPTER III

#### ECONOMIC SUPPORT AND WORK PROGRAMS

**49.11 Definitions.** In this subchapter:

(1) "Department" means the department of workforce development.

(2) "Secretary" means the secretary of workforce development.

**History:** 1995 a. 27 ss. 2770, 9130 (4); 1997 a. 3.

**49.114 Contract powers of the department.**

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

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

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

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

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

(5) **EMPLOYMENT PRACTICES.** To the extent permitted under federal law, a religious organization's exemption provided under [42 USC 2000e–1a](#) regarding employment practices is not affected by its participation in, or receipt of funds from, programs administered by the department.

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

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

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

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

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

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

**History:** 1997 a. 27.

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

**49.13 Employment and training program.** (1) In this section:

(a) "Food stamp program" means the federal food stamp program under [7 USC 2011 to 2036](#).

(b) "Wisconsin works employment position" has the meaning given in s. [49.141 \(1\) \(r\)](#).

(2) (a) The department shall contract with the department of health and family services as provided under s. [49.79 \(10\)](#) to administer an employment and training program for recipients under the food stamp program. The department may subcontract with a Wisconsin works agency to administer the employment and training program under this subsection. Except as provided in pars. (b) and (bm), the department may require able individuals who are 18 to 60 years of age who are not participants in a Wisconsin works employment position to participate in the employment and training program under this subsection.

(b) The department may not require an individual who is a recipient under the food stamp program and who is the caretaker of a child who is under the age of 12 weeks to participate in any employment and training program under par. (a).

(bm) The department may not require an individual who is a recipient under the food stamp program to participate in any employment and training program under par. (a) if that individual is enrolled at least half time in a school, as defined in s. [49.26 \(1\) \(a\) 2.](#), a training program or an institution of higher education.

(cm) The amount of food stamp benefits paid to a recipient who is a participant in a Wisconsin works employment position under s. [49.147 \(4\) or \(5\)](#) shall be calculated based on the pre-sanction benefit amount received s. [49.148](#).

(d) A participant in an employment and training program under this section administered by the department is an employee of the department for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage. A participant in an employment and training program under this section administered by a Wisconsin works agency is an employee of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the

participant is performing work provides worker's compensation coverage.

(3) An individual who fails to comply with the work requirements under sub. (2) (a) without good cause is ineligible to participate in the food stamp program under s. 49.79 as follows:

(a) For the first occurrence of noncompliance, one month, or until the person complies with the work requirements under sub. (2) (a), whichever is later.

(b) For the 2nd occurrence of noncompliance, 3 months, or until the person complies with the work requirements under sub. (2) (a), whichever is later.

(c) For the 3rd and subsequent occurrences of noncompliance, 6 months, or until the person complies with the work requirements under sub. (2) (a), whichever is later.

**History:** 2001 a. 16 ss. 1656i, 1656j to 1656p, 1656u.

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

(2) If the necessary authorization under sub. (1) is granted, and except as provided in sub. (3), the department may implement a program to deliver by an electronic benefit transfer system any benefit that is administered by the department and that the department designates by rule.

(3) The department may not require a county or tribal governing body to participate in an electronic benefit transfer system under this section if the costs to the county or tribal governing body would be greater than the costs that the county or tribal governing body would incur in delivering the benefits through a system that is not an electronic benefit transfer system.

**History:** 2001 a. 16 ss. 1656g, 1656h, 1656v, 1656w.

**49.133 Refusal to pay child care providers.** The department or a county department under s. 46.215, 46.22 or 46.23 may refuse to pay a child care provider for child care provided under s. 49.132, 1995 stats., or any other program if any of the following applies to the child care provider, employee or person living on the premises where child care is provided:

(1) The person has been convicted of a felony or misdemeanor that the department or county department under s. 46.215, 46.22 or 46.23 determines substantially relates to the care of children.

(2) The person is the subject of a pending criminal charge that the department or county department under s. 46.215, 46.22 or 46.23 determines substantially relates to the care of children.

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

**History:** 1989 a. 31; 1995 a. 404 s. 122; Stats. 1995 s. 49.133; 1997 a. 252.

**49.134 Child care resource and referral service grants.**

(1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

1. Technical assistance and support to child care providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) "Employer" means a person who engages the services of an employee, and includes the state, its political subdivisions and any office, department, independent agency, authority, institution,

association, society or other body in state or local government created or authorized to be created by the constitution or any law, including the courts and the legislature.

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

(k) “Group day care center” means a day care center that provides care and supervision for 9 or more children.

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

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

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

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

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

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

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

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

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

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

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

(b) “Day care center” has the meaning given in s. 49.136 (1) (d).

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

(d) “Family day care center” has the meaning given in s. 49.136 (1) (j).

(e) “Group day care center” has the meaning given in s. 49.136 (1) (k).

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

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

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

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

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

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

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

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

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

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

(d) Providing informational resources to child care providers.

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

(f) Developing family child care systems.

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

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

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

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

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

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

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

**Cross Reference:** See also chs. DWD 58 and 59, Wis. adm. code.

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

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

**History:** 1999 a. 9.

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

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

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

**(1m)** The department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. The department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member based on the funding available under s. [20.445 \(3\) \(dz\)](#) and [\(md\)](#). The department need not establish the maximum amount by rule under ch. [227](#). The department shall publish the maximum amount and annual changes to it in the Wisconsin administrative register. Emergency assistance provided to needy persons under this section in cases of homelessness or impending homelessness may be used only to obtain or retain a permanent living accommodation. For the purposes of this section, a family is considered to be homeless, or to be facing impending homelessness, if any of the following applies:

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

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

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

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

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

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

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

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

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

1. Withdraws the petition in writing.

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

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

**History:** 1995 a. 289 ss. 83e, 103d; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2005 a. 25.  
**Cross Reference:** See also ch. [DWD 16](#), Wis. adm. code.

**49.141 Wisconsin works; general provisions. (1) DEFINITIONS.** As used in ss. [49.141](#) to [49.161](#):

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

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

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

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

(e) "Job access loan" means a loan administered under s. [49.147 \(6\)](#).

(f) "Migrant worker" has the meaning given in s. [103.90 \(5\)](#).

(g) "Minimum wage" means the state minimum hourly wage under ch. [104](#) or the federal minimum hourly wage under [29 USC 206 \(a\) \(1\)](#), whichever is applicable.

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

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

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

1. A biological parent.

2. A person who has consented to the artificial insemination of his wife under s. [891.40](#).

3. A parent by adoption.

4. A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not



adopted or whose parents do not subsequently intermarry under s. 767.803.

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

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

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

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

(n) “Trial job” means a work component of Wisconsin works administered under s. 49.147 (3).

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

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

(s) “Wisconsin works group” means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent and all dependent children with respect to whom the individual’s dependent child is a custodial parent. “Wisconsin works group” includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. “Wisconsin works group” does not include any person who is receiving benefits under s. 49.027 (3) (b).

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

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

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

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

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

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

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

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

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

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

**(7) PENALTIES.** (a) A person who is convicted of violating sub. (6) in connection with the furnishing by that person of items or services for which payment is or may be made under Wisconsin works is guilty of a Class H felony.

- (b) A person, other than a person under par. (a), who is convicted of violating sub. (6) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

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

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

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

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

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

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

**(8) DAMAGES.** If a person is convicted under sub. (6), the state has a cause of action for relief against the person in an amount equal to 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under sub. (6) is conclusive proof in a civil action of the state’s right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages consist of the total amount of excess payments, any part of which is paid with state funds. In a civil action under this subsection, the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

**(9) KICKBACKS, BRIBES AND REBATES.** (a) Whoever solicits or receives any remuneration in cash or in-kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin works, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Wisconsin works, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

- (b) Whoever offers or pays any remuneration in cash or in-kind to any person to induce the person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin works, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any provision of Wisconsin works, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

(c) This subsection does not apply to any of the following:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately

reflected in the costs claimed or charges made by the provider or entity under Wisconsin works.

2. An amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services.

**(10) PROHIBITED CHARGES.** (a) A provider may not knowingly impose upon a recipient charges in addition to payments received for services under Wisconsin works or knowingly impose direct charges upon a recipient in lieu of obtaining payment under Wisconsin works unless benefits or services are not provided under Wisconsin works and the recipient is advised of this fact prior to receiving the service.

(b) A person who violates this subsection is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

**History:** 1995 a. 289; 1997 a. 27, 41, 283; 1999 a. 9; 2001 a. 105, 109; 2003 a. 173; 2005 a. 443 s. 265.

**Cross Reference:** See also ch. DWD 12, Wis. adm. code.

#### 49.143 Wisconsin works; agency contracts.

**(1) AWARDING CONTRACTS.** (a) Except as provided in par. (ar), the department may do any of the following:

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

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

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

- a. The person's assets and liabilities.
- b. The sources of the person's income.
- c. All of the person's other clients, as well as a description of the goods or services provided to those clients.
- d. The identity of all of the person's subsidiaries, affiliates, and parent companies, if any.

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

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

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

(ar) If the department changes the geographical areas for which a Wisconsin works agency administers Wisconsin works as provided under sub. (6), the department shall award contracts on the basis of the competitive process established by the department

under par. (a) 1. regardless of whether a Wisconsin works agency has met the performance standards established by the department under sub. (3) and is eligible to contract with the department under par. (a) 2.

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

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

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

(a) Establish a community steering committee within 60 days after the date on which the contract is awarded. The Wisconsin works agency shall recommend the members of the committee to the chief executive officer of each county served by the Wisconsin works agency. The chief executive officer of each county shall appoint the members of the committee. The number of members that each chief executive officer appoints to the committee shall be in proportion to the population of that officer's county relative to the population of each other county served by the Wisconsin works agency, except that the chief executive officer of a county that is not a Wisconsin works agency shall appoint the director of the county department under s. 46.215, 46.22 or 46.23, or his or her designee, and one other representative of the county department under s. 46.215, 46.22 or 46.23. The committee shall consist of at least 12 members, but not more than 15 members. The members of the committee shall appoint a chairperson who shall be a person who represents business interests. The committee shall do all of the following:

1. Advise the Wisconsin works agency concerning employment and training activities.
2. Identify and encourage employers to provide permanent jobs for persons who are eligible for trial jobs or community service jobs.
3. Create, and encourage others to create, subsidized jobs for persons who are eligible for trial jobs or community service jobs.
4. Create, and encourage others to create, on-the-job training sites for persons who are eligible for trial jobs or community service jobs.
5. Foster and guide the entrepreneurial efforts of participants who are eligible for trial jobs or community service jobs.

6. Provide mentors, both from its membership and from recruitment of members of the community, to provide job-related guidance, including assistance in resolving job-related issues and the provision of job leads or references, to persons who are eligible for trial jobs or community service jobs.

7. Coordinate with the council on workforce investment established under 29 USC 2821 to ensure compatibility of purpose and no duplication of effort.

8. Work with participants, employers, child care providers and the community to identify child care needs, improve access to child care and expand availability of child care.

10. Identify motivational training programs, including programs that enhance parenting skills.

(b) Establish a children's services network. The children's services network shall provide information about community resources available to the dependent children in a Wisconsin works group, including charitable food and clothing centers; subsidized and low-income housing; transportation subsidies; the state supplemental food program for women, infants and children under s. 253.06; and child care programs. In a county having a population of 500,000 or more, a children's services network shall, in addition, provide a forum for those persons who are interested in the delivery of child welfare services and other services to children and families in the geographical area under sub. (6) served by that children's services network to communicate with and make recommendations to the providers of those services in that geographical area with respect to the delivery of those services in that area.

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

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

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

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

(ct) Return to the department an amount equal to the total amount of benefits withheld under s. 49.148 for missed work or education and training activities.

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

(em) Determine eligibility for child care assistance under s. 49.155 and refer eligible families to county departments under s. 46.215, 46.22 or 46.23 for child care services.

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

department shall update the description as frequently as necessary to reflect all benefits and services that may be offered by Wisconsin works agencies.

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

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

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

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

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

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

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

(e) Recruit mentor families.

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

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

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

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

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

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

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

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

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

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

5. Appropriate implementation of Wisconsin works.

6. Customer satisfaction.

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

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

**(5) REQUESTS FOR INFORMATION.** (a) In accordance with rules promulgated by the department, a Wisconsin works agency may request from any person any information that it determines appropriate and necessary for the administration of Wisconsin works.

Any person in this state shall provide this information within 7 days after receiving a request under this paragraph. The Wisconsin works agency may extend the 7-day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the agency. The Wisconsin works agency may disclose information obtained under this paragraph only in the administration of Wisconsin works. The Wisconsin works agency shall keep all information that it receives regarding victims of domestic abuse strictly confidential, except to the extent needed to administer Wisconsin works.

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

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

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

**(6) GEOGRAPHICAL AREAS.** The department shall determine the geographical area for which a Wisconsin works agency will administer Wisconsin works. Except for federally recognized American Indian reservations and in counties with a population of 500,000 or more, no geographical area may be smaller than one county. A geographical area may include more than one county. The department need not establish the geographical areas by rule.

**History:** 1995 a. 216, 289; 1997 a. 27, 36, 236, 318; 1999 a. 9, 32; 2001 a. 16; 2005 a. 25.

**Cross Reference:** See also ch. DWD 17, Wis. adm. code.

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

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

- (a) The individual is a custodial parent.
- (b) The individual has attained the age of 18.
- (c) The individual is a U.S. citizen or a qualifying alien, as defined by the department by rule.
- (d) The individual has residence in this state.
- (f) 1. Subject to subd. 2., all of the following conditions are met:

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

b. Every parent in the individual's Wisconsin works group fully cooperates in good faith with efforts directed at obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for

which that parent may be responsible, regardless of whether the parent is the custodial or noncustodial parent of the minor child. Such cooperation shall be in accordance with federal law and regulations and rules promulgated by the department applicable to collection of support payments and may not be required if the parent has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

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

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

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

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

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

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

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

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

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

(n) 1. Except as provided in subd. 4., beginning on the date on which the individual has attained the age of 18, the total number of months in which the individual or any adult member of the individual's Wisconsin works group has participated in, or has received benefits under, any of the following or any combination of the following does not exceed 60 months, whether or not consecutive:

a. The job opportunities and basic skills program under s. 49.193, 1997 stats. Active participation on or after October 1, 1996, in the job opportunities and basic skills program counts toward the 60-month limit.

b. A Wisconsin works employment position.

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

2. Except as provided in subd. 4., in calculating the number of months in which the individual participated under subd. 1., the Wisconsin works agency shall include any month in which any

adult member of a Wisconsin works group participated in a Wisconsin works employment position, if the individual was a member of that Wisconsin works group during that month.

3. A Wisconsin works agency may extend the time limit under this paragraph only if the Wisconsin works agency determines, in accordance with rules promulgated by the department, that unusual circumstances exist that warrant an extension of the participation period.

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

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

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

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

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

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

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

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

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

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

(b) *Income limitations.* The individual is a member of a Wisconsin works group whose gross income is at or below 115% of

the poverty line. In calculating gross income under this paragraph, the Wisconsin works agency shall include all of the following:

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

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

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

**History:** 1995 a. 289; 1997 a. 27, 191, 237, 283; 1999 a. 9; 2001 a. 16; 2005 a. 25.

**Cross Reference:** See also ss. DWD 12.09 and 12.24, Wis. adm. code.

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

**History:** 1997 a. 27.

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

**History:** 1995 a. 289.

**Cross Reference:** See also s. DWD 12.14, Wis. adm. code.

**49.147 Wisconsin works; work programs and job access loans. (1) DEFINITIONS.** In this section:

(c) "Unsubsidized employment" means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities.

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

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

**(2) UNSUBSIDIZED EMPLOYMENT.** (a) *Job search, orientation and training activities.* 1. An individual who applies for a Wisconsin works employment position may be required by the Wis-

consin works agency to search for unsubsidized employment during the period that his or her application is being processed as a condition of eligibility. A participant in a Wisconsin works employment position shall search for unsubsidized employment throughout his or her participation. The department shall define by rule satisfactory search efforts for unsubsidized employment.

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

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

(3) TRIAL JOBS. (a) *Administration.* A Wisconsin works agency shall administer a trial job program as part of its administration of the Wisconsin works program to improve the employability of individuals who are not otherwise able to obtain unsubsidized employment, as determined by the Wisconsin works agency, by providing work experience and training to assist them to move promptly into unsubsidized employment. In determining an appropriate placement for a participant, a Wisconsin works agency shall give priority to placement under this subsection over placements under subs. (4) and (5). The Wisconsin works agency shall pay a wage subsidy to an employer that employs a participant under this subsection and agrees to make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy is terminated. The wage subsidy may not exceed \$300 per month for full-time employment of a participant. For less than full-time employment of a participant during a month, the wage subsidy may not exceed a dollar amount determined by multiplying \$300 by a fraction, the numerator of which is the number of hours worked by the participant in the month and the denominator of which is the number of hours which would be required for full-time employment in that month.

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

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

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

(4) COMMUNITY SERVICE JOB. (a) *Administration.* A Wisconsin works agency shall administer a community service job program as part of its administration of Wisconsin works to improve the employability of an individual who is not otherwise able to obtain employment, as determined by the Wisconsin works agency, by providing work experience and training, if necessary, to assist the individual to move promptly into unsubsidized public or private employment or a trial job. In determining an appropriate placement for a participant, a Wisconsin works agency shall give placement under this subsection priority over placements under sub. (5). Community service jobs shall be limited to proj-

ects that the department determines would serve a useful public purpose or projects the cost of which is partially or wholly offset by revenue generated from such projects. After each 6 months of an individual's participation under this subsection and at the conclusion of each assignment under this subsection, a Wisconsin works agency shall reassess the individual's employability.

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

(as) *Required hours.* Except as provided in pars. (at) and (av) and sub. (5m), a Wisconsin works agency shall require a participant placed in a community service job program to work in a community service job for the number of hours determined by the Wisconsin works agency to be appropriate for the participant at the time of application or review, but not to exceed 30 hours per week. Except as provided in pars. (at) and (av), a Wisconsin works agency may require a participant placed in the community service job program to participate in education or training activities for not more than 10 hours per week.

(at) *Motivational training.* A Wisconsin works agency may require a participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program identified by the community steering committee under s. 49.143 (2) (a) 10. The Wisconsin works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (as).

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

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

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

person for whom the participant is performing work provides worker's compensation coverage.

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

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

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

3. The Wisconsin works agency determines that the individual is incapable of performing a trial job or community service job.

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

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

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

d. Counseling or physical rehabilitation activities.

e. Other activities that the Wisconsin works agency determines are consistent with the capabilities of the individual.

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

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

(bs) *Required hours.* Except as provided in par. (bt) and sub. (5m), a Wisconsin works agency may require a participant placed in a transitional placement to engage in activities under par. (b) 1. for up to 28 hours per week. Except as provided in sub. (5m), a Wisconsin works agency may require a participant placed in a transitional placement to participate in education or training activities under par. (bm) for not more than 12 hours per week.

(bt) *Motivational training.* A Wisconsin works agency may require a participant, during the first 2 weeks of participation under this subsection, to participate in an assessment and motivational training program identified by the community steering committee under s. 49.143 (2) (a) 10. The Wisconsin works agency may require not more than 40 hours of participation per week under this paragraph in lieu of the participation requirement under par. (bs).

(c) *Worker's compensation.* A participant under this subsection is an employee of the Wisconsin works agency for purposes

of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

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

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

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

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

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

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

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

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

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

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

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

4. The individual is not a migrant worker.

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

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

2. The method of loan disbursement.

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

(c) *Distribution and administration.* From the appropriation under s. 20.445 (3) (jL), the department shall distribute funds for job access loans to a Wisconsin Works agency, which shall administer the loans in accordance with rules promulgated by the department.

(cm) *Collection of delinquent repayments.* 1. The department of workforce development may, in the manner provided in s. 49.85, collect job access loan repayments that are delinquent under the terms of a repayment agreement. The department of workforce development shall credit all delinquent repayments collected by the department of revenue as a setoff under s. 71.93 to the appropriation account under s. 20.445 (3) (jL). Use of the

process under s. 49.85 does not preclude the department of workforce development from collecting delinquent repayments through other legal means.

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

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

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

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

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

**History:** 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25.  
**Cross Reference:** See also ss. DWD 12.16 and 12.17, Wis. adm. code.

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

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

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

**History:** 2001 a. 16.

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

**History:** 1999 a. 9.

**49.148 Wisconsin works; wages and benefits.**

(1) **BENEFIT LEVELS FOR PARTICIPANTS IN EMPLOYMENT POSITIONS.** A participant in a Wisconsin works employment position shall receive the following benefits:

(a) *Trial jobs.* For a participant in a trial job, the amount established in the contract between the Wisconsin works agency and the trial job employer, but not less than minimum wage for every hour actually worked in the trial job, not to exceed 40 hours per week paid by the employer. Hours spent participating in education and training activities under s. 49.147 (3) (am) shall be included in determining the number of hours actually worked.

(b) *Community service jobs.* 1. Except as provided in subd. 1m., for a participant in a community service job under s. 49.147 (4), a monthly grant of \$673, paid by the Wisconsin works agency. For every hour that the participant misses work or education or training activities without good cause, the grant amount shall be reduced by \$5.15. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse. If a participant in a community service job under s. 49.147 (4) is required to work fewer than 30 hours per week because the participant has unsubsidized employment, as defined in s. 49.147 (1) (c), the grant amount under this paragraph shall equal the amount specified under subd. 1m. minus \$5.15 for each hour that the participant misses work or education or training activities without good cause.

1m. Except as provided in subd. 1., the Wisconsin works agency shall pay a participant in a community service job the following:

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

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

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

d. For a participant placed in a community service job for more than 20 hours per week, \$673.

3. For a participant in a community service job who participates in technical college education under s. 49.147 (5m), a monthly grant of \$673, paid by the Wisconsin works agency. For every hour that the participant misses work or other required activities without good cause, the grant amount shall be reduced by \$5.15. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

(c) *Transitional placements.* For a participant in a transitional placement under s. 49.147 (5) or in a transitional placement and in technical college education under s. 49.147 (5m), a grant of \$628, paid monthly by the Wisconsin works agency. For every hour that the participant fails to participate in any required activity without good cause, including any activity under s. 49.147 (5) (b) 1. a. to e., the grant amount shall be reduced by \$5.15. Good cause shall be determined by the financial and employment planner in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

(1m) **CUSTODIAL PARENT OF INFANT.** (a) A custodial parent of a child who is 12 weeks old or less and who meets the eligibility requirements under s. 49.145 (2) and (3) may receive a monthly grant of \$673 unless another adult member of the custodial parent's Wisconsin works group is participating in, or is eligible to participate in, a Wisconsin works employment position or is employed in unsubsidized employment, as defined in s. 49.147 (1) (c). A Wisconsin works agency may not require a participant



under this subsection to participate in any employment positions. Receipt of a grant under this subsection does not constitute participation in a Wisconsin works employment position for purposes of the time limits under s. 49.145 (2) (n) or 49.147 (3) (c), (4) (b) or (5) (b) 2. if the child is born to the participant not more than 10 months after the date that the participant was first determined to be eligible for assistance under s. 49.19 or for a Wisconsin works employment position.

(b) Receipt of a grant under this subsection constitutes participation in a Wisconsin works employment position for purposes of the time limits under ss. 49.145 (2) (n) and 49.147 (3) (c), (4) (b) or (5) (b) 2. if the child is born to the participant more than 10 months after the date that the participant was first determined to be eligible for assistance under s. 49.19 or for a Wisconsin works employment position unless the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the mother did not indicate a freely given agreement to have sexual intercourse or of incest in violation of s. 944.06 or 948.06 and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

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

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

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

**History:** 1995 a. 289; 1997 a. 27; 1999 a. 9.

**Cross Reference:** See also s. DWD 12.18, Wis. adm. code.

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

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

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

(4) Work with the department of commerce to coordinate the provision of training to participants in conjunction with employers eligible for the development zone program under subch. VI of ch. 560.

**History:** 1995 a. 289.

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

**(2) REQUIREMENTS FOR NONPARTICIPANT PARENT.** (a) If a participant in a Wisconsin works employment position resides with the other parent of a dependent child with respect to whom the participant is a custodial parent, the other parent shall participate in activities described under sub. (3) if the Wisconsin works group receives federally funded child care assistance on behalf of the

dependent child. The other parent shall participate in activities described under sub. (3) for a number of hours per week that is at least equal to the difference between 55 hours and the sum of the number of hours that the participant in the Wisconsin works employment position participates in the Wisconsin works employment position and the number of hours that the participant in the Wisconsin works employment position participates in any activity described in sub. (3) during that week.

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

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

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

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

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

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

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

**History:** 1997 a. 27; 1999 a. 32.

**Cross Reference:** See also s. DWD 12.27, Wis. adm. code.

**49.151 Wisconsin works; sanctions. (1) REFUSAL TO PARTICIPATE.** A participant who refuses to participate 3 times in any Wisconsin works employment position component is ineligible to participate in that component. A participant is also ineligible to participate in that Wisconsin works employment position component if an individual in the participant's Wisconsin works group is subject to the work requirement under s. 49.15 (2) and refuses 3 times to participate as required. A participant whom the Wisconsin works agency has determined is ineligible under this section for a particular Wisconsin works employment position component may be eligible to participate in any other Wisconsin works employment position component in which the participant has not refused to participate 3 times. A participant or an individual who is subject to the work requirement under s. 49.15 (2) demonstrates a refusal to participate if any of the following applies:

(a) The participant, or an individual who is in the participant's Wisconsin works group and who is subject to the work requirement under s. 49.15 (2), expresses verbally or in writing to a Wisconsin works agency that he or she refuses to participate.

(b) The participant, or an individual who is in the participant's Wisconsin works group and who is subject to the work requirement under s. 49.15 (2), fails, without good cause, as determined by the Wisconsin works agency, to appear for an interview with a prospective employer or, if the participant is in a Wisconsin works transitional placement, the participant fails to appear for an assigned activity, including an activity under s. 49.147 (5) (b) 1. a. to e., without good cause, as determined by the Wisconsin works agency.

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

(d) The participant, or an individual who is in the participant's Wisconsin works group and who is subject to the work requirement under s. 49.15 (2), loses employment as a result of being discharged for cause.

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

**(2) INTENTIONAL PROGRAM VIOLATIONS.** If a court finds or it is determined after an administrative hearing that an individual who

is a member of a Wisconsin works group applying for or receiving benefits under ss. 49.141 to 49.161, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has intentionally violated, on 3 separate occasions, any provision in ss. 49.141 to 49.161 or any rule promulgated under those sections, the Wisconsin works agency may permanently deny benefits under ss. 49.141 to 49.161 to the individual.

**History:** 1995 a. 289; 1997 a. 27.

**Cross Reference:** See also ss. DWD 12.20 and 12.21, Wis. adm. code.

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

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

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

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

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

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

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

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

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

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

**(3) REMEDIES.** (a) If, following review under sub. (2), the Wisconsin works agency or the department determines that an individual, whose application for a Wisconsin works employment position was denied based on eligibility, was in fact eligible, or that the individual was placed in an inappropriate Wisconsin works employment position, the Wisconsin works agency shall place the individual in the first available Wisconsin works employment position that is appropriate for that individual, as determined by the Wisconsin works agency or the department. An

individual who is placed in a Wisconsin works employment position under this paragraph is eligible for the benefit for that position under s. 49.148 beginning on the date on which the individual begins participation under s. 49.147.

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

**History:** 1995 a. 289; 1997 a. 27.

**Cross Reference:** See also ss. DWD 12.07 and 12.22, Wis. adm. code.

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

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

(b) After providing written notice, explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action.

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

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

**History:** 2005 a. 25.

**49.155 Wisconsin works; child care subsidy. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

**(1d) CHILD CARE CERTIFICATION RULES.** (a) The department shall promulgate rules establishing standards for the certification of child care providers under s. 48.651. The department shall consult with the child abuse and neglect prevention board before promulgating those rules. In establishing the requirements for certification under this paragraph of a child care provider, the department shall include a requirement that all providers and all employees and volunteers of a provider who provide care and supervision for children receive, before the date on which the provider is certified or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome, if the provider, employee, or volunteer provides care and supervision for children under one year of age, and the training relating to shaken baby syndrome and impacted babies required under s. 253.15 (4), if the provider, employee, or volunteer provides care and supervision for children under 5 years of

age. In establishing the requirements for certification as a Level II certified family day care provider, the department may not include any other requirement for training for providers.

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

**(1g) DISTRIBUTION OF FUNDS.** Subject to sub. (1j), the department shall, within the limits of the availability of the federal child care and development block grant funds received under 42 USC 9858, do all of the following:

(b) From the appropriations under s. 20.445 (3) (cm), (kx), and (mc), distribute \$5,488,500 in each fiscal year for grants under s. 49.134 (2) for child day care resource and referral services, for grants under s. 49.137 (4m), for a child care scholarship and bonus program, for administration of the department's office of child care and for the department's share of the costs for the Child Care Information Center operated by the division for libraries, technology, and community learning in the department of public instruction.

(c) From the appropriation account under s. 20.445 (3) (mc), transfer \$4,438,200 in fiscal year 2005–06 and \$4,440,500 in fiscal year 2006–07 to the appropriation account under s. 20.435 (3) (kx).

(d) From the appropriation under s. 20.445 (3) (md), distribute \$3,378,500 in fiscal year 2005–06 and \$3,378,500 in fiscal year 2006–07 for grants under s. 49.134 (2) for child day care resource and referral services, for contracts under s. 49.137 (4) for training and technical assistance, for grants under s. 49.137 (4m), and for a child care scholarship and bonus program.

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

**(1m) ELIGIBILITY.** A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 or, if the child is disabled, who has not attained the age of 19, if the individual meets all of the following conditions:

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

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

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

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

b. The individual has not yet attained the age of 18 years and the individual resides with his or her custodial parent or with a kinship care relative under s. 48.57 (3m) or with a long-term kinship care relative under s. 48.57 (3n) or is in a foster home or treatment foster home licensed under s. 48.62, a subsidized guardianship home under s. 48.62 (5), a group home, or an independent living arrangement supervised by an adult.

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

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

3m. Participate in a job search or work experience component of the food stamp employment and training program under s. 49.13.

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

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

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

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

2. Section 49.145 (2) (s).

(bm) If the individual is providing care for a child under a court order and is receiving payments on behalf of the child under s. 48.57 (3m) or (3n) or 48.62 (5), or if the individual is a foster parent or treatment foster parent, and child care is needed for that child, the child meets the requirement under s. 49.145 (2) (c).

(c) 1. Except as provided in subs. 1g., 1h., 1m., 2., and 3., the gross income of the individual's family is at or below 185% of the poverty line for a family the size of the individual's family or, for an individual who is already receiving a child care subsidy under this section, the gross income of the individual's family is at or below 200% of the poverty line for a family the size of the individual's family. In calculating the gross income of the family, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. and 3., except that, in calculating farm and self-employment income, the Wisconsin works agency shall include the sum of the following:

a. Net earnings reported to the Internal Revenue Service.

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

1g. If the individual is a foster parent of the child or a subsidized guardian or interim caretaker of the child under s. 48.62 (5), the child's biological or adoptive family has a gross income that is at or below 200% of the poverty line. In calculating the gross income of the child's biological or adoptive family, the Wisconsin

works agency shall include income described under s. 49.145 (3) (b) 1. and 3.

1h. If the individual is a relative of the child, is providing care for the child under a court order, and is receiving payments under s. 48.57 (3m) or (3n) on behalf of the child, the child's biological or adoptive family has a gross income that is at or below 200% of the poverty line. In calculating the gross income of the child's biological or adoptive family, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. and 3.

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

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

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

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

**(3) COUNTY ADMINISTRATION.** (a) A Wisconsin works agency shall refer an individual who has been determined eligible under sub. (1m) to a county department under s. 46.215, 46.22 or 46.23 for child care assistance.

(b) The county department under s. 46.215, 46.22 or 46.23 shall administer child care assistance under this section. In administering child care assistance under this section, the county department under s. 46.215, 46.22 or 46.23 shall do all of the following:

1. Determine an individual's liability under sub. (5).
2. Provide a voucher to an eligible individual for the payment of child care services provided by a child care provider or otherwise reimburse child care providers.
3. Set maximum reimbursement rates as provided under sub. (6) (b).
5. Certify child care providers under s. 48.651.
6. Assist individuals who are eligible for child care subsidies under this section to identify available child care providers and select appropriate child care arrangements.

**(3m) DISTRIBUTION OF CHILD CARE FUNDS.** (a) The department shall reimburse child care providers or shall distribute funds to county departments under s. 46.215, 46.22 or 46.23 or tribal governing bodies for child care services provided under this section and to private nonprofit agencies that provide child care for children of migrant workers. The department may reimburse a Wisconsin works agency for child care that the Wisconsin works agency provides to the children of Wisconsin works participants and applicants.

(b) Of the funds distributed under par. (a) not more than the greatest of the following may be used for the costs of administering the program under this section:

1. Five percent of the funds distributed under par. (a) in the current year.
2. Five percent of the funds distributed under par. (a) in the immediately preceding year.
3. Twenty thousand dollars.

(c) From the funds distributed under par. (a), a county may provide child care services itself, purchase child care services from a child care provider, provide vouchers to an eligible parent for the payment of child care services provided by a child care provider, reimburse an eligible parent for payments made by the parent to a child care provider for child care services, adopt, with the approval of the department, any other arrangement that the county considers appropriate or use any combination of these methods to provide child care.

(d) No funds distributed under par. (a) may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child, unless the county determines that the care is necessary because of a special health condition of the child.

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

**(5) LIABILITY FOR PAYMENT.** An individual is liable for the percentage of the cost of the child care specified by the department in a printed copayment schedule. An individual who is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care.

**(6) CHILD CARE RATES AND QUALITY STANDARDS.** (a) Subject to review and approval by the department, each county shall establish the maximum reimbursement rate for licensed child care services provided under this section. A county shall set the rate so that at least 75% of the number of places for children within the licensed capacity of all child care providers in that county can be purchased at or below that maximum rate.

(b) Subject to review and approval by the department, each county shall set a maximum reimbursement rate for Level I certified family day care providers for services provided to eligible individuals under this section. The maximum rate set under this paragraph may not exceed 75% of the rate established under par. (a).

(c) Subject to review and approval by the department, each county shall set a maximum reimbursement rate for Level II certified family day care providers for services provided to eligible individuals under this section. The maximum rate set under this paragraph may not exceed 50% of the rate established under par. (a).

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

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

**(7) REFUSAL TO PAY CHILD CARE PROVIDERS.** (a) The department or the county department under s. 46.215, 46.22 or 46.23

may refuse to pay a child care provider for child care provided under this section if any of the following applies to the child care provider, employee or person living on the premises where child care is provided:

1. The person has been convicted of a felony or misdemeanor that the department or county department determines substantially relates to the care of children.
2. The person is the subject of a pending criminal charge that the department or county department determines substantially relates to the care of children.
3. The person has been determined under s. 48.981 to have abused or neglected a child.

**History:** 1995 a. 289; 1997 a. 27, s. 1766 to 1775, 1838 to 1857; 1997 a. 41, 105, 237, 252; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 165.

**Cross Reference:** See also ch. DWD 56 and s. DWD 12.26, Wis. adm. code.

#### 49.157 Wisconsin works; transportation assistance.

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

**History:** 1995 a. 289.

#### 49.159 Wisconsin works; noncustodial and minor and other custodial parents. (1) NONCUSTODIAL PARENTS.

An individual who would be eligible under s. 49.145 except that the individual is the noncustodial parent of a dependent child, is eligible for services under this subsection if the dependent child's custodial parent is a participant and if the individual is subject to a child support order. The Wisconsin works agency may provide job search assistance and case management designed to enable eligible noncustodial parents to obtain and retain employment.

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

(3) OTHER CUSTODIAL PARENTS. A custodial parent in a Wisconsin works group in which the other custodial parent is a participant in a Wisconsin works employment position is eligible for employment training and job search assistance services provided by the Wisconsin works agency.

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

**History:** 1995 a. 289; 1997 a. 27.

#### 49.161 Wisconsin works; overpayments. (1) TRIAL JOBS OVERPAYMENTS.

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

(2) COMMUNITY SERVICE JOBS AND TRANSITIONAL PLACEMENTS OVERPAYMENTS. Except as provided in sub. (3), the department shall recover an overpayment of benefits paid under s. 49.148 (1) (b) or (c) from an individual who continues to receive benefits

under s. 49.148 (1) (b) and (c) by reducing the amount of the individual's benefit payment by no more than 10%.

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

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

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

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

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

**History:** 1995 a. 289; 1997 a. 27; 1999 a. 9.

**Cross Reference:** See also s. DWD 12.23, Wis. adm. code.

#### 49.1635 Wisconsin Trust Account Foundation. (1) To

the extent permitted under federal law and subject to sub. (2), from the appropriation under s. 20.445 (3) (md) the department may distribute funds to the Wisconsin Trust Account Foundation in an amount up to the amount received by the foundation from private donations, but not to exceed \$100,000 in a fiscal year. Except as provided in sub. (4), funds distributed under this subsection may be used only for the provision of legal services to individuals who are eligible for temporary assistance for needy families under 42 USC 601 et seq. and whose incomes are at or below 200% of the poverty line.

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

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

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

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

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

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

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

#### 49.167 Alcohol and other drug abuse treatment grant program. (1) The department may award grants to counties,

tribal governing bodies, and private entities to provide community-based alcohol and other drug abuse treatment programs that are targeted at individuals who have a family income of not more than 200% of the poverty line and who are eligible for temporary assistance for needy families under 42 USC 601 et seq. and that do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

**49.173 Workforce attachment and advancement program.** (1) The department shall distribute funds to Wisconsin works agencies and to local workforce development boards established under 29 USC 2832 to provide all of the following to any person who is eligible for the federal temporary assistance to needy families program under 42 USC 601 et. seq.:

(a) Job readiness training and job placement services to unemployed persons.

(b) Basic job skills development to unemployed or recently employed persons.

(c) Services to assist recently employed persons with job retention.

(d) Incumbent worker training to promote job advancement and increased earnings.

(e) Services to employers to assist them in retaining workers and providing workers with position advancement.

(2) (a) The department shall allocate a portion of the amount to be distributed under sub. (1) and shall distribute that portion in equal amounts among all of the Wisconsin works agencies.

(b) The department shall distribute the amount that remains after the distribution under par. (a) to each Wisconsin works agency and local workforce development board based on the criteria specified in sub. (3).

(3) (a) The department shall allocate and distribute funds under sub. (2) (b) to Wisconsin works agencies based on the number of persons in all of the following case categories served by that Wisconsin works agency:

1. Case management.
2. Food stamp employment and training.
3. Diversion, as defined by the department.
4. Noncustodial parents.
5. Child care.

(b) The department shall allocate and distribute to each local workforce development board funds under sub. (2) (b) based on a formula that takes into account all of the following:

1. The percentage of the population of the area served by the local board with an income at or below 200% of the poverty line.
2. Labor force participation.
3. The unemployment rate of the area served by the local board.

(4) The department shall require recipients of the funds distributed under this section to meet performance standards that are based on employment placement for unemployed persons, job retention rates of the persons served by the fund recipients, increased earnings of the persons served by the fund recipients, and increased child support collections for noncustodial parents served by the fund recipients.

History: 1999 a. 9; 2001 a. 16.

**49.175 Public assistance and local assistance allocations.** (1) ALLOCATION OF FUNDS. Except as provided in sub. (2), within the limits of the appropriations under s. 20.445 (3) (a), (cm), (dz), (k), (kx), (L), (mc), (md), (me), and (s), the department shall allocate the following amounts for the following purposes:

(a) *Wisconsin Works benefits.* For Wisconsin Works benefits, \$59,184,700 in fiscal year 2005–06 and \$51,930,000 in fiscal year 2006–07.

(b) *Wisconsin Works administration.* For administration of Wisconsin Works performed under contracts under s. 49.143, \$18,999,900 in fiscal year 2005–06 and \$16,834,100 in fiscal year 2006–07.

(c) *Performance bonuses.* For the payment of performance bonuses to Wisconsin Works agencies that have entered into contracts under s. 49.143 having a term that begins on January 1, 2004, and that ends on December 31, 2005, \$0 in fiscal year 2005–06.

(f) *Wisconsin Works ancillary services.* For program services under Wisconsin Works provided under contracts under s. 49.143, \$49,534,800 in fiscal year 2005–06 and \$43,463,000 in fiscal year 2006–07.

(g) *State administration of public assistance programs.* For state administration of public assistance programs, \$16,060,000 in each fiscal year.

(i) *Emergency assistance.* For emergency assistance under s. 49.138, \$4,500,000 in each fiscal year.

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

(p) *Direct child care services.* For direct child care services under s. 49.155, \$310,332,100 in fiscal year 2005–06 and \$313,432,100 in fiscal year 2006–07.

(q) *Indirect child care services.* For indirect child care services under s. 49.155 (1g), \$9,926,700 in fiscal year 2005–06 and \$9,929,000 in fiscal year 2006–07.

(qm) *Quality care for quality kids.* For the child care quality improvement activities specified in s. 49.155 (1g) (d), \$3,378,500 in each fiscal year.

(r) *Early childhood excellence initiative.* For grants under s. 49.1375, \$0 in each fiscal year.

(z) *Grants to the Boys and Girls Clubs of America.* For grants to the Wisconsin Chapter of the Boys and Girls Clubs of America to fund programs that improve social, academic, and employment skills of youth who are eligible to receive temporary assistance for needy families under 42 USC 601 et seq., \$300,000 in each fiscal year.

(ze) *Programs administered by the department of health and family services.* 1. 'Kinship care and long-term kinship care assistance.' For the kinship care and long-term kinship care programs under s. 48.57 (3m), (3n), and (3p), \$23,034,200 in fiscal year 2005–06 and \$22,686,300 in fiscal year 2006–07.

2. 'Children of recipients of supplemental security income.' For payments made under s. 49.775 for the support of the dependent children of recipients of supplemental security income, \$30,444,000 in fiscal year 2005–06 and \$30,394,000 in fiscal year 2006–07.

10m. 'Safety services.' For services provided in counties having a population of 500,000 or more to ensure the safety of children who the department of health and family services deter-

mines may remain at home if appropriate services are provided, \$5,707,200 in each fiscal year.

11. ‘Prevention services.’ For services to prevent child abuse or neglect in counties having a population of 500,000 or more, \$1,489,600 in each fiscal year.

12. ‘Milwaukee and statewide child welfare administration.’ For the costs associated with the Milwaukee child welfare information system and the Wisconsin statewide automated child welfare information system, \$1,310,800 in fiscal year 2005–06 and \$1,317,700 in fiscal year 2006–07.

(zh) *Earned income tax credit supplement.* For the transfer of moneys from the appropriation account under s. 20.445 (3) (md) to the appropriation account under s. 20.835 (2) (kf) for the earned income tax credit, \$55,232,000 in each fiscal year.

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

(c) If the amounts of federal block grant moneys that are required to be credited to the appropriation accounts under s. 20.445 (3) (mc) and (md) are less than the amounts appropriated under s. 20.445 (3) (mc) and (md), the department shall submit a plan to the secretary of administration for reducing the amounts of moneys allocated under sub. (1). If the secretary of administration approves the plan, the amounts of moneys required to be allocated under sub. (1) may be reduced as proposed by the department and the department shall allocate the moneys as specified in the plan.

**History:** 1997 a. 27, 105, 236, 237, 252, 318; 1999 a. 9; 2001 a. 16, 104, 109; 2003 a. 33, 321, 327; 2005 a. 25, 254.

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

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

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

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

(b) Any individual may apply for aid to families with dependent children and shall have opportunity to do so. Application for

aid shall be made on forms prescribed by the department. Any person having knowledge that any child is dependent upon the public for proper support or that the interest of the public requires that such child be granted aid may bring the facts to the notice of an agency administering such aid in the county in which the child resides.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Eligibility for aid to families with dependent children for any month shall be based on estimated income, resources, family size and other similar relevant circumstances during that month. The amount of aid for any month shall be based on income and other relevant circumstances in the first or, at the option of the department, the 2nd month preceding such a month, except that

the amount of aid in the first month or, at the option of the department, the first and 2nd months of a period of consecutive months for which aid is payable is based on estimated income and other relevant circumstances in such first month or first and 2nd months. The department may promulgate rules establishing payment and reporting months as needed to administer this paragraph.

(p) Any person who has conveyed, transferred or disposed of any asset that would be included in determining the value of assets under sub. (4) (bm) within 2 years prior to the date of making application, or of redetermination of eligibility, for benefits under this section at less than fair market value shall, unless shown to the contrary, be presumed to have made the transfer, conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive the benefits thereafter until the uncompensated value of the asset is expended by or on behalf of the person for his or her maintenance needs, including needs for medical care. The department shall promulgate rules for the administration of this paragraph. This paragraph shall apply to the extent permitted under federal law.

(3) (a) After the investigation and report and a finding of eligibility, aid as defined in sub. (1) shall be granted by the county department under s. 46.215 or 46.22 as the best interest of the child requires. No such aid shall be furnished any person for any period during which that person is receiving supplemental security income or for any month if, on the last day of the month, that person is participating in a strike or to any person who fails to apply for or provide such social security account numbers as required by federal law.

(b) If the county department under s. 46.215 or 46.22 finds a person eligible for aid under this section, that county department shall, on a form to be prescribed by the department, direct the payment of such aid by order upon the secretary of administration. Payment of aid shall be made monthly, based on a calendar month or fiscal month as defined by the department; except that the director of the county department may, in his or her discretion for the purpose of protecting the public, direct that the monthly allowance be paid in accordance with sub. (5) (c).

(4) The aid shall be granted only upon the following conditions:

(a) There must be a dependent child who is living with the person charged with its care and custody and dependent upon the public for proper support. Aid may also be granted for minors other than to those specified, but not for a dependent child 18 years of age or older who is living in a home or institution specified under sub. (1) (a) 2. b.

(b) The person applying for aid has allowed the county department under s. 46.215 or 46.22 15 to 30 days to process his or her application and, if not already a resident of the county, has notified the county department under s. 46.215 or 46.22 of his or her intent to establish residence in the county. The effective date of eligibility for aid to eligible individuals is the date the applicant submits a signed and completed application to the county department under s. 46.215 or 46.22, or the first date on which the applicant meets all of the eligibility criteria, whichever is later.

(bm) The person applying for aid shall document, to the department's satisfaction, actual income as claimed in the application, and shall reveal all assets. Except as specified in par. (br), aid is available only if the combined equity value of assets does not exceed \$1,000. One automobile with an equity value not exceeding \$1,500, one home, as specified in par. (e), and, for each person, one burial plot and one burial agreement under s. 445.125 (1) (a) 2. and 3. with a value of not more than \$1,500 may not be included when determining the combined equity value of assets. Any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), may not be included in determining the combined equity value of assets in the month of receipt and the following month.

(br) Aid may be paid for up to 9 months to an otherwise eligible owner of real property other than that specified under par. (bm) and that real property may be excluded as an asset for up to 9 months if all of the following conditions are met:

1. The owner enters into a signed, written agreement with the county department under s. 46.215 or 46.22 that he or she shall make a good faith effort to sell the real property and repay the amount of aid granted during the asset exclusion period up to the amount of net proceeds of the sale of the real property.

2. The net proceeds of the sale of the real property plus the combined equity value of all other countable assets exceed \$1,000 on the date of the agreement made under subd. 1.

(bu) 1. The department shall request a waiver from the secretary of the federal department of health and human services to allow a recipient of aid under this section to accumulate funds in an education and employability account, as described in subd. 2., the first \$10,000 in which is not considered against the amount of assets that a recipient is allowed to own under par. (bm). If the waiver is granted, the department shall promulgate rules to implement the waiver and shall implement the waiver beginning no sooner than January 1, 1995. Subdivision 2. does not apply unless the waiver is in effect.

2. The department may authorize a person to establish an education and employability account at a financial institution, as defined in s. 705.01 (3), after the person is determined to be eligible for aid under this section. The first \$10,000 in the account is not considered against the asset limit if the person provides to the county department under s. 46.215, 46.22 or 46.23, at the time of establishing the account and at other times required by the department, a signed statement identifying the financial institution, the account number of the account and the amount in the account. Interest earned on the account and retained in the account is not considered income under this section. Money withdrawn from the education and employability account will be considered income in the month that it is withdrawn unless it is used for one of the following purposes:

a. The recipient's own education or training or the education or training of his or her child.

b. Improving the employability of a member of the family.

d. Not more than \$200 every 12 months for emergency needs, as determined by the county department under s. 46.215, 46.22 or 46.23.

(by) No later than September 1, 1992, the department shall request a waiver from the secretary of the federal department of health and human services under which the equity value of automobiles with a total equity value of not more than \$2,500 would not be included when determining the combined equity value of assets under par. (bm). If the waiver is granted, the equity value of automobiles with a total equity value of not more than \$2,500 shall not be included when determining the combined equity value of assets under par. (bm), rather than one automobile with an equity value not exceeding \$1,500.

(c) The person having the care and custody of the dependent child must be fit and proper to have the child. Aid shall not be denied by the county department under s. 46.215 or 46.22 on the grounds that a person is not fit and proper to have the care and custody of the child until the county department obtains a finding substantiating that fact from a court assigned to exercise jurisdiction under chs. 48 and 938 or other court of competent jurisdiction; but in appropriate cases it is the responsibility of the county department to petition under ch. 48 or refer the case to a proper child protection agency.

(d) Aid may be granted to the mother or stepmother of a dependent child if she is without a husband or if she:

1. Is the wife of a husband who is incapacitated for gainful work by mental or physical disability; or

2. Is the wife of a husband who is incarcerated or who is a convicted offender permitted to live at home but precluded from earn-



ing a wage because the husband is required by a court imposed sentence to perform unpaid public work or unpaid community service; or

3. Is the wife of a husband who has been committed to the department pursuant to ch. 975, irrespective of the probable period of such commitment; or

4. Is the wife of a husband who has continuously abandoned or failed to support her, if proceedings have been commenced against the husband under ch. 769; or

5. Has been divorced and is without a husband or legally separated from her husband and is unable through use of the provisions of law to compel her former husband to adequately support the child for whom aid is sought; or

6. Has commenced an action for divorce or legal separation and obtained a temporary order for support under s. 767.225 which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

7. Has obtained an order under s. 767.501 from the court to compel support, which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

8. Is incapacitated and the county department under s. 46.215 or 46.22 believes she is the proper payee.

(dm) Aid may be paid to parents of a dependent child if the parents are unable to supply the needs of the child because of the unemployment of the parent, in a home in which both parents live, who earned the most income during the 24-month period immediately preceding the month for which aid is granted and who meets the federal requirements as to past employment and current unemployment. The department shall count up to 4 calendar quarters of full-time attendance at an elementary school, a secondary school, or a vocational or technical training course that satisfies the requirements under 42 USC 607 (d) (1) (B) toward the federal requirement as to past employment. Aid to dependent children of unemployed parents may be granted only if federal aid for this purpose is available to the state. No aid may be granted if the unemployed parent:

4. Qualifies for unemployment insurance but refuses to apply for or accept unemployment insurance; or

5. Fails to meet any applicable federal or state work, work registration or training requirement. The department shall promulgate rules listing the applicable requirements under this subdivision.

(e) The ownership of a home and the lands used or operated in connection therewith or, in lieu thereof, a house trailer, if such home or house trailer is used as the person's abode, by a person having the care and custody of any dependent child shall not prevent the granting of aid if the cost of maintenance of said home or house trailer does not exceed the rental which the family would be obliged to pay for living quarters.

(es) In determining eligibility for aid to families with dependent children, all earned and unearned income of the applicant shall be considered, except any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), and aid received under this section. Eligibility does not exist if the total income considered exceeds 185% of the standard of need or if the total income considered after disregards are applied exceeds the standard of need.

(et) In determining eligibility for aid, the income of a dependent child's stepparent who lives in the same home as the child shall be considered as required under 42 USC 602 (a) (31).

(ez) If an alien applies for aid, the income and resources of any person or public or private agency which executed an affidavit of support for the alien are deemed unearned income and resources of the alien for a 3-year period after the alien enters the United States, unless the department determines that the public or private agency no longer exists or has become unable to meet the alien's

needs. The income and resources of the spouse of the executor, if the executor is an individual, are also deemed unearned income and resources of the alien for a 3-year period after the alien enters the United States, if the spouse is living with the executor. The department may, by rule, specify the method of computing income and resources under this paragraph and may reduce the level of income and resources that are deemed unearned income and resources of the alien, to the extent required by P.L. 97-35, section 2320 (b). This paragraph does not apply if the alien is a dependent child and if the executor or the executor's spouse is the parent of the alien.

(f) Whenever better provisions, public or private, can be made for the care of such dependent child, aid under this section shall cease. Prompt notice shall be given to the appropriate law enforcement officials of the county of the furnishing of aid under this section in respect of a child who has been deserted or abandoned by a parent.

(g) 1. If the pregnancy is medically verified, a pregnant woman receiving aid under this section who notifies the county department under s. 46.215 or 46.22 before the 8th month of pregnancy begins shall receive a monthly payment determined under sub. (11) (a) 4. from the first day of the month in which the 8th month of pregnancy begins, in addition to the payment determined according to family size under sub. (11) (a). If the recipient provides notification after the 8th month of pregnancy begins, the woman shall receive the additional monthly payment determined under sub. (11) (a) 4. beginning with the first day of the month following notification.

2. Aid to a pregnant woman who is otherwise eligible but has no children is available from the first day of the month in which the 8th month of pregnancy begins or the date the woman submits a signed and completed application for aid to the county department under s. 46.215 or 46.22, whichever is later, if the pregnancy is medically verified. The pregnant woman has a family size of one for grant determination purposes under sub. (11) (a) and is additionally eligible for a monthly payment determined under sub. (11) (a) 4.

3. Eligibility for the additional monthly payment under this paragraph continues through the month of the child's birth.

(h) 1. a. As a condition of eligibility for assistance under this section, the person charged with the care and custody of the dependent child or children shall fully cooperate in efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which that person and the dependent child or children may have rights. Such cooperation shall be in accordance with federal law, rules and regulations applicable to paternity establishment and collection of support payments.

b. Except as provided under sub. (5) (a) 1m., when any person applies for or receives aid under this section, any right of the parent or any dependent child to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time aid is paid under this section, is assigned to the state. If a minor who is a beneficiary of aid under this section is also the beneficiary of support under a judgment or order that includes support for one or more children not receiving aid under this section, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the minor receiving aid under this section, except as otherwise ordered by the court on the motion of a party. Amounts assigned to the state under this subd. 1. b. remain assigned to the state until that amount of aid paid that represents the amount due as support or maintenance has been recovered. No amount of support that begins to accrue after aid under this section is discontinued for the recipient may be considered assigned to this state.

c. Notice of the requirements of this subdivision shall be provided applicants for aid under this section at the time of application.

2. If the person charged with the care and custody of the dependent child or children does not comply with the requirements of subd. 1. a., that person shall be ineligible for assistance under this section. In such instances, aid payments made on behalf of the dependent child or children shall be made in the form of protective payments. If the county department under s. 46.215 or 46.22 has been unsuccessful in finding a person other than the person charged with the care of the dependent child to receive the protective payment on behalf of the child, after performance of a reasonable effort to do so, the county department may make the payment on behalf of the child to the person charged with the care of the dependent child.

**Cross Reference:** See also ch. DWD 15, Wis. adm. code.

(k) The total income of the AFDC group, including any nonrecurring lump sum payment of earned or unearned income and any other income not disregarded, may not exceed the applicable standard of need under sub. (11). If the total income exceeds the standard of need, all members of the AFDC group remain ineligible for the number of months that equals the total income divided by the standard of need.

**(4e)** (a) If a person applying for aid is under 18 years of age, has never married and is pregnant or has a dependent child in his or her care, the person is not eligible for aid unless he or she lives in a place maintained by his or her parent, legal guardian or other adult relative as the parent's, guardian's or other adult relative's own home or lives in a foster home, treatment foster home, maternity home or other supportive living arrangement supervised by an adult.

(b) Paragraph (a) does not apply in any of the following situations:

1. The person applying for aid has no parent or legal guardian whose whereabouts are known.
2. No parent or legal guardian of the person applying for aid allows the person to live in the home of that parent or legal guardian.
3. The department determines that the physical or emotional health or safety of the person applying for aid or the dependent child would be jeopardized if the person and the dependent child lived with the person's parent or guardian.
4. The person applying for aid lived apart from his or her parent or legal guardian for at least one year before the birth of any dependent child or before the person applied for aid.
5. The county department under s. 46.215, 46.22 or 46.23 otherwise determines that there is good cause not to apply par. (a).

(c) The department shall request a waiver from the secretary of the federal department of health and human services to require, without exception, that a person applying for aid who is under 18 years of age, has never married and is pregnant or has a dependent child in his or her care meet the requirements of par. (a). If a waiver is granted and in effect, par. (b) does not apply.

**(4h)** Student loans and grants, including work study funds, are not considered income in determining eligibility for aid under this section or the amount of monthly payments under this section.

**(4m)** Aid under this section is unavailable to a family for any month in which the caretaker relative of the dependent child is participating in a strike on the last day of the month. Aid under this section is unavailable to any person for a month in which the person is participating in a strike on the last day of the month.

**(5)** (a) The aid shall be sufficient to enable the person having the care and custody of dependent children to care properly for them. The amount granted shall be determined by a budget for the family in which all income shall be considered, except:

1. All earned income of each dependent child included in the grant who is: a full-time student; or a part-time student who is not a full-time employee. For purposes of this subdivision a student is an individual attending a school, college, university or a course of vocational or technical training designed to fit him or her for gainful employment.

1e. Any amount received under section 32 of the internal revenue code, as defined in s. 71.01 (6), and any payment made by an employer under section 3507 of the internal revenue code, as defined in s. 71.01 (6), to a family receiving aid.

1m. The first \$50 of any money received by the department in a month under an assignment to the state under sub. (4) (h) for a person applying for or receiving aid to families with dependent children that shall be paid to the family applying for or receiving aid.

2. The first \$90 shall be disregarded from the earned income of:

a. Any dependent child or relative applying for or receiving aid.

b. Any other person living in the same home as the dependent child whose needs are considered in determining the budget.

4. Except as provided under par. (am), after disregarding the amounts specified under subd. 2., \$30 of earned income and an amount equal to one-third of the remaining earned income not disregarded, from the earned income of any person specified in subd. 2. These disregards do not apply to:

a. The earned income of a person who has received the disregards for 4 consecutive months, until the person ceases to receive aid for 12 consecutive months.

b. Earned income derived from a training or retraining project.

c. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

4m. Except as provided under par. (am), after the person has received the benefit of the disregards under subd. 4. for 4 consecutive months, a disregard of \$30 of earned income shall be available for 8 additional consecutive months. This disregard does not apply to:

a. Earned income derived from a training or retraining project.

b. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

4s. After disregarding the amounts under subd. 2. and either subd. 4. or par. (am), an amount equal to expenditures and not to exceed \$175 per month for each dependent child or incapacitated person, or \$200 per month for each child under the age of 2, shall be disregarded from the earned income of any person listed in subd. 2. if:

a. The amount is used to provide care for a dependent child or for an incapacitated person who is living in the same home as the dependent child;

b. The person receiving care is also receiving aid under this section; and

c. The person requires care during the month that aid is received.

5. The disregards specified in subds. 2. to 4s. and par. (am) do not apply to the earned income of any person who violates 45 CFR 233.20 (a) (11) (iii).

(am) 1. Except as provided under subd. 1m., instead of the disregards under par. (a) 4. and 4m., after disregarding the amounts specified under par. (a) 2., \$30 of earned income and an amount equal to one-sixth of the remaining earned income not disregarded shall be disregarded from the earned income of a person specified in par. (a) 2. These disregards do not apply to:

a. The earned income of a person who has received the disregards for 12 consecutive months, until the person ceases to receive aid for 12 consecutive months.

b. Earned income derived from a training or retraining project.

c. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

1m. If a waiver under subd. 2. is granted, the department may select individuals to whom the disregards under par. (a) 4. and 4m. apply, rather than the disregard under subd. 1., as a control group for all or part of the period during which the waiver is in effect.

2. The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of the earned income disregards in subd. 1. Subdivision 1. does not apply unless a federal waiver is in effect. If a waiver is received, the department shall implement subd. 1. no later than the first day of the 6th month beginning after the waiver is approved.

(as) The department shall request, but may not implement, a waiver from the secretary of the federal department of health and human services to establish an earned income disregard that is equal to the first \$200 of earned income plus 50% of the remaining earned income, instead of the amount under par. (a) or (am), and that is not reduced after a specified period. The department shall request the waiver no later than September 1, 1992.

(b) Such family budget shall be based on a standard budget, including the parents or other person who may be found eligible to receive aid under this section.

(c) The aid allowed under this subsection may be given in the form of supplies or commodities or vouchers for the same, in lieu of money, as a type of remedial care authorized under sub. (1) (c), whenever the giving of aid in such form is deemed advisable by the director of the county department under s. 46.215, 46.22 or 46.23 dispensing such aid as a means either of attempting to rehabilitate a particular person having the care and custody of any such children or of preventing the misuse or mismanagement by such person of aid in the form of money payments.

(ce) At the request of a recipient of aid under this section, the department shall provide the portion of the grant equal to the amount of the recipient's rent to the recipient's landlord in the form of a rent voucher or by an alternative payment method.

(cm) 1. In this paragraph, "direct payment" means a check which is drawn in favor of the landlord of a recipient of aid under this section.

2. A direct payment shall be made whenever a recipient of aid under this section has failed to pay rent to the landlord for 2 months or more, unless the failure to pay rent is authorized by law.

3. If a landlord reports to a county department under s. 46.215, 46.22 or 46.23 that a recipient has failed to pay rent for 2 or more months, the county department shall do all of the following:

- a. Inform the recipient of the report.
- b. Investigate the report.
- c. If it determines that the conditions for issuing a direct payment under subd. 2. are met, inform the recipient of the right to a fair hearing on the issue of whether direct payment of rent should be made and inform the department of health and family services of its determination.
- d. If it determines that direct payments should not be made, inform the recipient and the landlord of that determination.

4. When it has been determined that a direct payment of rent should be made, the department of health and family services shall issue the recipient's monthly grant in 2 checks, a direct payment for the amount of the rent and a check drawn in favor of the recipient for the balance of the grant amount.

5. The county department shall review each case in which a direct payment is being made at least once every 12 months and whenever a recipient reports that a condition under subd. 6. for the cessation of direct payments exists.

6. The county department shall inform the department of health and family services, and the department of health and fam-

ily services shall cease making a direct payment, when the county department determines that any of the following conditions exists:

a. A direct payment has been made for 24 consecutive months.

b. The recipient has reimbursed the landlord for all back rent owed.

c. The recipient has moved and has a different landlord.

7. The department shall promulgate rules for the administration of this paragraph.

(d) The department shall reimburse the county for the funeral, burial, and cemetery expenses of a dependent child or the child's parents as provided in s. 49.785.

(e) No aid may continue longer than 6 months without reinvestigation, except that the department may provide that in certain cases or groups of cases aid may continue up to 12 months without reinvestigation. The county department under s. 46.215, 46.22 or 46.23 may conduct a reinvestigation of a case whenever there is reason to believe circumstances have changed. The county department shall submit information concerning reinvestigations, at such times and in such form as the department requires.

(f) This subsection does not prohibit such public assistance as may legitimately accrue directly to persons other than the beneficiaries of this section who may reside in the same household.

(6) The county department under s. 46.215, 46.22 or 46.23 may require the child's parent to do such remunerative work as in its judgment can be done without detriment to the parent's health or the neglect of the children or the home; and may prescribe the hours during which the parent may be required to work outside of the home.

(7) The county board shall annually appropriate a sum of money sufficient to carry out the provisions of this section. The county treasurer shall pay out the amounts ordered paid under this section.

(9) If the head of a family is a veteran, as defined in s. 45.01 (12), or a person under s. 45.51 (2) (a) 2., and is hospitalized or institutionalized because of disabilities in a county other than that of his or her residence or settlement at time of admission, aid shall be granted to the dependent children of the veteran by the county wherein the head of the family had his or her residence or settlement at the time of admission so long as he or she remains hospitalized or institutionalized.

(10) (a) Aid under this section may also be granted to a nonrelative who cares for a child dependent upon the public for proper support in a foster home or treatment foster home having a license under s. 48.62, in a foster home or treatment foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation or in a group home licensed under s. 48.625, regardless of the cause or prospective period of dependency. The state shall reimburse counties pursuant to the procedure under s. 46.495 (2) and the percentage rate of participation set forth in s. 46.495 (1) (d) for aid granted under this subsection except that if the child does not have legal settlement in the granting county, state reimbursement shall be at 100%. The county department under s. 46.215 or 46.22 shall determine the legal settlement of the child. A child under one year of age shall be eligible for aid under this subsection irrespective of any other residence requirement for eligibility within this section.

(b) Aid under this section may also be granted on behalf of a child in the legal custody of a county department under s. 46.215, 46.22 or 46.23 or on behalf of a child who was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason when such child is placed in a licensed residential care center for children and youth by the county department. Reimbursement shall be made by the state pursuant to par. (a).

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home, treatment foster home, group home, or residential care center for children and youth by a licensed child welfare agency or by a federally recognized American Indian tribal governing body in this state or by its designee, if the child is in the legal custody of the county department under s. 46.215, 46.22 or 46.23 or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made pursuant to an agreement with the county department.

(d) Aid may also be paid under this section to a licensed foster home, treatment foster home, group home, or residential care center for children and youth by the state when the child is in the custody or guardianship of the state, when the child is a ward of an American Indian tribal court in this state and the placement is made under an agreement between the department and the tribal governing body, or when the child was part of the state's direct service case load and was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department of health and family services or the department of corrections.

(e) Notwithstanding pars. (a), (c) and (d), aid under this section may not be granted for placement of a child in a foster home or treatment foster home licensed by a federally recognized American Indian tribal governing body, for placement of a child in a foster home, treatment foster home, or residential care center for children and youth by a tribal governing body or its designee, for the placement of a child who is a ward of a tribal court if the tribal governing body is receiving or is eligible to receive funds from the federal government for that type of placement, or for placement of a child in a group home licensed under s. 48.625.

(11) (a) 1. a. Except as provided in subs. (11m) and (11s), monthly payments made under s. 20.445 (3) (dz) and (md) to persons or to families with dependent children shall be based on family size and shall be at 80% of the total of the allowances under subs. 2. and 4. plus the following standards of assistance beginning on September 1, 1987:

**Figure 49.19 (11) (a) 1. a.:**

<u>FAMILY SIZE</u>	<u>AREA I</u>	<u>AREA II</u>
1	\$ 311	\$ 301
2	550	533
3	647	626
4	772	749
5	886	861
6	958	929
7	1,037	1,007
8	1,099	1,068
9	1,151	1,117
10	1,179	1,143

c. Grants shall vary in 2 areas which shall be groups of counties designated by the department based on variation in shelter cost.

2. A monthly allowance of \$25 per person for each additional member in the family above 10 shall be added to the standard of assistance specified under subd. 1. a.

3. In determining family size only those who are eligible for assistance shall be included.

4. In accordance with s. 49.19 (4) (g), a monthly allowance of \$71 for each person in the family who qualifies for a payment under s. 49.19 (4) (g) shall be added to the standard of assistance specified under subd. 1. a.

6. All payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar.

7. The department may not make a payment for a month if the amount of the payment would be less than \$10.

(11g) When the department submits a copy of the reevaluation of the need standard and payment standard under sub. (11) (a), as required by 42 USC 602 (h), the department shall submit a copy of that reevaluation to the chief clerk of each house of the legislature for distribution to the legislature in the manner provided under s. 13.172 (3).

(11m) (a) The department shall apply to the secretary of the federal department of health and human services for approval of a demonstration project under which the department provides a person eligible for aid under this section who is described in par. (am) with monthly payments, for the first 6 months that he or she lives in this state, calculated on the basis of the aid to families with dependent children benefit level in the state in which the family most recently resided for one month or longer. The department shall promulgate a rule establishing the methods and identifying the factors that the department will use to determine the aid to families with dependent children benefit that will be paid under the demonstration project according to family size and state of former residence. The rule shall also establish the initial benefit table to be used in determining benefits under the demonstration project. The department shall publish annual changes to this benefit table in the Wisconsin administrative register. The department shall base the benefit for a family on the aid to families with dependent children benefit available to a typical family of the same size in the other state, taking into account all factors that may affect the amount of the benefit. If a family moves from a state that allows a family to keep a different amount of income without reducing benefits than a family would be allowed to keep in this state, the department shall allow the family to keep a similar amount of income without reducing benefits.

(am) Under the demonstration project, a person is subject to receiving the payments under par. (a) if he or she has not previously resided in this state for at least 6 consecutive months and either:

1. Applies for benefits more than 90 days but fewer than 180 days after moving to this state and is unable to demonstrate to the satisfaction of the county department of social services or human services that he or she was employed for at least 13 weeks after moving to this state; or

2. Applies for benefits within 90 days after moving to this state.

(b) If approval under par. (a) is granted and if the supreme court determines, within 9 months after the department notifies the attorney general that the approval has been granted, that the demonstration project does not violate either the state constitution or the U.S. constitution or the supreme court does not make a decision on the constitutionality of the demonstration project within that time, the department shall implement the demonstration project. The department may conduct the demonstration project for a period not to exceed 36 months. The department may not start the demonstration project before a computerized system for determining the amount of benefits payable to recipients under the demonstration project is complete.

(c) Subject to pars. (b) and (d), the department shall conduct the demonstration project in Kenosha County, Milwaukee County, Racine County and up to 3 other counties. If the department does not initially select Rock County as one of the other counties and if one of the counties specified in this paragraph or initially selected by the department enacts an ordinance or adopts a resolution under par. (d), the department shall give Rock County priority for consideration as a replacement county.

(d) The department may not conduct the demonstration project in a county if the county enacts an ordinance or adopts a resolution objecting to participating in the demonstration project.

(e) If the department conducts the demonstration project, the department shall enter into a contract with the legislative audit bureau under which the legislative audit bureau will contract with a private or public agency for the performance of an evaluation of the demonstration project, including whether the demonstration project deters persons from moving to this state, and will submit the evaluation of the demonstration project to the governor and to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

**(11s)** (a) The department shall conduct a demonstration project under this subsection pursuant to a waiver from the secretary of the federal department of health and human services beginning on January 1, 1996. To the extent permitted in the waiver, the department may apply pars. (b) to (d) to all recipients of aid under this section or to a test group of recipients of aid under this section determined by the department. Paragraphs (b) to (d) do not apply to persons who are subject to s. 49.25, 1997 stats., and shall apply only while a waiver under this paragraph is in effect and only with respect to recipients covered by the waiver.

(b) In determining the payment amount under sub. (11) (a), a child born into a family more than 10 months after the date that the family was first determined to be eligible for assistance under this section shall not be considered in determining family size unless at least one of the following conditions is met:

1. The family did not receive benefits under this section for a period of at least 6 months, other than as a result of sanctions, and the child was born during that period or not more than 10 months after the family resumed receiving benefits under this section after that period.

2. The child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the mother did not indicate a freely given agreement to have sexual intercourse or of incest in violation of s. 944.06 or 948.06 and that incest or sexual assault has been reported to a physician and to law enforcement authorities.

3. The child's mother is a dependent child at the time of the child's birth and the child is born as a result of the mother's first pregnancy that resulted in a live birth.

4. The child does not reside with his or her biological mother or father.

5. The family or child meets the criteria for an exemption from the application of this paragraph under a rule promulgated by the department.

(c) The department shall inform all applicants for aid under this section of the limitation under par. (b) at the time of application.

(d) From the appropriation under s. 20.445 (3) (a), the department may award grants to county departments under ss. 46.215, 46.22 and 46.23 for providing education services relating to family planning, as defined in s. 253.07 (1) (a), to persons who are subject to par. (b).

**(13)** When a county department under s. 46.215, 46.22 or 46.23 proposes to terminate, discontinue, suspend or reduce assistance to a recipient under this section such county department shall provide at least the minimum notice required under 42 USC 601 to 613.

**(14)** (a) If any check or draft drawn and issued for payment of aid under this section is lost, stolen or destroyed, the department shall request a replacement as provided under s. 20.912 (5).

(b) If the secretary of administration is unable to issue a replacement check or draft requested under par. (a) because the original has been paid, the department shall promptly authorize the issuance of a replacement check or draft. If the secretary of administration recovers the amount of the original check or draft that amount shall be returned to the department. If the secretary of administration is unable to obtain recovery, the department may pursue recovery.

**(15)** By January 1, 1990, the department shall apply for approval of a demonstration project under 42 USC 1315 (d) (1)

(A) which would test and evaluate the elimination, on a statewide basis, of the limit on the number of hours a parent may work and still be considered unemployed for purposes of eligibility for aid under this section. If the application is approved, the department shall inform the joint committee on finance. The department may implement the demonstration project only if the joint committee on finance approves the demonstration project.

**(16)** The department shall provide written notice of the penalties under s. 49.29 to each applicant for aid under this section at the time of application and to each person who receives aid under this section on June 18, 1992, at the time of the next redetermination of the person's eligibility.

**(17)** The department may recover an overpayment of aid under this section from an overpaid family who continues to receive aid by reducing the amount of the family's monthly aid payment by no more than 10% of the maximum monthly payment allowance under sub. (11) for a family of that size.

**(19)** The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to determine eligibility and payment amounts under this section for a woman entrepreneur who receives a start-up or capital expansion loan through the revolving loan program operated by the women's business initiative corporation without consideration of that loan or of any business income during the start-up period of the woman's business. If the waiver is approved, the department shall implement the waiver.

**(19m)** Notwithstanding subs. (1) to (19), no aid may be paid under this section for a child on whose behalf a payment is made under s. 49.775.

**(20)** (a) Beginning on January 1, 1999, or beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d), 1997 stats., whichever is sooner, no person is eligible to receive benefits under this section and no aid may be granted under this section. No additional notice, other than the enactment of this paragraph, is required to be given under sub. (13) to recipients of aid under this section to terminate their benefits under this paragraph.

(b) Notwithstanding par. (a):

1. If a nonlegally responsible relative is receiving aid under this section on behalf of a dependent child on October 14, 1997, no aid under this section may be paid to the nonlegally responsible relative after December 31, 1997, or the first reinvestigation under sub. (5) (e) occurring after October 14, 1997, whichever is earlier.

2. If a nonlegally responsible relative is not receiving aid under this section on behalf of a dependent child on October 14, 1997, no aid may be paid to the nonlegally responsible relative on or after October 14, 1997.

**History:** 1971 c. 125, 215, 217; 1973 c. 90, 147, 186, 328, 333; 1975 c. 39, 82, 94, 224, 307, 422; 1977 c. 29, 203, 271, 418, 449; 1979 c. 32 s. 92 (4); 1979 c. 34, 206, 221, 352; 1981 c. 1, 20, 93, 314, 317, 391; 1983 a. 27, 161, 192, 245, 310, 430, 447; 1985 a. 29, 120, 176, 281, 332; 1987 a. 27, 307, 399; 1989 a. 31, 107, 122, 359; 1991 a. 39, 178, 269, 313, 315, 316, 322; 1993 a. 16, 99, 326, 395, 437, 446, 481; 1995 a. 12; 1995 a. 27 ss. 2852 to 2871, 9126 (19); 1995 a. 77, 198, 225, 289, 295; 1997 a. 27, 35, 39, 252; 1999 a. 9; 2001 a. 59; 2003 a. 33; 2005 a. 22; 2005 a. 443 s. 265.

An AFDC budget must be computed on the basis of actual income. 60 Atty. Gen. 431.

Sub. (6) has not been affected by amendments to the work incentive program, nor does it violate equal protection provisions of the Fourteenth Amendment. 62 Atty. Gen. 120.

"Dependent child" under AFDC does not include unborn children. Burns v. Alcalá, 420 U.S. 575.

Various provisions of sub. (4) (d) are invalid as inconsistent with the Social Security Act. Doe v. Schmidt, 330 F. Supp. 159.

Unconstitutional conditions on welfare eligibility. Redlich, 1970 WLR 450.

Procedural due process and the welfare recipient: A statistical study of AFDC fair hearings in Wisconsin. Hammer and Hartley, 1978 WLR 145.

#### 49.195 Recovery of aid to families with dependent children and Wisconsin works benefits. (1) If any parent at the time of receiving aid under s. 49.19 or a benefit under s. 49.148, 49.155 or 49.157 or at any time thereafter acquires property by gift, inheritance, sale of assets, court judgment or settlement of any damage claim, or by winning a lottery or prize, the county granting such aid, or the Wisconsin works agency granting such

a benefit, may sue the parent on behalf of the department to recover the value of that portion of the aid or of the benefit which does not exceed the amount of the property so acquired. The value of the aid or benefit liable for recovery under this section may not include the value of work performed by a member of the family in a community work experience program under s. 46.215 (1) (o), 1991 stats., s. 46.22 (1) (b) 11., 1991 stats., or s. 49.50 (7j) (d), 1991 stats., or in a community work experience component under s. 49.193 (6), 1997 stats. During the life of the parent, the 10-year statute of limitations may be pleaded in defense against any suit for recovery under this section; and if such property is his or her homestead it shall be exempt from execution on the judgment of recovery until his or her death or sale of the property, whichever occurs first. Notwithstanding the foregoing restrictions and limitations, where the aid or benefit recipient is deceased a claim may be filed against any property in his or her estate and the statute of limitations specified in s. 859.02 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse or child is dependent on the property for support, and the court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records of aid or benefits paid kept by the county, by the department or by the Wisconsin works agency are prima facie evidence of the value of the aid or benefits furnished. Liability under this section shall extend to any parent or stepparent whose family receives aid under s. 49.19 or benefits under s. 49.148, 49.155 or 49.157 during the period that he or she is a member of the same household, but his or her liability is limited to such period. This section does not apply to medical and health assistance payments for which recovery is prohibited or restricted by federal law or regulation.

(2) Amounts may be recovered pursuant to this section for aid granted both prior to and after August 31, 1969; and any amounts so recovered shall be paid to the United States, this state and its political subdivisions in the proportion in which they contributed to the payment of the aid granted, in the same manner as amounts recovered for old-age assistance are paid.

(3) A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal governing body, Wisconsin works agency or department shall provide notice of the overpayment to the liable person. The department shall give that person an opportunity for a review following the procedure specified under s. 49.152, if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227. Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19 (17) and shall promulgate rules establishing policies and procedures to administer this subsection. The rules shall include notification procedures similar to those established for child support collections.

(3m) (a) 1. If any person fails to pay to the department any amount determined under sub. (3), no review or appeal of that determination is pending and the time for requesting a review or taking an appeal has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the person mentioned in the warrant, the amount for which the warrant is issued and the date on which the clerk entered that information.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the person's right, title and interest in all real and personal property located in the county in which the warrant is entered.

4. After issuing a warrant, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to levy upon and sell sufficient real and personal property of the person to pay the amount stated

in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 90 days after receipt of the warrant. The execution may not command the sheriff to levy upon or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

(b) The clerk of circuit court shall accept, file, and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under par. (d), (e), (g), or (h) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The department shall pay the fees, but shall add the fees provided by s. 814.61 (5) for entering the warrants to the amount of the warrant and shall collect the fees from the person named in the warrant when satisfaction or release is presented for entry.

(c) If a warrant that is not satisfied in full is returned, the department may enforce the amount due as if the department had recovered judgment against the person named in the warrant for the same amount.

(d) When the amount set forth in a warrant and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person named in the warrant.

(e) If the department finds that the interests of the state will not be jeopardized, the department may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. Upon presentation to the clerk and payment of the fee for filing the release, the clerk shall enter the release of record. The release is conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(f) Notwithstanding s. 49.96, at any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of such an action may be either in Dane County or the county where the debtor resides and may not be changed from the county in which that action is commenced, except upon consent of the parties.

(g) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any resulting liens.

(h) If the department arranges a payment schedule with the debtor and the debtor complies with the payment schedule, the department may issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. If the department issues a notice of withdrawal of the warrant, the clerk shall void the warrant and the resulting liens.

(3n) (a) In this subsection:

1. "Debt" means the amount of liability determined under sub. (3).

2. "Debtor" means an individual who is liable under sub. (3).

3. "Disposable earnings" means that part of the earnings of any debtor after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under this subsection.

4. "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1).

5. “Levy” means all powers of distraint and seizure.

6. “Property” includes all tangible and intangible personal property and rights to such property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, periodic payments received pursuant to a pension or retirement program, rents, proceeds of insurance and contract payments.

(b) If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

(c) Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(d) 1. Any debtor who fails or refuses to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

2. Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this subdivision for more than 25% of the debt. The department shall serve the levy as provided under par. (m) on any 3rd party who fails to surrender property under this subdivision. Proceedings may not be initiated by the department until 5 days after service of the demand.

3. When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

(e) 1. If the department has levied upon property, any person, other than the debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under subd. 2.

2. In an action under subd. 1., if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

3. For purposes of an adjudication under this paragraph, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(f) The department shall determine its costs and expenses to be paid in all cases of levy.

(g) 1. The department shall apply all money obtained under this subsection first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the debtor.

2. The department may refund or credit any amount left after the applications under subd. 1., upon submission of a claim for that amount and satisfactory proof of the claim, to the person entitled to that amount.

(h) The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or

to grant relief from a wrongful levy, but that release does not prevent any later levy.

(j) If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(k) Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this subsection with intent to evade or defeat the assessment or collection of any debt is guilty of a Class H felony and shall be assessed the costs of prosecution.

(L) If no appeal or other proceeding for review permitted by law is pending and the time for taking an appeal or petitioning for review has expired, the department shall make a demand to the debtor for payment of the debt that is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt. The debtor’s refusal or failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

(m) 1. The department shall serve the levy upon the debtor and 3rd party by personal service or by any type of mail service that requires a signature of acceptance.

2. Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the debtor or 3rd party personally; by leaving a copy of the levy at the debtor’s dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment with an officer or employee of the establishment; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

3. The department representative who serves the levy shall certify service of process on the notice of levy form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

4. The debtor’s or 3rd party’s failure to accept or receive service of the levy does not invalidate the levy.

(n) Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

(p) A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied or until the levy is released, whichever occurs first.

(q) 1. The debtor is entitled to an exemption from levy of the greater of the following:

a. A subsistence allowance of 75% of the debtor’s disposable earnings then due and owing.

b. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor’s pay period; or, in the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that amount using a multiple of the federal minimum hourly wage prescribed by the department by rule.

2. The first \$1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment.

(r) No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employee by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this subsection. Any person who violates this paragraph is guilty of a Class I felony.

(s) Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal in any case where property is secured through the levy.

(t) Any 3rd party is entitled to a levy fee of \$5 for each levy in any case in which property is secured through the levy. If the 3rd party retains the fee, the 3rd party shall increase the levy amount by the amount of the fee and deduct the fee from the proceeds of the levy.

**(3p)** The availability of the remedies under subs. (3m) and (3n) does not abridge the right of the department to pursue other remedies.

**(3r)** From the appropriation under s. 20.445 (3) (L) the department may contract with or employ a collection agency or other person to enforce a repayment obligation of a person who is found liable under sub. (3) who is delinquent in making repayments.

**(3s)** The department shall specify by rule when requests for reviews, hearings and appeals under this section may be made and the process to be used for the reviews, hearings and appeals. In promulgating the rules, the department shall provide for a hearing or review after a warrant under sub. (3m) has been issued and before the warrant has been executed, before property is levied under sub. (3m) or (3n) and after levied property is seized and before it is sold. The department shall specify by rule the time limit for a request for review or hearing. The department shall also specify by rule a minimum amount that must be due before collection proceedings under this section may be commenced.

**(4)** Any county or governing body of a federally recognized American Indian tribe may retain 15% of benefits distributed under s. 49.19 that are recovered due to the efforts of an employee or officer of the county or tribe. This subsection does not apply to recovery of benefits that were provided as a result of state, county or tribal governing body error.

**History:** 1977 c. 29; 1981 c. 93, 317; 1983 a. 27; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 307; 1989 a. 31, 96, 173; 1993 a. 16; 1995 a. 27, 289; 1997 a. 27; 1999 a. 9, 185; 2001 a. 109; 2005 a. 25.

The words "both prior to and" in sub. (2) constitute an unconstitutional enactment and are stricken from the statute. *Estate of Peterson*, 66 Wis. 2d 535, 225 N.W.2d 644 (1975).

Recovery may be had only from a parent who immediately received aid. *Richland County Department of Social Services, v. McHone*, 95 Wis. 2d 108, 288 N.W.2d 879 (Ct. App. 1980).

This section does not authorize recovery against a child with a guardianship account if the child never applied for, directly received or made representations to obtain aid. There may be common-law authority for a claim against a guardianship estate. *Matter of Guardianship of Kordecki*, 95 Wis. 2d 275, 290 N.W.2d 693 (1980).

**49.197 Fraud investigation and reduction and error reduction. (1m) FRAUD INVESTIGATION.** From the appropriations under s. 20.445 (3) (dz), (kx), (L), (md), (n), and (nL), the department shall establish a program to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19, on the part of participants in the Wisconsin Works program under ss. 49.141 to 49.161, and, if the department of health and family services contracts with the department under sub. (5), on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665. The department's activities under this subsection may include, but are not limited to, comparisons of information provided to the department by an applicant and information provided by the applicant to other federal, state, and

local agencies, development of an advisory welfare investigation prosecution standard, and provision of funds to county departments under ss. 46.215, 46.22, and 46.23 and to Wisconsin Works agencies to encourage activities to detect fraud. The department shall cooperate with district attorneys regarding fraud prosecutions.

**(3) STATE ERROR REDUCTION ACTIVITIES.** The department shall conduct activities to reduce payment errors in Wisconsin Works under ss. 49.141 to 49.161 and, if the department of health and family services contracts with the department under sub. (5), the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665.

**(4) COUNTY AND TRIBAL ERROR REDUCTION.** If the department of health and family services contracts with the department under sub. (5), the department shall provide funds from the appropriation under s. 20.445 (3) (kx) to counties and governing bodies of federally recognized American Indian tribes administering Medical Assistance under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665 to offset administrative costs of reducing payment errors in those programs.

**(5) CONTRACTS FOR MEDICAL ASSISTANCE, FOOD STAMPS, SUPPLEMENTAL SECURITY INCOME, AND CARETAKER SUPPLEMENT.** Notwithstanding s. 49.845 (1) and (2), the department of health and family services may contract with the department to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665 and to conduct activities to reduce payment errors in the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665, as provided in this section.

**History:** 1985 a. 29, 176; 1987 a. 27, 413; 1989 a. 31; 1991 a. 39; 1995 a. 27, 289; 1997 a. 27, 35; 2001 a. 16; 2005 a. 25.

**49.22 Child and spousal support; establishment of paternity; medical liability. (1)** There is created a child and spousal support and establishment of paternity and medical support liability program in the department. The purpose of this program is to establish paternity when possible, to establish or modify support obligations, to enforce support obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside in this state or owed in other states if the support order was issued in this state or owed in other states if the parent, spouse, or former spouse resides in this state, to locate persons who are alleged to have taken their child in violation of s. 948.31 or of similar laws in other states, and to locate and value property of any person having a support duty. To accomplish the objectives of this program and of other assistance programs under this chapter, county and state agencies will cooperate with one another to implement a child and spousal support and paternity establishment and medical support liability program in accordance with state and federal laws, regulations, and rules and to assure proper distribution of benefits of all assistance programs authorized under this chapter.

**(2)** The department shall constitute the state location service which shall assist in locating parents who have deserted their chil-



dren and other persons liable for support of dependents or persons who are alleged to have taken their child in violation of s. 948.31 or of similar laws in another state, and in locating and valuing property of any person having a support duty.

**(2m)** (a) The department may request from any person in this state information it determines appropriate and necessary for the administration of this section, ss. 49.141 to 49.161, 49.19, 49.46, 49.468 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029. Unless access to the information is prohibited or restricted by law, or unless the person has good cause, as determined by the department in accordance with federal law and regulations, for refusing to cooperate, the person shall make a good faith effort to provide this information within 7 days after receiving a request under this paragraph. Except as provided in subs. (2p) and (2r) and subject to sub. (12), the department or the county child support agency under s. 59.53 (5) may disclose information obtained under this paragraph only in the administration of this section, ss. 49.141 to 49.161, 49.19, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029. Employees of the department or a county child support agency under s. 59.53 (5) are subject to s. 49.83.

(am) In conjunction with any request for information under par. (a), including a request made by subpoena under par. (b), the department or county child support agency under s. 59.53 (5) shall advise the person of the time by which the information must be provided and of any consequences to the person under par. (d) that may result from a failure to respond or comply with the request.

(b) The department or county child support agency under s. 59.53 (5) may issue a subpoena, in substantially the form authorized under s. 885.02, to compel the production of financial information and other documentary evidence in the administration of this section, ss. 49.145, 49.19, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029.

(bc) A person in this state shall comply with an administrative subpoena that is issued from another state to compel the production of financial information or other documentary evidence for purposes comparable to those specified in par. (b).

(c) A person is not liable to any person for any of the following:

1. Allowing access to financial or other records by the department or a county child support agency under s. 59.53 (5) in response to a request under par. (a) or a subpoena described in par. (bc).

2. Disclosing information from financial or other records to the department or a county child support agency under s. 59.53 (5) in response to a request under par. (a) or a subpoena described in par. (bc).

3. Any other action taken in good faith to comply with this section or a subpoena described in par. (bc) or to comply with a request for information or access to records from the department or a county child support agency under s. 59.53 (5) in the administration of this section, ss. 49.145, 49.19, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029.

(d) Any person who fails to respond to or comply with a subpoena described in par. (bc) or a request under par. (a) by the department or a county child support agency under s. 59.53 (5) may be required to pay a forfeiture in an amount determined by the department by rule.

**(2p)** Except as provided in sub. (12), the department or a county child support agency under s. 59.53 (5) may disclose to a parent with legal custody of a child, upon the parent's request, the last-known address, and the name and address of the last-known employer, of the child's other parent if that other parent owes a support obligation to the child and is in arrears in the payment of the support.

**(2r)** The department or a county child support agency under s. 59.53 (5) may, to the extent permitted under federal law, disclose information obtained under sub. (2m) to the department of revenue for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported

their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax-related prosecutions.

**(3)** The department, acting as a state location service, shall furnish all services under sub. (2) to any similarly appointed agency of another state which by its laws is authorized to furnish such services to this state or its agencies.

**(3m)** The department, acting as a state location service, shall furnish services under sub. (2) upon request to the department of health and family services, a county department under s. 46.215, 46.22 or 46.23 or a child welfare agency that is administering a program operated under 42 USC 620 to 628b or 42 USC 670 to 679a.

**(4)** Except as provided in this section, no person may use or disclose information obtained by the state location service. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned for not more than one year in the county jail or both.

**(6)** The department shall establish, pursuant to federal and state laws, rules and regulations, a uniform system of fees for services provided under this section to individuals not receiving aid under s. 46.261, 49.19 or 49.47; benefits under s. 49.148, 49.155, or 49.79; foster care maintenance payments under 42 USC 670 to 679a; or kinship care payments under s. 48.57 (3m) or long-term kinship care payments under s. 48.57 (3n). The system of fees may take into account an individual's ability to pay. Any fee paid and collected under this subsection may be retained by the county providing the service except for the fee specified in 42 USC 653 (e) (2) for federal parent locator services.

**(7)** The department may represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation. The department may delegate its authority to represent the state in any action to establish paternity or to establish or enforce a support or maintenance obligation under this section to an attorney responsible for support enforcement under s. 59.53 (6) (a) pursuant to a contract entered into under s. 59.53 (5). The department shall ensure that any such contract is for an amount reasonable and necessary to assure quality service. The department may, by such a contract, authorize a county to contract with any attorney, collection agency or other person to collect unpaid child support or maintenance. If a county fails to fully implement the programs under s. 59.53 (5), the department may implement them and may contract with any appropriate person to obtain necessary services. The department shall establish a formula for disbursing funds appropriated under s. 20.445 (3) (md) to carry out a contract under this subsection.

**(7g)** The department shall provide all of the following:

(a) Training to hospital staff members concerning the form that is prescribed by the state registrar under s. 69.15 (3) (b) 3. and concerning the significance and benefits of, and alternatives to, of establishing paternity.

(b) The written information that is required to be provided to parents under s. 69.14 (1) (cm).

**(7m)** The department may contract with or employ a collection agency or other person to enforce a support obligation of a parent who is delinquent in making support payments and may contract with or employ an attorney to appear in an action in state or federal court to enforce such an obligation. To pay for the department's administrative costs of implementing this subsection, the department may charge a fee to counties, use federal matching funds or funds retained by the department under s. 49.24 (2) (c), or use up to 30% of this state's share of a collection made under this subsection on behalf of a recipient of aid to families with dependent children or a recipient of kinship care payments under s. 48.57 (3m) or long-term kinship care payments under s. 48.57 (3n).

**(8)** The department may charge other states and counties seeking collection of child and spousal support for any administrative costs it incurs in providing services related to interstate child sup-

port collections, the federal parent locator service under [42 USC 653](#), the interception of unemployment compensation under [42 USC 654](#) or the withholding of state and federal income tax refunds under s. [49.855](#) and [42 USC 664](#).

(9) The department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

(11) (a) The department shall disclose to a consumer reporting agency, as defined under [45 CFR 303.105](#) (a), the amount of overdue child support owed by a parent. At least 20 business days before disclosing the information to the consumer reporting agency, the department shall notify the parent and inform the parent of the methods available for contesting the accuracy of the information.

(b) The department shall notify a consumer reporting agency within 30 days if any amounts reported to the consumer reporting agency under par. (a) were erroneous. Within 30 days of notification under this paragraph, the consumer reporting agency shall correct the erroneous amount in its records.

(c) The department shall notify a consumer reporting agency within 30 days if any amounts reported to the consumer reporting agency under par. (a) are paid in full. Within 30 days of notification under this paragraph, the consumer reporting agency shall indicate the payment in full in its records.

(12) The department or a county child support agency under s. [59.53 \(5\)](#) may not release information to a person about the whereabouts of another person if any of the following applies:

(a) The person seeking the information is subject to a temporary restraining order or injunction under s. [813.12](#), [813.122](#), [813.123](#), [813.125](#) or [813.127](#) with respect to the person about whom the information is sought; and the department or county child support agency under s. [59.53 \(5\)](#) has notice of the temporary restraining order or injunction.

(b) The department or county child support agency under s. [59.53 \(5\)](#) has reason to believe that releasing the information may result in physical or emotional harm to the person about whom the information is sought.

**History:** 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 20, 93; 1983 a. 27; 1985 a. 29 ss. 861m to 866, 2390 to 2399; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 399, 403, 413; 1989 a. 31; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 ss. 2128m to 2134, 9126 (19), 9130 (4); 1995 a. 77, 187, 201, 225, 289; 1995 a. 404 ss. 39 to 43, 45, 46, 48, 173, 174; Stats. 1995 s. 49.22; 1997 a. 27, 105, 191, 237; 1999 a. 32; 2001 a. 16; 2003 a. 33; 2005 a. 25.

**Cross Reference:** See also chs. [DWD 40](#) and [43](#), Wis. adm. code.

The state may request patient billing records under s. [46.25 \(2m\)](#) [now [49.22 \(2m\)](#)], which may be admitted into evidence under the exception to confidentiality under s. [146.82 \(2\) \(a\) 3](#). *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (1996), 95–0792.

Information contained in a county paternity case file may be released for purposes of fraud investigation of the public assistance programs specified in s. [49.53](#). [80 Atty. Gen. 226](#).

**49.225 Ordering genetic tests.** (1) In this section, “genetic test” has the meaning given in s. [767.001 \(1m\)](#).

(2) (a) A county child support agency under s. [59.53 \(5\)](#) may require, by subpoena in substantially the form authorized under s. [885.02](#) or by other means, a child, the child’s mother and a male alleged, or alleging himself, to be the child’s father to submit to genetic tests if there is probable cause to believe that the male had sexual intercourse with the child’s mother during a possible time of the child’s conception. Probable cause of sexual intercourse during a possible time of conception may be established by a sufficient affidavit of the child’s mother or the male alleged, or alleging himself, to be the child’s father.

(b) If there is only one male alleged, or alleging himself, to be the father and one or more persons required to submit to genetic tests under par. (a) fail to appear for the scheduled tests, the county

child support agency under s. [59.53 \(5\)](#) may bring an action under s. [767.80](#) for determining the paternity of the child.

(3) The fees and costs for genetic tests performed on any person required to submit to the tests under sub. (2) (a) shall be paid for by the county except as follows:

(a) The county may seek reimbursement from either the mother or male alleged, or alleging himself, to be the father, or from both, if the test results show that the male is not excluded as the father and that the statistical probability of the male’s parentage is 99.0% or higher.

(b) If 2 or more identical series of genetic tests are performed upon the same person, the county child support agency under s. [59.53 \(5\)](#) shall require the person requesting the 2nd or subsequent series of tests to pay for the tests in advance. If the person requesting the 2nd or subsequent series of tests is indigent, the county shall pay for the tests and may seek reimbursement from the person.

**History:** 1997 a. 191; 2005 a. 443 s. 265.

**49.227 Program for publication of delinquent child support obligors.** The department shall establish a program to increase public awareness about the importance of the payment of child support. The program shall include publication of information, such as names and photographs, that identifies child support obligors who are significantly delinquent in the payment of child support. The department may use posters, media presentations or other means that the department determines are appropriate for publication of the information. The publications shall include information about the child support owed by each obligor identified and, if appropriate, shall solicit information from the public to assist the department in locating a delinquent obligor.

**History:** 1995 a. 12; 1997 a. 191 s. 39; Stats. 1997 s. 49.227; 1999 a. 32 s. 131.

**49.24 Child support incentive payments.** (1) From the appropriation under s. [20.445 \(3\) \(k\)](#), the department shall provide child support incentive payments to counties. Total payments under this subsection may not exceed \$5,690,000 per year.

**History:** 1995 a. 12; 1997 a. 191 s. 39; Stats. 1997 s. 49.227; 1999 a. 32 s. 131.

(2) (a) The department shall, in consultation with representatives of counties, promulgate a rule that specifies the formula according to which the payments under sub. (1) and federal child support incentive payments will be distributed to counties. The rule shall provide that the total of state and federal incentive payments per year to a county may not exceed the costs per year of the county’s child support program under s. [49.22](#).

(b) Subject to the incentive payments limit specified in par. (a), the department shall distribute to counties, in accordance with the formula established under par. (a), all of the following:

1. Of the amount of federal child support incentive payments awarded to the state for federal fiscal year 2002, the amount awarded if that amount is less than \$12,340,000, or \$12,340,000 plus 50% of the amount awarded that exceeds \$12,340,000.

2. Of the amount of federal child support incentive payments awarded to the state for each federal fiscal year after federal fiscal year 2002, the amount awarded if that amount is less than \$12,340,000, or \$12,340,000 plus 30% of the amount awarded that exceeds \$12,340,000.

3. All federal matching funds associated with the amounts distributed under subs. 1. and 2.

(c) The department may retain 50% of the amount of federal child support incentive payments awarded to the state for federal fiscal year 2002 that exceeds \$12,340,000, and may retain 70% of the amount of federal child support incentive payments awarded to the state for each federal fiscal year after federal fiscal year 2002 that exceeds \$12,340,000, to be used to pay the costs of the department’s activities under ss. [49.22](#) and [49.227](#) and costs related to receiving and disbursing support and support-related payments.

(d) If the amount of federal child support incentive payments awarded to the state for a federal fiscal year is less than

\$12,340,000, the total of payments distributed to counties under par. (b) and sub. (1) for that federal fiscal year may not exceed \$12,340,000.

(3) A county that receives any state child support incentive payment under sub. (1) or any federal child support incentive payment under sub. (2) may use the funds only to pay costs under its child support program under s. 49.22.

**History:** 1997 a. 27; 1999 a. 9; 2003 a. 33.

**Cross Reference:** See also ch. DWD 44, Wis. adm. code.

**49.26 Learnfare program. (1)** (a) In this subsection:

1. “Habitual truant” has the meaning given in s. 118.16 (1) (a).
2. “School” means any one of the following:
  - a. A public school, as described in s. 115.01 (1).
  - b. A private school, as defined in s. 115.001 (3r).
  - c. A technical college pursuant to a contract under s. 118.15 (2).
  - d. A course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation.

(c) A county department or Wisconsin works agency may provide services under this subsection directly or may contract with a nonprofit agency or a school district to provide the services.

(d) A county department or Wisconsin works agency that provides services under this subsection directly shall develop a plan, in coordination with the school districts located in whole or in part in the county, describing the assistance that the county department or Wisconsin works agency and school districts will provide to individuals receiving services under this subsection, the number of individuals that will be served and the estimated cost of the services. The county department or Wisconsin works agency shall submit the plan to the department of workforce development and the department of public instruction by January 15, annually.

(e) For an individual who is a recipient of aid under s. 49.19, or whose custodial parent is a participant under s. 49.147 (3) to (5), who is the parent with whom a dependent child lives and who is subject to the school attendance requirement under par. (ge), the department shall make a monthly payment to the individual or the child care provider for the month’s child care costs in an amount based on need with the maximum amount per child equal to the lesser of the actual cost of the care or the rate established under s. 49.155 (6) if the individual demonstrates the need to purchase child care services in order to attend school and those services are available from a child care provider.

(g) An individual who is a dependent child in a Wisconsin works group that includes a participant under s. 49.147 (3), (4) or (5) or who is a recipient of aid under s. 49.19 is subject to the school attendance requirement under par. (ge) if all of the following apply:

1. Before the first day of the fall 1994 school term, as defined in s. 115.001 (12), the individual is 13 to 17 years of age. Beginning on the first day of the fall 1997 school term, as defined in s. 115.001 (12), the individual is 6 to 17 years of age.
2. The individual has not graduated from a public or private high school or obtained a declaration of equivalency of high school graduation under s. 115.29 (4).
3. The individual is not excused from attending school under s. 118.15 (3).
4. The individual is a parent or is residing with his or her natural or adoptive parent.
5. If the individual is the caretaker of a child, the child is at least 45 days old and child care is available for the child at the school or the school provides an instruction program for the caretaker at home.
6. If child care services are necessary in order for the individual to attend school, child care from a child care provider is avail-

able for the child and transportation to and from child care is also available.

7. The individual is not prohibited from attending school while an expulsion under s. 119.25 or 120.13 (1) is pending.

8. If the individual was expelled from a school under s. 119.25 or 120.13 (1), there is another school available which the individual can attend.

10. The individual does not have good cause for failing to attend school, as defined by the department by rule.

11. If the individual is the mother of a child, a physician has not determined that the individual should delay her return to school after giving birth.

12. If the individual is on a waiting list for a children-at-risk program under s. 118.153, a children-at-risk program that is appropriate for the individual is not available.

(ge) An individual fails to meet the school attendance requirement if the individual is not enrolled in school or was not enrolled in the immediately preceding semester. The Wisconsin works agency or county department shall verify enrollment.

(gm) 1. The following individuals who are subject to the school attendance requirement under the learnfare program are required to participate in case management under sub. (2) (b):

- a. Minor parents.
- b. Habitual truants.
- c. Dropouts, as defined in s. 118.153 (1) (b), including individuals who were dropouts and reenrolled in school in the same or immediately succeeding semester in which they dropped out of school.

2. The department may, in accordance with rules promulgated by the department, sanction any individual specified under subd. 1. who fails to cooperate with case management efforts.

(h) 1. An individual who fails to cooperate with case management efforts under par. (gm) is subject to sanctions as provided under subd. 1s. only if all of the following apply:

- as. The individual has failed to request a hearing or has failed to show good cause for not cooperating with case management efforts in a hearing. The hearing shall be requested and held under s. 49.152. The department shall determine by rule the criteria for good cause.
- b. The individual’s family fails to cooperate with the case manager or fails to engage in the activities identified by the case manager as being necessary to improve the individual’s school attendance.
- c. The individual continues to fail to meet the school attendance requirement under par. (ge).

1s. a. Except as provided under subd. 1s. b., an individual who fails to meet the school attendance requirement under par. (ge) is subject to sanctions determined by the department by rule.

b. An individual who is a dependent child in a Wisconsin works group that includes a participant under s. 49.147 (3), (4) or (5) and who fails to meet the school attendance requirement under par. (ge) is subject to a monthly sanction.

2. If, as a result of the application of sanctions under this paragraph, no child in a family receives payment under s. 49.19, the department shall make a payment to meet only the needs of the parent or parents who would otherwise be eligible for aid under s. 49.19.

(hm) The department may require consent to the release of school attendance records, under s. 118.125 (2) (e), as a condition of eligibility for benefits under s. 49.147 (3) to (5) or aid under s. 49.19.

(hr) If an individual subject to the school attendance requirement under par. (ge) is enrolled in a public school, communications between the school district and the department, a county department under s. 46.215, 46.22 or 46.23 or a Wisconsin works agency concerning the individual’s school attendance may only

be made by a school attendance officer, as defined under s. 118.16 (1) (a).

(2) SERVICES FOR LEARNFARE PUPILS. (a) In this subsection, “county department” means a county department under s. 46.215, 46.22 or 46.23.

(b) County departments or Wisconsin works agencies shall provide case management services to individuals who are subject to the school attendance requirement under the learnfare program under sub. (1) and their families to improve the school attendance and achievement of those individuals.

**History:** 1995 a. 27 ss. 2319 to 2324, 2898g to 2898r, 3101 to 3120b, 9130 (4), 9145 (1); 1995 a. 289; 1997 a. 3, 27, 239; 1999 a. 9.

**Cross Reference:** See also s. DWD 12.20, Wis. adm. code.

**49.275 Cooperation with federal government.** The department may cooperate with the federal government in carrying out federal acts concerning public assistance under this subchapter and in other matters of mutual concern under this subchapter pertaining to public welfare.

**History:** 1995 a. 27.

**49.29 Loss of eligibility.** If a court finds or it is determined after an administrative hearing that meets the requirements in regulations of the federal department of health and human services under 42 USC 616 (b) that an individual who is a member of a family applying for or receiving aid under s. 49.19, for the purpose of establishing or maintaining eligibility for aid under s. 49.19 or of increasing the amount of aid received under s. 49.19, intentionally made a false or misleading statement, intentionally misrepresented or withheld facts or committed an act intended to mislead or to misrepresent or withhold facts, the department shall consider the income and assets of the person but shall remove the needs of the person in determining the amount of any payment made to the person’s family under s. 49.19 as follows:

- (1) Upon the first occurrence, for 6 months.
- (2) Upon the 2nd occurrence, for one year.
- (3) Upon the 3rd occurrence, permanently.

**History:** 1985 a. 29; 1991 a. 313; 1993 a. 16; 1995 a. 27 ss. 2787, 2919.

**49.32 Department; powers and duties. (1) UNIFORM FEE SCHEDULE, LIABILITY AND COLLECTIONS.** (a) The department shall establish a uniform system of fees for services provided or purchased under this subchapter by the department, or a county department under s. 46.215, 46.22 or 46.23, except as provided in s. 49.22 (6) and except where, as determined by the department, a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service. A county department under s. 46.215, 46.22 or 46.23 shall apply the fees which it collects under this program to cover the cost of such services.

(b) Any person receiving services provided or purchased under par. (a) or the spouse of the person and, in the case of a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) who became dependent on public funds for his or her primary support before an order granting his or her adoption, the resident of this state appointed guardian of the child by a foreign court who brought the child into this state for the purpose of adoption, shall be liable for the services in the amount of the fee established under par. (a).

(c) The department shall make collections from the person who in the opinion of the department is best able to pay, giving due regard to the present needs of the person or of his or her lawful dependents. The department may bring an action in the name of the department to enforce the liability established under par. (b).

(d) The department may compromise or waive all or part of the liability for services received. The sworn statement of the secretary shall be evidence of the services provided and the fees charged for the services.

(e) The department may delegate to county departments under s. 46.215, 46.22 or 46.23 and other providers of care and services the powers and duties vested in the department by pars. (c) and (d) as it considers necessary to efficiently administer this subsection,

subject to such conditions as the department considers appropriate.

(g) The department shall return to county departments under s. 46.215, 46.22 or 46.23 50% of collections made by the department for delinquent accounts previously delegated under par. (e) and then referred back to the department for collections.

(2) PAYMENT OF BENEFITS. (a) The department may make payments directly to recipients of public assistance or to such persons authorized to receive such payments in accordance with law and rules of the department on behalf of the counties. The department may charge the counties for the cost of operating public assistance systems which make such payments.

(b) The department may make social services payments directly to recipients, vendors or providers in accordance with law and rules of the department on behalf of the counties which have contracts to have such payments made on their behalf.

(c) A county department under s. 46.215, 46.22 or 46.23 shall provide the department with information which the department shall use to determine each person’s eligibility and amount of payment. A county department under s. 46.215, 46.22 or 46.23 shall provide the department all necessary information in the manner prescribed by the department.

(3) UNIFORM MANUAL. The department shall adopt policies and procedures and a uniform county policy and procedure manual to minimize unnecessary variations between counties in the administration of the aid to families with dependent children program. The department shall also require each county to use the manual in the administration of the program.

(4) EMPLOYMENT OF AID RECIPIENTS. The department shall assist state agencies in efforts under s. 230.147 to employ recipients of aid under s. 49.19.

(5) EMPLOYMENT AND TRAINING AND EDUCATION MANUAL. The department shall produce a manual describing employment and training and education programs for which recipients of public assistance benefits under this subchapter may qualify. The department shall distribute the manual, free of charge, to each county department under s. 46.215, 46.22 or 46.23.

(6) WELFARE REFORM STUDIES. The department shall request proposals from persons in this state for studies of the effectiveness of various program changes, referred to as welfare reform, to the aid to families with dependent children program, including the requirement that certain recipients of aid to families with dependent children with children under age 6 participate in training programs, the learnfare school attendance requirement under s. 49.26 (1) (g) and the modification of the earned income disregard under s. 49.19 (5) (am). The studies shall evaluate the effectiveness of the various efforts, including their cost-effectiveness, in helping individuals gain independence through the securing of jobs and providing financial incentives and in identifying barriers to independence.

(7) PERIODIC RECORDS MATCHES. (a) The department shall conduct a program to periodically verify the eligibility of recipients of aid to families with dependent children under s. 49.19 and of participants in Wisconsin works under ss. 49.141 to 49.161 through a check of school enrollment records of local school boards as provided in s. 118.125 (2) (i).

(b) The department shall conduct a program to periodically match the records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health and family services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 with the records of recipients under those programs in other states. If an agreement with the other states can be obtained, matches with records of states contiguous to this state shall be conducted at least annually.

(c) The department shall conduct a program to periodically match the address records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health

and family services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 to verify residency and to identify recipients receiving duplicate or fraudulent payments.

(d) The department, with assistance from the department of corrections, shall conduct a program to periodically match the records of persons confined in state correctional facilities with the records of recipients of aid to families with dependent children under s. 49.19 and, if the department of health and family services contracts with the department under s. 49.197 (5), recipients of medical assistance under subch. IV and food stamp benefits under the food stamp program under 7 USC 2011 to 2036 to identify recipients who may be ineligible for benefits.

**(8) PERIODIC EARNINGS CHECK BY DEPARTMENT.** The department shall make a periodic check of the amounts earned by recipients of aid to families with dependent children under s. 49.19 and by participants under Wisconsin works under ss. 49.141 to 49.161 through a check of the amounts credited to the recipient's social security number. The department shall make an investigation into any discrepancy between the amounts credited to a social security number and amounts reported as income on the declaration application and take appropriate action under s. 49.95 when warranted. The department shall use the state wage reporting system under 1985 Wisconsin Act 17, section 65 (1), when the system is implemented, to make periodic earnings checks.

**(9) MONTHLY REPORTS OF RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN.** (a) Each county department under s. 46.215, 46.22 or 46.23 administering aid to families with dependent children shall maintain a monthly report at its office showing the names of all persons receiving aid to families with dependent children together with the amount paid during the preceding month. Each Wisconsin works agency administering Wisconsin works under ss. 49.141 to 49.161 shall maintain a monthly report at its office showing the names of all persons receiving benefits under s. 49.148 together with the amount paid during the preceding month. Nothing in this paragraph shall be construed to authorize or require the disclosure in the report of any information (names, amounts of aid or otherwise) pertaining to adoptions, or aid furnished for the care of children in foster homes or treatment foster homes under s. 46.261 or 49.19 (10).

(b) The report under par. (a) shall be open to public inspection at all times during regular office hours and may be destroyed after the next succeeding report becomes available. Any person except any public officer, seeking permission to inspect such report shall be required to prove his or her identity and to sign a statement setting forth his or her address and the reasons for making the request and indicating that he or she understands the provisions of par. (c) with respect to the use of the information obtained. The use of a fictitious name is a violation of this section. Within 7 days after the record is inspected, or on the next regularly scheduled communication with that person, whichever is sooner, the county department or Wisconsin works agency shall notify each person whose name and amount of aid was inspected that the record was inspected and of the name and address of the person making such inspection. County departments under ss. 46.215, 46.22 and 46.23 administering aid to families with dependent children and Wisconsin works agencies administering Wisconsin works under ss. 49.141 to 49.161 may withhold the right to inspect the name of and amount paid to recipients from private individuals who are not inspecting this information for purposes related to public, educational, organizational, governmental or research purposes until the person whose record is to be inspected is notified by the county department or Wisconsin works agency, but in no case may the county department or Wisconsin works agency withhold this information for more than 5 working days. The county department or Wisconsin works agency shall keep a record of such requests. The record shall indicate the name, address, employer and telephone number of the person making the request. If the person refuses to provide his or her name, address, employer and tele-

phone number, the request to inspect this information may be denied.

(c) It is unlawful to use any information obtained through access to such report for political or commercial purposes. The violation of this provision is punishable upon conviction as provided in s. 49.83.

**(10) RELEASE OF INFORMATION TO LAW ENFORCEMENT OFFICERS.** (a) Each county department under s. 46.215, 46.22, or 46.23 may release the current address of a recipient of food stamps or of aid under s. 49.19, and each Wisconsin works agency may release the current address of a participant in Wisconsin works under ss. 49.141 to 49.161, to a law enforcement officer if the officer meets all of the following conditions:

1. The officer provides, in writing, the name of the recipient or participant.

2. The officer satisfactorily demonstrates, in writing, all of the following:

a. That the recipient or participant is a fugitive felon under 42 USC 608 (a) (9), is violating a condition of probation, extended supervision or parole imposed under state or federal law or has information that is necessary for the officer to conduct the official duties of the officer.

b. That the location or apprehension of the recipient or participant under subd. 2. a. is within the official duties of the officer.

c. That the officer is making the request in the proper exercise of his or her duties under subd. 2. b.

(b) If a law enforcement officer believes, on reasonable grounds, that a warrant has been issued and is outstanding for the arrest of a Wisconsin works participant, the law enforcement officer may request that a law enforcement officer be notified when the participant appears to obtain his or her benefits under the Wisconsin works program. At the request of a law enforcement officer under this paragraph, an employee of a Wisconsin works agency who disburses benefits may notify a law enforcement officer when the participant appears to obtain Wisconsin works benefits.

**(10m) RELEASE OF ADDRESSES OF RECIPIENTS INVOLVED IN LEGAL PROCEEDINGS.** (a) A county department, relief agency under s. 49.01 (3m) or Wisconsin works agency shall, upon request, and after providing the notice to the recipient required by this paragraph, release the current address of a recipient of relief under s. 49.01 (3), aid to families with dependent children or benefits under s. 49.148 to a person, the person's attorney or an employee or agent of that attorney, if the person is a party to a legal action or proceeding in which the recipient is a party or a witness, unless the person is a respondent in an action commenced by the recipient under s. 813.12, 813.122, 813.123, 813.125 or 813.127. If the person is a respondent in an action commenced by the recipient under s. 813.12, 813.122, 813.123, 813.125 or 813.127, the county department, relief agency or Wisconsin works agency may not release the current address of the recipient. No county department, relief agency or Wisconsin works agency may release an address under this paragraph until 21 days after the address has been requested. A person requesting an address under this paragraph shall be required to prove his or her identity and his or her participation as a party in a legal action or proceeding in which the recipient is a party or a witness by presenting a copy of the pleading or a copy of the subpoena for the witness. The person shall also be required to sign a statement setting forth his or her name, address and the reasons for making the request and indicating that he or she understands the provisions of par. (b) with respect to the use of the information obtained. The statement shall be made on a form prescribed by the department and shall be sworn and notarized. Within 7 days after an address has been requested under this paragraph, the county department, relief agency or Wisconsin works agency shall mail to each recipient whose address has been requested a notification of that fact on a form prescribed by the department. The form shall also include the date on which the address was requested, the name and address of the person who

requested the disclosure of the address, the reason that the address was requested and a statement that the address will be released to the person who requested the address no sooner than 21 days after the date on which the request for the address was made. County departments, relief agencies and Wisconsin works agencies shall keep a record of each request for an address under this paragraph.

(b) No person may use an address obtained under this subsection for a purpose that is not connected with the legal action or proceeding to which the person requesting the address is a party. No person may use an address obtained under this subsection for political or commercial purposes. No person may request an address under par. (a) using a fictitious name. Any person who violates this paragraph is subject to the penalties under s. 49.83.

(11) COMMUNITY ACTION AGENCIES. The department shall distribute all of the funds under s. 20.445 (3) (cr) to community action agencies and organizations, including any of the 11 federally recognized tribal governing bodies in this state and limited-purpose agencies, in proportion to the share of funds actually allocated to these entities under 42 USC 1315 and from other federal and private foundation sources that provide funds for job creation and development for individuals with low incomes.

(12) ADMINISTRATIVE HEARINGS AND APPEALS. Any hearing under s. 227.42 granted by the department under this subchapter may be conducted before the division of hearings and appeals in the department of administration.

**History:** 1995 a. 27 ss. 2035 to 2037, 2276d, 2805 to 2809, 2927 to 2930, 3146 to 3149; 1995 a. 289, 361, 370, 404; 1997 a. 27, 35, 237, 252, 283; 2001 a. 16; 2003 a. 33.

#### 49.325 County department budgets and contracts.

(1) BUDGET. (a) Each county department under s. 46.215, 46.22 or 46.23 shall submit its final budget for services directly provided or purchased under this subchapter to the department by December 31 annually.

(b) The department shall submit a model of the contract under sub. (2g) (a) to each county department under s. 46.215, 46.22 or 46.23 by May 1 annually.

(2) ASSESSMENT OF NEEDS. Before developing and submitting a proposed budget for services directly provided or purchased under this subchapter to the county executive or county administrator or the county board, the county departments listed in sub. (1) shall assess needs and inventory resources and services, using an open public participation process.

(2g) CONTRACT. (a) The department shall annually submit to the county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department a proposed written contract containing the allocation of funds for services directly provided or purchased under this subchapter and such administrative requirements as necessary. The contract as approved may contain conditions of participation consistent with federal and state law. The contract may also include provisions necessary to ensure uniform cost accounting of services. Any changes to the proposed contract shall be mutually agreed upon. The county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department shall approve the contract before January 1 of the year in which it takes effect unless the department grants an extension. The county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department may designate an agent to approve addenda to any contract after the contract has been approved.

(b) The department may not approve contracts for amounts in excess of available revenues. Actual expenditure of county funds shall be reported in compliance with procedures developed by the department.

(c) The joint committee on finance may require the department to submit contracts between county departments under ss. 46.215, 46.22 and 46.23 and providers of services under this subchapter to the committee for review and approval.

(2r) WITHHOLDING FUNDS. (a) The department, after reasonable notice, may withhold a portion of the appropriation allocated to a county department under s. 46.215, 46.22 or 46.23 if the department determines that that portion of the allocated appropriation is any of the following:

1. For services under this subchapter which duplicate or are inconsistent with services being provided or purchased by the department or other county departments receiving grants-in-aid or reimbursement from the department.

2. Inconsistent with state or federal statutes, rules or regulations, in which case the department may also arrange for provision of services under this subchapter by an alternate agency. The department may not arrange for provision of services by an alternate agency unless the joint committee on finance or a review body designated by the committee reviews and approves the department's determination.

5. Inconsistent with the provisions of the county department's contract under sub. (2g).

(b) If the department withholds a portion of the allocable appropriation under par. (a), the county department under s. 46.215, 46.22 or 46.23 that is affected by the action of the department may submit to the county board of supervisors in a county with a single-county department or to its designated agent or the county boards of supervisors in counties with a multicounty department or their designated agents a plan to rectify the deficiency found by the department. The county board of supervisors or its designated agent in a county with a single-county department or the county boards of supervisors in counties with a multicounty department or their designated agents may approve or amend the plan and may submit for departmental approval the plan as adopted. If a multicounty department is administering a program, the plan may not be submitted unless each county board of supervisors which participated in the establishment of the multicounty department, or its designated agent, adopts it.

(3) OPEN PUBLIC PARTICIPATION PROCESS. (a) *Citizen advisory committee.* Except as provided in par. (b), the county board of supervisors of each county or the county boards of supervisors of 2 or more counties jointly shall establish a citizen advisory committee to the county departments under ss. 46.215, 46.22 and 46.23. The citizen advisory committee shall advise in the formulation of the budget under sub. (1). Membership on the committee shall be determined by the county board of supervisors in a county with a single-county committee or by the county boards of supervisors in counties with a multicounty committee and shall include representatives of those persons receiving services, providers of services and citizens. A majority of the members of the committee shall be citizens and consumers of services. The committee's membership may not consist of more than 25% county supervisors, nor of more than 20% services providers. The chairperson of the committee shall be appointed by the county board of supervisors establishing it. In the case of a multicounty committee, the chairperson shall be nominated by the committee and approved by the county boards of supervisors establishing it. The county board of supervisors in a county with a single-county committee or the county boards of supervisors in counties with a multicounty committee may designate an agent to determine the membership of the committee and to appoint the committee chairperson or approve the nominee.

(b) *Alternate process.* The county board of supervisors or the boards of 2 or more counties acting jointly may submit a report to the department on the open public participation process used under sub. (2). The county board of supervisors may designate an agent, or the boards of 2 or more counties acting jointly may designate an agent, to submit the report. If the department approves the report, establishment of a citizen advisory committee under par. (a) is not required.

(c) *Yearly report.* The county board of supervisors or its designated agent, or the boards of 2 or more counties acting jointly or their designated agent, shall submit to the department a list of

members of the citizen advisory committee under par. (a) or a report on the open public participation process under par. (b) on or before July 1 annually.

**History:** 1995 a. 27.

**49.34 Purchase of care and services. (1)** All services under this subchapter purchased by the department or by a county department under s. 46.215, 46.22 or 46.23 shall be authorized and contracted for under the standards established under this section. The department may require the county departments to submit the contracts to the department for review and approval. For purchases of \$10,000 or less the requirement for a written contract may be waived by the department. When the department directly contracts for services, it shall follow the procedures in this section in addition to meeting purchasing requirements established in s. 16.75.

**(2)** All services purchased under this subchapter shall meet standards established by the department and other requirements specified by the purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of the services, and document the specific services in meeting the service plan for the client and the objective of the service.

**(3)** (a) Purchase of service contracts shall be written in accordance with rules promulgated and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

(b) Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the contracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

(c) For proprietary agencies, contracts may include a percentage add-on for profit according to rules promulgated by the department.

(d) Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start-up period not to exceed 180 days. This reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

(e) If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, the actual cost incurred by the provider may be reimbursed in an amount determined by mutual agreement of the parties.

(f) Advance payments of up to one-twelfth of an annual contract may be allowed under the contract. If the advance payment exceeds \$10,000, the provider shall supply a surety bond in an amount equal to the amount of the advance payment applied for. No surety bond is required if the provider is a state agency. The cost of the surety bond shall be allowable as an expense.

**(4)** For purposes of this section and as a condition of reimbursement, each provider under contract shall:

(a) Except as provided in this subsection, maintain a uniform double entry accounting system and a management information system which are compatible with cost accounting and control systems prescribed by the department.

(b) Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

(c) Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certi-

fied financial and compliance audit report if the care and services purchased exceed \$25,000. The audit shall follow standards that the department prescribes.

(d) Transfer a client from one category of care or service to another only with the approval of the purchaser.

(e) Charge a uniform schedule of fees as specified under s. 49.32 (1) unless waived by the purchaser with the approval of the department. Whenever providers recover funds attributed to the client, such funds shall offset the amount paid under the contract.

**(5)** Except as provided in sub. (5m), the purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

**(5m)** (a) In this subsection:

1. “Provider” means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this section to provide client services on the basis of a unit rate per client service.

2. “Rate-based service” means a service or a group of services, as determined by the department, that is reimbursed through a prospectively set rate and that is distinguishable from other services or groups of services by the purpose for which funds are provided for that service or group of services and by the source of funding for that service or group of services.

(b) 1. Subject to subs. 2. and 3., if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the provider may retain from the surplus generated by that rate-based service up to 5% of the contract amount. A provider that retains a surplus under this subdivision shall use that retained surplus to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by the same rate-based service that generated the surplus.

2. Subject to subd. 3., a provider may accumulate funds from more than one contract period under this paragraph, except that, if at the end of a contract period the amount accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that rate-based service, the provider shall, at the request of a purchaser, return to that purchaser the purchaser’s proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider’s unit rate per client for that rate-based service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a rate-based service that is equal to or exceeds 10% of the amount of all current contracts for that rate-based service, the provider shall apply 50% of that accumulated amount to reducing its unit rate per client for that rate-based service in the next contract period.

3. If on December 31, 1995, the amount accumulated by a provider from all contract periods ending on or before that date for all rate-based services provided by the provider exceeds 10% of the provider’s total contract amount for all rate-based services provided by the provider in 1995, the provider shall, at the request of a purchaser, return to that purchaser the purchaser’s proportional share of that excess.

(f) All providers that are subject to this subsection shall comply with any financial reporting and auditing requirements that the department may prescribe. Those requirements shall include a requirement that a provider provide to any purchaser and the department any information that the department needs to claim federal reimbursement for the cost of any services purchased from the provider and a requirement that a provider provide audit reports to any purchaser and the department according to standards specified in the provider’s contract and any other standards that the department may prescribe.

**(6)** Contracts may be renegotiated by the purchaser under conditions specified in the contract.

(7) The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

**History:** 1995 a. 27; 1997 a. 79.

**49.35 Public assistance; supervisory functions of department.** (1) (a) The department shall supervise the administration of programs under this subchapter. The department shall submit to the federal authorities state plans for the administration of programs under this subchapter in such form and containing such information as the federal authorities require, and shall comply with all requirements prescribed to ensure their correctness.

(b) All records of the department and all county records relating to programs under this subchapter and aid under s. 49.18, 1971 stats., s. 49.20, 1971 stats., and s. 49.61, 1971 stats., as affected by chapter 90, laws of 1973, shall be open to inspection at all reasonable hours by authorized representatives of the federal government. Notwithstanding ss. 48.396 (2) and 938.396 (2), all county records relating to the administration of the services and public assistance specified in this paragraph shall be open to inspection at all reasonable hours by authorized representatives of the department.

(bm) All records of the department relating to aid provided under s. 49.19 are open to inspection at reasonable hours by members of the legislature who require the information contained in the records in pursuit of a specific state legislative purpose. All records of any county relating to aid provided under s. 49.19 are open to inspection at reasonable hours by members of the board of supervisors of the county or the governing body of a city, village or town located in the county who require the information contained in the records in pursuit of a specific county or municipal legislative purpose. The right to records access provided by this paragraph does not apply if access is prohibited by federal law or regulation or if this state is required to prohibit such access as a condition precedent to participation in a federal program in which this state participates.

(c) The department may at any time audit all county records relating to the administration of the services and public assistance specified in this section and may at any time conduct administrative reviews of county departments under ss. 46.215, 46.22 and 46.23. If the department conducts such an audit or administrative review in a county, the department shall furnish a copy of the audit or administrative review report to the chairperson of the county board of supervisors and the county clerk in a county with a single-county department or to the county boards of supervisors and the county clerks in counties with a multicounty department, and to the director of the county department under s. 46.215, 46.22 or 46.23.

(2) The county administration of all laws relating to programs under this subchapter shall be vested in the officers and agencies designated in the statutes.

**History:** 1995 a. 27; 2005 a. 344.

**49.36 Work experience program for noncustodial parents.** (1) In this section:

(a) “Custodial parent” means a parent who lives with his or her child for substantial periods of time.

(b) “Tribal governing body” means an elected tribal governing body of a federally recognized American Indian tribe or band.

(2) The department may contract with any county, tribal governing body, or Wisconsin Works agency to administer a work experience and job training program for parents who are not custodial parents and who fail to pay child support or to meet their children’s needs for support as a result of unemployment or underemployment. The program may provide the kinds of work experience and job training services available from the program under s. 49.193, 1997 stats., or s. 49.147 (3) or (4). The program may also include job search and job orientation activities. The depart-

ment shall fund the program from the appropriations under s. 20.445 (3) (dz) and (k).

(3) (a) Except as provided in par. (f), a person ordered to register under s. 767.55 (2) (am) shall participate in a work experience program if services are available.

(b) A person may not be required to participate for more than 32 hours per week in the program under this section.

(c) A person may not be required to participate for more than 16 weeks during each 12-month period in a program under this section.

(d) If a person is required by a governmental entity to participate in another work or training program, the person may not be required to participate in a program under this section in a week for more than 32 hours minus the number of hours he or she is required to participate in the other work or training program in that week.

(e) If a person is employed, the person may not be required to participate in a program under this section in a week for more than 80% of the difference between 40 hours and the number of hours actually worked in the unsubsidized job during that week.

(f) A person who works, on average, 32 hours or more per week in an unsubsidized job is not required to participate in a program under this section.

(4) When a person completes 16 weeks of participation in a program under this section, the county, tribal governing body, or Wisconsin works agency operating the program shall inform the clerk of courts, by affidavit, of that completion.

(5) A person participating in work experience as part of the program under this section is considered an employee of the county, tribal governing body, or Wisconsin works agency administering the program under this section for purposes of worker’s compensation benefits only.

(6) A county, tribal governing body, or Wisconsin works agency administering the program under this section shall reimburse a person for reasonable transportation costs incurred because of participation in a program under this section up to a maximum of \$25 per month.

(7) The department shall pay a county, tribal governing body, or Wisconsin works agency not more than \$400 for each person who participates in the program under this section in the region in which the county, tribal governing body, or Wisconsin works agency administers the program under this section. The county, tribal governing body, or Wisconsin works agency shall pay any additional costs of the program.

**History:** 1987 a. 413; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 2135 to 2142; 1995 a. 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2005 a. 443 s. 265.

**49.38 Menominee Enterprises, Inc., bonds, acquisition.** (1) The department is authorized to exercise options to purchase securities assigned to the state of Wisconsin under s. 710.05, 1973 stats., at par value, or to accept an assignment of such securities, for the purpose of providing relief, public assistance or welfare aid under this section.

(2) The department shall exercise the options to purchase such securities or accept an assignment of such securities when it finds that the owner of the securities is a resident of this state and is in need of public assistance, or who but for the ownership of such securities would qualify for public assistance. If the department exercises an option to purchase such security, the purchase price shall be paid out, at par value, as a relief payment. Where the department accepts an assignment of such security as provided in this section it shall pay out as relief an amount equal to the par value of the security assigned. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts as will in the discretion of the department meet the needs of the recipient and protect the public. The department is authorized to exercise the options to purchase assigned to it in whole or in part, or to accept an assignment of such securities in whole or in part. The department is granted such authority as may be necessary and



convenient to enable it to exercise the functions and perform the duties required of it by this section, including without limitation because of enumeration the authority to promulgate rules governing eligibility and the furnishing and paying of relief under this section, the authority to enter into suitable agreements with the owner of the security or other appropriate persons for the purpose of carrying out this section, and the authority to sell or transfer the securities or defend and prosecute all actions concerning it and pay all just claims against it and do all other things necessary for the protection, preservation and management of the securities.

(3) If the relief, public assistance, or other welfare aid provided pursuant to this section is discontinued during the life of the person receiving such aid and the value of the securities transferred to the department exceed the total amount of assistance paid under this section, the excess of such property shall be returned to such person; and in the event of the person's death the excess shall be considered the property of such person for administration proceedings.

(4) The department may make loans to the owner of such securities for relief and welfare purposes which loans shall be secured by pledges of the securities to the state. The department may by rule establish the purposes for which loans may be made, permissible interest rates and fees, time and manner in which the loan is paid out, time and manner of repayment, general procedures to be followed in making loans, the action which shall be taken if a borrower defaults on a loan, maximum amount which may be loaned to any one borrower, and any other rules necessary to carry out the purposes of this section.

(5) Nothing in this section as created by chapter 2, laws of Special Session of 1963, is in derogation of other rights and remedies provided by law.

(6) On and after May 20, 1972, where the owner of such security is otherwise eligible for welfare assistance, such security shall be an exempt asset under the welfare law and shall not disqualify such person from receiving welfare assistance.

**History:** 1971 c. 302; 1975 c. 422 s. 163; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (19); 1985 a. 29, 120; 1989 a. 359; 1991 a. 316; 1995 a. 27 ss. 3180, 3181; Stats. 1995 s. 49.38.

**NOTE:** Ch. 303, 1971 laws, provided for returning to its original owners Menominee Enterprises, Inc. bonds assigned to the state as a condition for receiving public assistance.

**49.385 No action against members of the Menominee Indian tribe in certain cases.** No action shall be commenced under s. 46.10 or 49.08 or any other provision of law for the recovery from assets distributed to members of the Menominee Indian tribe and others by the United States pursuant to P.L. 83–399, as amended, for the value of relief or old-age assistance under s. 49.20, 1971 stats., as affected by chapter 90, laws of 1973, and the value of maintenance in state institutions under ch. 46, furnished prior to termination date as defined in s. 70.057 (1), 1967 stats., to any legally enrolled member of the Menominee Indian tribe, his or her dependents, or lawful distributees of such member under section 3, said P.L. 83–399, as amended. For purposes of this section, “legally enrolled members of the Menominee Indian tribe” shall include only those persons whose names appear on “Final Roll—Menominee Indian Tribe of Wisconsin” as proclaimed by the secretary of the interior November 26, 1957, and published at pages 9951 et seq. of the federal register, Thursday, December 12, 1957.

**History:** 1973 c. 147, 243; 1983 a. 192; 1995 a. 27 s. 2768m; Stats. 1995 s. 49.385.

#### SUBCHAPTER IV

#### MEDICAL ASSISTANCE

**49.43 Definitions.** As used in ss. 49.43 to 49.497 unless the context indicates otherwise:

(1e) “Accommodated person” means any person in a hospital or in a skilled nursing facility or intermediate care facility, as defined in Title XIX of the social security act, who would have

been eligible for benefits under s. 49.19 or 49.77 or federal Title XVI if the person were not in such a hospital or facility, and any person in such an institution who can be found eligible for Title XIX under the social security act.

(1m) “Charge” means the customary, usual and reasonable demand for payment as established prospectively, concurrently or retrospectively by the department for services, care or commodities which does not exceed the general level of charges by others who render such service or care, or provide such commodities, under similar or comparable circumstances within the community in which the charge is incurred.

(2) “Cost” means the reasonable cost of services, care or commodities as determined by the principles of reimbursement used under 42 USC 1395 to 1395rr, in effect on April 30, 1980.

(2m) “Cost-effective” has the meaning given in P.L. 101–508, section 4402 (a) (2).

(3) “Dentist” means a person licensed to practice dentistry.

(3e) “Department” means the department of health and family services.

(3m) “Developmentally disabled” has the meaning specified in s. 51.01 (5).

(3r) “Group health plan” has the meaning given in P.L. 101–508, section 4402 (a) (2).

(4) “Home health agency” has the meaning specified in s. 50.49 (1) (a).

(5) “Hospital” means an institution, approved by the appropriate state agency, providing 24-hour continuous nursing service to patients confined therein; which provides standard dietary, nursing, diagnostic and therapeutic facilities; and whose professional staff is composed only of physicians and surgeons, or of physicians and surgeons and doctors of dental surgery.

(6) “Inpatient psychiatric hospital services for individuals 21 years of age or for individuals under 22 years of age who are receiving such service immediately prior to reaching age 21” has the same meaning as provided in section 1905 (h) of the federal social security act.

(6m) “Institution for mental diseases” has the meaning specified in 42 CFR 435.1009.

(7) “Intermediate care facility” means either of the following:

(a) An institution or distinct part thereof, which is:

1. Licensed or approved under state law to provide, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designated to provide but who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities; and

2. Qualifies as an “intermediate care facility” within the meaning of Title XIX of the social security act.

(b) A public institution, or distinct part thereof, which is:

1. Licensed or approved under state law for the mentally retarded or persons with related conditions, the primary purpose of which is to provide health or rehabilitative services for mentally retarded individuals according to rules promulgated by the department; and

2. Qualifies as an “intermediate care facility” within the meaning of Title XIX of the social security act.

(8) “Medical assistance” means any services or items under ss. 49.45 to 49.473, except s. 49.472 (6), and under ss. 49.49 to 49.497, or any payment or reimbursement made for such services or items.

(9) “Physician” means a person licensed to practice medicine and surgery, and includes graduates of osteopathic colleges holding an unlimited license to practice medicine and surgery.

(10) “Provider” means a person, corporation, limited liability company, partnership, unincorporated business or professional association and any agent or employee thereof who provides medical assistance.

**(10m)** “Public medical institution” has the meaning designated in Title XIX of the federal social security act.

**(10s)** “Secretary” means the secretary of health and family services.

**(10v)** “Serious and persistent mental illness” has the meaning given in s. 51.01 (14t).

**(11)** “Skilled nursing home” means a facility or distinct part thereof, which:

(a) Is licensed or approved under state law for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care;

(b) Employs sufficient registered nursing practitioners for supervision of those giving nursing care to patients; and

(c) Qualifies as a “skilled nursing facility” within the meaning of Title XIX of the social security act.

**(12)** “Spouse” means the legal husband or wife of the beneficiary, whether or not eligible for medical assistance.

**History:** 1977 c. 29 ss. 583m, 591; 1977 c. 418 s. 929 (18); 1979 c. 221; 1981 c. 20 s. 2202 (20) (m); 1981 c. 93; 1983 a. 189; 1987 a. 27; 1987 a. 403 s. 256; 1987 a. 413; 1991 a. 39; 1993 a. 27, 99, 112, 437; 1995 s. 27 ss. 2649, 2661, 2943 to 2946, 9126 (19); 1999 a. 9; 2001 a. 16; 2005 a. 264.

**49.45 Medical assistance; administration. (1) PURPOSE.** To provide appropriate health care for eligible persons and obtain the most benefits available under Title XIX of the federal social security act, the department shall administer medical assistance, rehabilitative and other services to help eligible individuals and families attain or retain capability for independence or self-care as hereinafter provided.

**(2) DUTIES.** (a) The department shall:

1. Exercise responsibility relating to fiscal matters, the eligibility for benefits under standards set forth in ss. 49.46 to 49.47 and general supervision of the medical assistance program.

2. Employ necessary personnel under the classified service for the efficient and economical performance of the program and shall supply residents of this state with information concerning the program and procedures.

3. Determine the eligibility of persons for medical assistance, rehabilitative, and social services under ss. 49.46, 49.468, and 49.47 and rules and policies adopted by the department and may, under a contract under s. 49.78 (2), delegate all, or any portion, of this function to the county department under s. 46.215, 46.22, or 46.23 or a tribal governing body.

4. To the extent funds are available under s. 20.435 (4) (bm), certify all proper charges and claims for administrative services to the department of administration for payment and the department of administration shall draw its warrant forthwith.

5. Cooperate with the division for learning support, equity and advocacy in the department of public instruction to carry out the provisions of Title XIX.

6. Appoint such advisory committees as are necessary and proper.

7. Cooperate with the federal authorities for the purpose of providing the assistance and services available under Title XIX to obtain the best financial reimbursement available to the state from federal funds.

8. Periodically report to the joint committee on finance concerning projected expenditures and alternative reimbursement and cost control policies in the medical assistance program.

9. Periodically set forth conditions of participation and reimbursement in a contract with provider of service under this section.

10. a. After reasonable notice and opportunity for hearing, recover money improperly or erroneously paid or overpayments to a provider by offsetting or adjusting amounts owed the provider under the program, crediting against a provider’s future claims for reimbursement for other services or items furnished by the provider under the program, or requiring the provider to make direct payment to the department or its fiscal intermediary.

b. Establish a deadline for payment of a recovery imposed under this subdivision and, if a provider fails to pay all of the amount to be recovered by the deadline, require payment, by the provider, of interest on any delinquent amount at the rate of 1% per month or fraction of a month from the date of the overpayment.

c. Promulgate rules to implement this subdivision.

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

b. Promulgate rules to implement this subdivision.

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

b. Promulgate rules to implement this subdivision.

12r. Notify the medical examining board, or any affiliated credentialing board attached to the medical examining board, of any decertification or suspension of a person holding a license granted by the board or the affiliated credentialing board if the grounds for the decertification or suspension include fraud or a quality of care issue.

13. Impose additional sanctions for noncompliance with the terms of provider agreements under subd. 9. or certification criteria established under subd. 11.

14. Assure due process in implementing subds. 12. and 13. by providing written notice, a fair hearing and a written decision.

15. Routinely provide notification to persons eligible for medical assistance, or such persons’ guardians, of the department’s access to provider records.

16. Notify the joint committee on finance and appropriate standing committees in each house of the legislature prior to renewing, extending or amending the claims processing contract under the medical assistance program.

17. Notify the governor, the joint committee on legislative organization, the joint committee on finance and appropriate standing committees, as determined by the presiding officer of each house, if the appropriation accounts under s. 20.435 (4) (b) and (gp) are insufficient to provide the state share of medical assistance.

18. Conduct outreach for the early and periodic screening, diagnosis and treatment program as required under 42 CFR 441. This activity is limited to persons under 21 years of age who have been determined to be eligible for medical assistance.

19. Contract with a county department under s. 46.21, 46.23, 51.42 or 51.437 to perform preadmission screening and resident review under sub. (6c).

20. Submit a report, by May 1, 1991, and annually thereafter, to the joint committee on finance on the participation rates of children in the early and periodic screening and diagnosis program.

22. After consulting with counties, independent living centers, consumer organizations and home health agencies, periodically identify those barriers to the provision of personal care services under s. 49.46 (2) (b) 6. j. which lead to a failure to respond

to the needs and preferences of individuals who are eligible for these services and act to remove the barriers to the extent possible.

23. Promulgate rules that define “supportive services”, “personal services” and “nursing services” provided in a certified residential care apartment complex, as defined under s. 50.01 (1d), for purposes of reimbursement under ss. 46.27 (11) (c) 7. and 46.277 (5) (e).

24. In consultation with hospitals, health maintenance organizations, county departments of social services and of human services and other interested parties, develop and, not later than January 1, 1999, implement a process for expediting medical assistance eligibility determinations for persons in urgent medical situations. The department shall promulgate any rules necessary for the implementation of that process.

24m. Promulgate rules that require that the written plan of care for persons receiving personal care services under medical assistance be reviewed by a registered nurse at least every 60 days. The rules shall provide that the written plan of care shall designate intervals for visits to the recipient’s home by a registered nurse as part of the review of the plan of care. The designated intervals for visits shall be based on the individual recipient’s needs, and each recipient shall be visited in his or her home by a registered nurse at least once in every 12–month period. The rules shall also provide that a visit to the recipient is also required if, in the course of the nurse’s review of the plan of care, there is evidence that a change in the recipient’s condition has occurred that may warrant a change in the plan of care.

(b) The department may:

1. Direct a county department under s. 46.215, 46.22 or 46.23 to perform other functions, responsibilities and services, including any functions related to health maintenance organizations, limited service health organizations and preferred provider plans.

2. Contract with any organization whether or not organized for profit to administer, in full or in part, the benefits under the medical assistance program including prepaid health care. The department shall accept bids on contracts for administrative services and services evaluating the medical assistance program as provided in ch. 16, but may accept the contract deemed most advantageous for claims processing services; or contract with any insurer authorized under the insurance code of this state to insure the program in full or in part and on behalf of the department. The department shall submit a report each December 31 to the governor, the joint committee on finance and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding the effectiveness of the management information system for monitoring and analyzing medical assistance expenditures.

3. Audit all claims filed by any contractor making the payment of benefits paid under ss. 49.46 to 49.47 and make proper fiscal adjustments.

4. Audit claims filed by any provider of medical assistance, and as part of that audit, request of any such provider, and review, medical records of individuals who have received benefits under the medical assistance program.

5. Enter into contracts with providers who donate their services at no charge or who provide services for reduced payments.

6m. Limit the number of providers of particular services that may be certified under par. (a) 11. or the amount of resources, including employees and equipment, that a certified provider may use to provide particular services to medical assistance recipients, if the department finds that existing certified providers and resources provide services that are adequate in quality and amount to meet the need of medical assistance recipients for the particular services; and if the department finds that the potential for medical assistance fraud or abuse exists if additional providers are certified or additional resources are used by certified providers. The department shall promulgate rules to implement this subdivision.

7. Require, as a condition of certification under par. (a) 11., all providers of a specific service that is among those enumerated

under s. 49.46 (2) or 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond issued by a surety company licensed to do business in this state. Providers subject to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a) for which providers have demonstrated significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a) 10., or to need additional sanctions under par. (a) 13. The surety bond shall be payable to the department in an amount that the department determines is reasonable in view of amounts of former recoveries against providers of the specific service and the department’s costs to pursue those recoveries. The department shall promulgate rules to implement this subdivision that specify all of the following:

a. Services under medical assistance for which providers have demonstrated significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a) 10., or to need additional sanctions under par. (a) 13.

b. The amount or amounts of the surety bonds.

c. Terms of the surety bond, including amounts, if any, without interest to be refunded to the provider upon withdrawal or decertification from the medical assistance program.

8. Require a person who takes over the operation, as defined in sub. (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation of the provider, regardless of whether the person is currently certified. The department may withhold the certification required under this subdivision until any outstanding repayment under sub. (21) is made. The department shall promulgate rules to implement this subdivision.

9. After providing reasonable notice and opportunity for a hearing, charge an assessment to a provider that repeatedly has been subject to recoveries under par. (a) 10. a. because of the provider’s failure to follow identical or similar billing procedures or to follow other identical or similar program requirements. The assessment shall be used to defray in part the costs of audits and investigations by the department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount of any such repeated recovery made, whichever is greater. The provider shall pay the assessment to the department within 10 days after receipt of notice of the assessment or the final decision after administrative hearing, whichever is later. The department may recover any part of an assessment not timely paid by offsetting the assessment against any medical assistance payment owed to the provider and may refer any unpaid assessments not collected in this manner to the attorney general, who may proceed with collection under this subdivision. Failure to timely pay in any manner an assessment charged under this subdivision, other than an assessment that is offset against any medical assistance payment owed to the provider, is grounds for decertification under par. (a) 12. A provider’s payment of an assessment does not relieve the provider of any other legal liability incurred in connection with the recovery for which the assessment is charged, but is not evidence of violation of a statute or rule. The department shall credit all assessments received under this subdivision to the appropriation account under s. 20.435 (4) (iL). The department shall promulgate rules to implement this subdivision.

(3) PAYMENT. (a) Reimbursement shall be made to each county department under ss. 46.215, 46.22, and 46.23 for any administrative services performed in the Medical Assistance program on the basis of s. 49.78 (8). For purposes of reimbursement under this paragraph, assessments completed under s. 46.27 (6) (a) are administrative services performed in the Medical Assistance program.

(ag) Reimbursement shall be made to each entity contracted with under s. 46.281 (1) (e) for functional screens performed by the entity.

(b) 1. The contractor, if any, administering benefits or providing prepaid health care under s. 49.46, 49.465, 49.468 or 49.47

shall be entitled to payment from the department for benefits so paid or prepaid health care so provided or made available when a certification of eligibility is properly on file with the contractor in addition to the payment of administrative expense incurred pursuant to the contract and as provided in sub. (2) (a) 4., but the contractor shall not be reimbursed for benefits erroneously paid where no certification is on file.

2. The contractor, if any, insuring benefits under s. 49.46, 49.465, 49.468 or 49.47 shall be entitled to receive a premium, in an amount and on terms agreed, for such benefits for the persons eligible to receive them and for its services as insurer.

(c) Payment for services provided under this section shall be made directly to the hospital, skilled and intermediate nursing homes, prepaid health care group, other organization or individual providing such services or to an organization which provides such services or arranges for their availability on a prepayment basis.

(d) No payment may be made for inpatient hospital services, skilled nursing home services, intermediate care facility services, tuberculosis institution services or inpatient mental institution services, unless the facility providing such services has in operation a utilization review program and meets federal regulations governing such utilization review program.

(dm) After distribution of computer software has been made under 1993 Wisconsin Act 16, section 9126 (13h), no payment may be made for home health care services provided to persons who are enrolled in the federal medicare program and are recipients of medical assistance under s. 49.46 or 49.47 unless the provider of the services has in use the computer software to maximize payments under the federal medicare program under 42 USC 1395.

(e) 1. The department may develop, implement and periodically update methods for reimbursing or paying hospitals for allowable services or commodities provided a recipient. The methods may include standards and criteria for limiting any given hospital's total reimbursement or payment to that which would be provided to an economically and efficiently operated facility.

2. A hospital whose reimbursement or payment is determined on the basis of the methods developed and implemented under subd. 1. shall annually prepare a report of cost and other data in the manner prescribed by the department.

3. The department may adopt a prospective payment system under subd. 1. which may include consideration of an average rate per diem, diagnosis-related groups or a hospital-specific prospective rate per discharge.

4. If the department maintains a retrospective reimbursement system under subd. 1. for specific provided services or commodities, total reimbursement for allowable services, care or commodities provided recipients during the hospital's fiscal year may not exceed the lower of the hospital's charges for the services or the actual and reasonable allowable costs to the hospital of providing the services, plus any disproportionate share funding that the hospital is qualified to receive under 42 USC 1396r-4.

7. The daily reimbursement or payment rate to a hospital for services provided to medical assistance recipients awaiting admission to a skilled nursing home, intermediate care facility, community-based residential facility, group home, foster home, treatment foster home or other custodial living arrangement may not exceed the maximum reimbursement or payment rate based on the average adjusted state skilled nursing facility rate, created under sub. (6m). This limited reimbursement or payment rate to a hospital commences on the date the department, through its own data or information provided by hospitals, determines that continued hospitalization is no longer medically necessary or appropriate during a period where the recipient awaits placement in an alternate custodial living arrangement. The department may contract with a peer review organization, established under 42 USC 1320c to 1320c-10, to determine that continued hospitalization of a recipient is no longer necessary and that admission to an alternate custodial living arrangement is more appropriate for the con-

tinued care of the recipient. In addition, the department may contract with a peer review organization to determine the medical necessity or appropriateness of physician services or other services provided during the period when a hospital patient awaits placement in an alternate custodial living arrangement.

7m. Notwithstanding subd. 7., the daily reimbursement or payment rate for services at a hospital established under s. 45.50 (10) provided to medical assistance recipients whose continued hospitalization is no longer medically necessary or appropriate during a period where the recipient awaits placement in an alternate custodial living arrangement shall be the skilled nursing facility rate paid to a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50.

8. Reimbursement or payment for outpatient hospital services may not exceed reimbursement or payment for comparable services performed by providers not owned or operated by hospitals.

9. Hospital research costs that the department finds to be indirectly related to patient care are not allowable costs in establishing a hospital's reimbursement or payment rate under subd. 1.

10. Hospital procedures on an inpatient basis that could be performed on an outpatient basis shall be reimbursed or paid at the outpatient rate. The department shall determine which procedures this subdivision covers.

(f) 1. Providers of services under this section shall maintain records as required by the department for verification of provider claims for reimbursement. The department may audit such records to verify actual provision of services and the appropriateness and accuracy of claims.

2. The department may deny any provider claim for reimbursement which cannot be verified under subd. 1. or may recover the value of any payment made to a provider which cannot be so verified. The measure of recovery will be the full value of any claim if it is determined upon audit that actual provision of the service cannot be verified from the provider's records or that the service provided was not included in s. 49.46 (2). In cases of mathematical inaccuracies in computations or statements of claims, the measure of recovery will be limited to the amount of the error.

2m. The department shall adjust reimbursement claims for hospital services that are provided during a period when the recipient awaits placement in an alternate custodial living arrangement under par. (e) 7. and that fail to meet criteria the department may establish concerning medical necessity or appropriateness for hospital care. In addition, the department shall deny any provider claim for services that fail to meet criteria the department may establish concerning medical necessity or appropriateness.

3. Contractors under sub. (2) (b) shall maintain records as required by the department for audit purposes. Contractors shall provide the department access to the records upon request of the department, and the department may audit the records.

(fm) The department shall seek, on behalf of dentists who are providers, federal reimbursement for the cost of any equipment that the department requires dentists to use to verify medical assistance eligibility electronically. If the department is successful in obtaining federal reimbursement of that expense, the department shall reimburse dentists who are providers for the portion of the cost of the equipment that is reimbursed by the federal government.

(g) 1. The secretary may authorize personnel to audit or investigate and report to the department on any matter involving violations or complaints alleging violations of statutes, regulations, or rules applicable to the medical assistance program and to perform such investigations or audits as are required to verify the actual provision of services or items available under the medical assistance program and the appropriateness and accuracy of claims for reimbursement submitted by providers participating in the program. Department employees authorized by the secretary under this paragraph shall be issued, and shall possess at all times while they are performing their investigatory or audit functions under this section, identification, signed by the secretary, that specifi-

cally designates the bearer as possessing the authorization to conduct medical assistance investigations or audits. Under the request of a designated person and upon presentation of the person's authorization, providers and medical assistance recipients shall accord the person access to any provider personnel, records, books, or documents or other information needed. Under the written request of a designated person and upon presentation of the person's authorization, providers and recipients shall accord the person access to any needed patient health care records of a recipient. Authorized employees may hold hearings, administer oaths, take testimony, and perform all other duties necessary to bring the matter before the department for final adjudication and determination.

2. The department shall promulgate rules to implement this paragraph.

(h) 1m. The failure or refusal of a provider to accord department auditors or investigators access as required under par. (g) to any provider personnel, records, books, patient health care records of medical assistance recipients, or documents or other information requested constitutes grounds for decertification or suspension of the provider from participation in the medical assistance program. No payment may be made for services rendered by the provider following decertification, during the period of suspension, or during any period of provider failure or refusal to accord access as required under par. (g).

1n. The department shall promulgate rules to implement this paragraph.

(j) Reimbursement for administrative contract costs under this section is limited to the funds available under s. 20.435 (4) (bm).

(k) If a physician performs a surgical procedure that is within the scope of practice of a podiatrist, as defined in s. 448.60 (3), the allowable charge for the procedure may not exceed the charge the department determines is reasonable.

(L) 1. In this paragraph:

- a. "Designated health service" has the meaning given in 42 USC 1395nn (h) (6).
- b. "Medicare" means coverage under Part A or Part B of Title XVIII of the federal social security act, 42 USC 1395 to 1395ccc.
- c. "Physician" has the meaning given in s. 448.01 (5).
- d. "Referral" has the meaning given in 42 USC 1395nn (h) (5).

2. The department may not pay a provider for a designated health service that is authorized under this section or s. 49.46 or 49.47, that is provided as the result of a referral made to the provider by a physician and that, under 42 USC 1396b (s), if made on behalf of a beneficiary of medicare under the requirements of 42 USC 1395nn, as amended to August 10, 1993, would result in the denial of payment for the service under 42 USC 1395nn.

3. A provider shall submit to the department information concerning the ownership arrangements of the provider or the entity of which the provider is a part that corresponds to the information required of providers under 42 USC 1395nn (f), as amended to August 10, 1993.

4. Any person who fails to comply with subd. 3. may be required to forfeit not more than \$10,000. Each day of continued failure to comply constitutes a separate offense.

5. The department shall administer this paragraph consistently with 42 USC 1395nn and 42 USC 1396b (s).

(m) To be certified under sub. (2) (a) 11. to provide transportation by specialized medical vehicle, a person must have at least one human service vehicle, as defined in s. 340.01 (23g), that satisfies the requirements imposed under s. 110.05 for a vehicle that is used to transport a person in a wheelchair. If a certified provider uses 2 or more vehicles to provide transportation by specialized medical vehicle, at least 2 of the vehicles must be human service vehicles that satisfy the requirements imposed under s. 110.05 for a vehicle that is used to transport a person in a wheelchair, and any

3rd or additional vehicle must be a human service vehicle to which the equipment required under s. 110.05 for transporting a person in a wheelchair may be added. The department shall pay for transportation by specialized medical vehicle under s. 49.46 (2) (b) 3. that is provided in a human service vehicle that is not equipped to transport a person in a wheelchair if the person being transported does not use a wheelchair. The reimbursement rate for transportation by specialized medical vehicle provided in a vehicle that is not equipped to accommodate a wheelchair shall be the same as for transportation by specialized medical vehicle provided in a vehicle that is equipped to accommodate a wheelchair.

(4) INFORMATION RESTRICTED. The use or disclosure of any information concerning applicants and recipients of medical assistance not connected with the administration of this section is prohibited.

(5) APPEAL. (a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

(b) 1. Upon receipt of a timely petition under par. (a) the department shall give the applicant or recipient reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and, if a county department under s. 46.215, 46.22, or 46.23 is responsible for making the medical assistance determination, to the county clerk of the county. The county may be represented at such hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient, to the county clerk, and to any county officer charged with administration of the Medical Assistance program. The decision of the department shall have the same effect as an order of a county officer charged with the administration of the Medical Assistance program. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for a hearing or shall refuse to grant relief if:

- a. The petitioner withdraws the petition in writing.
- b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state or federal law.
- c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within the timely notice period specified in 42 CFR 431.231 (c), medical assistance coverage shall not be suspended, reduced, or discontinued until a decision is rendered after the hearing but medical assistance payments made pending the hearing decision may be recovered by the department if the contested decision or failure to act is upheld. If a county department is responsible for making the medical assistance determination, the department shall notify the county department of the county in which the recipient resides that the recipient has requested a hearing. Medical assistance coverage shall be suspended, reduced, or discontinued if:

- a. The recipient is contesting a state or federal law or a change in state or federal law and not the determination of the payment made on the recipient's behalf.
- b. The recipient is notified of a change in his or her medical assistance coverage while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if medical assistance is to be suspended, reduced or terminated pending the hearing decision.

**(5m) SUPPLEMENTAL FUNDING FOR RURAL HOSPITALS.** (ag) In this subsection, “critical access hospital” has the meaning given in s. 50.33 (1g).

(am) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w), the department shall distribute not more than \$2,256,000 in each fiscal year, to provide supplemental funds to rural hospitals that, as determined by the department, have high utilization of inpatient services by patients whose care is provided from governmental sources, and to provide supplemental funds to critical access hospitals, except that the department may not distribute funds to a rural hospital or to a critical access hospital to the extent that the distribution would exceed any limitation under 42 USC 1396b (i) (3).

(b) The supplemental funding for rural hospitals under par. (am) shall be based on the utilization, by recipients of medical assistance, of the total inpatient days of a rural hospital in relation to that utilization in other rural hospitals.

**(6b) CENTERS FOR THE DEVELOPMENTALLY DISABLED.** From the appropriation under s. 20.435 (2) (gk), the department may reimburse the cost of services provided by the centers for the developmentally disabled. Reimbursement to the centers for the developmentally disabled shall be reduced following each placement made under s. 46.275 that involves a relocation from a center for the developmentally disabled, by \$225 per day, beginning in fiscal year 2002–03, and by \$325 per day, beginning in fiscal year 2004.

**(6c) PREADMISSION SCREENING AND RESIDENT REVIEW.** (a) *Definitions.* In this subsection:

1. “Active treatment for developmental disability” means a continuous program for an individual who has a developmental disability that includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services, that is directed toward the individual’s acquiring behaviors necessary for him or her to function with as much self-determination and independence as possible and that is directed toward preventing or decelerating regression or loss of the individual’s current optimal functional status. “Active treatment for developmental disability” does not include services to maintain generally independent individuals with developmental disability who are able to function with little supervision or in the absence of active treatment for developmental disability.

2. “Active treatment for mental illness” means the implementation of an individualized plan of care for an individual with mental illness that is developed under and supervised by a physician licensed under ch. 448 and other qualified mental health care providers and that prescribes specific therapies and activities for the treatment of the individual while the individual experiences an acute episode of severe mental illness which necessitates supervision by trained mental health care providers.

3. “County department” means a department under s. 46.21, 46.23, 51.42 or 51.437.

4. “Developmental disability” means any of the following:

a. Significantly subaverage general intellectual functioning that is concurrent with an individual’s deficits in adaptive behavior and that manifested during the individual’s developmental period.

b. A severe, chronic disability that meets all of the conditions for individuals with related conditions as specified in 42 CFR 435.1009.

5. “Facility” has the meaning given under 42 USC 1396r (a).

6. “Facility care” means services provided in a facility that are in conformity with 42 USC 1396r and that are payable under sub. (6m).

6m. “Intermediate facility” has the meaning given in s. 46.279 (1) (a).

7. “Mental illness” has the meaning given in 42 USC 1396r (e).

(b) *Preadmission screening.* Except as provided in par. (e), every individual who applies for admission to a facility or to an institution for mental diseases shall be screened to determine if the individual has developmental disability or mental illness. The department or an entity to which the department has delegated authority shall screen every individual who has been identified as having a developmental disability or mental illness to determine if the individual needs facility care. If the individual is determined to need facility care, the department or an entity to which the department has delegated authority shall also assess the individual to determine if he or she requires active treatment for developmental disability or active treatment for mental illness. If the department or entity determines that the individual requires active treatment for developmental disability, the department or entity shall determine whether the level of care required by the individual that is provided by a facility could be provided safely in an intermediate facility or under a plan that is developed under s. 46.279 (4).

(c) *Resident review.* Except as provided in par. (e), the department or an entity to which the department has delegated authority shall review every resident of a facility or institution for mental diseases who has a developmental disability or mental illness and who has experienced a significant change in his or her physical or mental condition to determine all of the following:

1. Whether the resident needs facility care.

2. Whether the resident requires active treatment for developmental disability or active treatment for mental illness.

3. If the department or entity determines under subd. 1. that the resident needs facility care and under subd. 2. that the resident requires active treatment for developmental disability, whether the level of care required by the resident that is provided by a facility could be provided safely in an intermediate facility or under a plan that is developed under s. 46.279 (4).

(d) *Payment for facility care.* 1. No payment may be made under sub. (6m) to a facility or to an institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46 or 49.47, who has developmental disability or mental illness and for whom under par. (b) or (c) it is determined that he or she does not need facility care, unless it is determined that the individual requires active treatment for developmental disability or active treatment for mental illness and has continuously resided in a facility or institution for mental diseases for at least 30 months prior to the date of the determination. If that individual requires active treatment and has so continuously resided, he or she shall be offered the choice of receiving active treatment for developmental disability or active treatment for mental illness in the facility or institution for mental diseases or in an alternative setting. A facility resident who has developmental disability or mental illness, for whom under par. (c) it is determined that he or she does not need facility care and who has not continuously resided in a facility for at least 30 months prior to the date of the determination, may not continue to reside in the facility after December 31, 1993, and shall, if the department so determines, be relocated from the facility after March 31, 1990, and before December 31, 1993. The county department shall be responsible for securing alternative residence on behalf of an individual who is required to be relocated from a facility under this subdivision, and the facility shall cooperate with the county department in the relocation.

2. Payment may be made under sub. (6m) to a facility or institution for mental diseases for the care of an individual who is otherwise eligible for medical assistance under s. 49.46 or 49.47 and who has developmental disability or mental illness and is determined under par. (b) or (c) to need facility care, regardless of whether it is determined under par. (b) or (c) that the individual

does or does not require active treatment for developmental disability or active treatment for mental illness.

(e) 1. Payment under sub. (6m) may be made to a facility and no screening under par. (b) or review under par. (c) is required for an individual who is medically diagnosed as having developmental disability or mental illness, and who is not a danger to himself or herself or to others, if, immediately after release from a hospital, the individual enters the facility, as part of a medically prescribed period of recovery, for a period not to exceed 30 days and the admission is approved by the department or an entity to which the department has delegated authority.

2. Payment under sub. (6m) may be made to a facility or institution for mental diseases for an individual who is 65 years of age or older, is medically diagnosed as having developmental disability or mental illness, is not a danger to himself or herself or to others and is competent to make an independent decision, if, following screening under par. (b) or review under par. (c), all of the following apply:

a. It is determined that the individual needs facility care and requires active treatment for developmental disability or active treatment for mental illness.

b. The individual chooses not to participate in active treatment.

(f) *Hearing.* An individual for whom admission to a facility or institution for mental diseases is denied under par. (b) or for whom a determination under par. (c) results in prohibition of payment to a facility or institution for mental diseases under par. (d) and relocation from the facility to a facility or institution for mental diseases may request a hearing from the department.

(g) *Rule making.* The department shall promulgate all of the following rules:

1. Establishing criteria and procedures for a determination by the department under par. (d) that a resident be relocated from a facility after March 31, 1990, and before December 31, 1993.

2. Establishing standards for the conduct of hearings under par. (f).

**(6h) LIABILITY FOR DISALLOWANCES.** If the department or the federal health care financing administration finds a skilled nursing facility or intermediate care facility in this state that provides care to medical assistance recipients for which the facility receives reimbursement under sub. (6m) to be an institution for mental diseases, the facility shall be liable for any retroactive federal medical assistance disallowances for services provided after the date of the finding.

**(6j) LIMITATION ON CERTAIN FACILITY COVERAGE.** The department shall determine, under a method devised by the department, the average population during the period from January 1, 1987, to June 30, 1988, of persons in each skilled nursing facility or an intermediate care facility who are mentally ill and are aged 21 to 64, except persons under 22 years of age who were receiving medical assistance services in the facility prior to reaching age 21 and continuously thereafter. Beginning July 1, 1988, the payment under sub. (6m) for services provided by a facility to persons who are mentally ill and are within the age limitations specified in this subsection may not exceed the payment for the average population of these persons in that facility, as determined by the department.

**(6m) PAYMENT TO FACILITIES.** (a) In this subsection:

1. “Active treatment” has the meaning specified in 42 USC 1396r (e) (7) (G) (iii).

2. “Cost center” means a group of similar facility expenses.

3. “Facility” means a nursing home or a community-based residential facility that is licensed under s. 50.03 and that is certified by the department as a provider of medical assistance.

5. “Nursing home” has the meaning given under s. 50.01 (3).

6. “Resource Utilization Groupings III” means a comparative resource utilization grouping that classifies each facility resident

based on information obtained from performing, for the resident, a minimum data set assessment developed by the federal Centers for Medicare and Medicaid Services.

(ag) Payment for care provided in a facility under this subsection made under s. 20.435 (4) (b), (gp), (o), (pa), or (w) shall, except as provided in pars. (bg), (bm), and (br), be determined according to a prospective payment system updated annually by the department. The payment system shall implement standards that are necessary and proper for providing patient care and that meet quality and safety standards established under subch. II of ch. 50 and ch. 150. The payment system shall reflect all of the following:

**NOTE:** Par. (ag) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

1. A prudent buyer approach to payment for services, under which a reasonable price recognizing selected factors that influence costs is paid for service that is of acceptable quality.

2. Except as provided in subd. 3r., standards established by the department that shall be based upon allowable costs incurred by facilities in the state as available from information submitted under par. (c) 3. and compiled by the department.

3m. For each state fiscal year, rates that shall be set by the department based on information from cost reports for costs specified under par. (am) 1. bm., 4., 5m., and 6. for the most recently completed fiscal year of the facility.

3p. For all costs specified under par. (am) 1. bm., an acuity-based payment rate system to which all of the following applies:

a. The system shall incorporate acuity measurements under the most recent Resource Utilization Groupings III methodology to determine factors for case-mix adjustment.

b. Four times annually, for each facility resident who is a Medical Assistance recipient on March 31, June 30, September 30, or December 31, as applicable, the system shall determine the average case-mix index by use of the factors specified under subd. 3p. a.

c. The system shall incorporate payment adjustments for dementia, behavioral needs, or other complex medical conditions.

d. The system may include incentives for providing high quality of care.

3r. Flat-rate payment for all costs specified under par. (am) 1. a. and 2.

5. Consideration for special needs of facility residents.

6. Standards for capital payment that will be based upon replacement value of a facility as determined by a commercial estimator with which the department contracts and criteria and limitations as determined by the department.

7. Assurance of an acceptable quality of care for all medical assistance recipients provided nursing home care.

(am) In determining payments for a facility under the payment system in par. (ag), the department shall consider all of the following cost centers:

1. Allowable direct care costs, including, if provided, any of the following:

a. Personal comfort supplies; medical supplies; over-the-counter drugs; and nonbillable services of a ward clerk, activity person, recreation person, social worker, volunteer coordinator, teacher for residents aged 22 and older, vocational counselor for residents aged 22 and older, religious person, therapy aide, therapy assistant, and counselor on resident living.

bm. Nonbillable services of a registered nurse, licensed practical nurse and nurse’s assistant.

2. Allowable support service costs, including the following allowable facility expenses:

a. Dietary service for the provision of meals to facility residents.

b. Environmental service for the provision of maintenance, housekeeping, laundry and security service.

c. Allowable fuel and utility costs, including the facility expenses that the department determines are allowable for the provision of electrical service, water and sewer services, and heat.

d. Allowable administrative and general costs, including costs related to the facility's overall management and administration and allowable expenses that are not recognized or reimbursed in other cost centers and including the costs of commercial estimators approved by the department under par. (ar) 6.

4. Property tax or municipal service costs paid by the owner of the facility for the facility.

5m. Allowable interest expense of the facility, less interest income of the facility and less interest income of affiliated entities, to the extent required under the approved state plan for services under 42 USC 1396.

6. Capital payment necessary for the provision of service over time, including allowable facility expenses for suitable space, furnishings, property insurance and movable equipment for patient care.

(ap) If the bed occupancy of a nursing home is below the minimum patient day occupancy standards that are established by the department under par. (ar) (intro.), the department may approve a request by the nursing home to delicense any of the nursing home's licensed beds. If the department approves the nursing home's request, all of the following apply:

1. The department shall delicense the number of beds in accordance with the nursing home's request.

2. The department may not include the number of beds of the nursing home that the department delicensures under this paragraph in determining the costs per patient day under the minimum patient day occupancy standards under par. (ar).

3. The nursing home may not use or sell a bed that is delicensed under this paragraph.

4. a. Every 12 months following the delicensure of a bed under this paragraph, for which a nursing home has not resumed licensure under subd. 5., the department shall reduce the licensed bed capacity of the nursing home by 10% of all of the nursing home's beds that remain delicensed under this paragraph or by 25% of one bed, whichever is greater. The department shall reduce the statewide maximum number of licensed nursing home beds under s. 150.31 (1) (intro.) by the number or portion of a number of beds by which the nursing home's licensed bed capacity is reduced under this subdivision.

b. Subdivision 4. a. does not apply with respect to the delicensure of beds between October 14, 1997, and the date that is 60 days after October 14, 1997, during the period of any contract entered into by a nursing home prior to January 1, 1997, if the contract requires the nursing home to maintain its current licensed bed capacity.

5. A nursing home retains the right to resume licensure of a bed of the nursing home that was delicensed under this paragraph unless the licensed bed capacity of the nursing home has been reduced by that bed under subd. 4. The nursing home may not resume licensure of a fraction of a bed. The nursing home may resume licensure 18 months after the nursing home notifies the department in writing that the nursing home intends to resume the licensure. If a nursing home resumes licensure of a bed under this subdivision, subd. 2. does not apply with respect to that bed.

6. If subd. 4. b. applies and the nursing home later resumes licensure of a bed that was delicensed between October 14, 1997, and the date that is 60 days after October 14, 1997, the department shall calculate the costs per patient day using the methodology specified in the state plan that is in place at the time that the delicensed beds are resumed.

(ar) In determining payments for a facility under par. (ag), the department may establish minimum patient day occupancy standards for determining costs per patient day and shall apply the following methods to calculate amounts payable for the rate year for the cost centers described under par. (am):

1. For direct care costs:

a. The department shall establish standards for payment of allowable direct care costs under par. (am) 1. bm., for facilities that do not primarily serve the developmentally disabled, that take into account direct care costs for a sample of all of those facilities in this state and separate standards for payment of allowable direct care costs, for facilities that primarily serve the developmentally disabled, that take into account direct care costs for a sample of all of those facilities in this state. The standards shall be adjusted by the department for regional labor cost variations. The department shall treat as a single labor region the counties of Dane, Iowa, Columbia, and Sauk. For facilities in Douglas, Pierce, and St. Croix counties, the department shall perform the adjustment by use of the wage index that is used by the federal department of health and human services for hospital reimbursement under 42 USC 1395 to 1395ggg.

b. The department shall establish the direct care component of the facility rate for each facility by comparing actual allowable direct care cost information of that facility adjusted for inflation to the standards established under subd. 1. a.

c. If a facility has an approved program for provision of service to mentally retarded residents, residents dependent upon ventilators, or residents requiring supplemental skilled care due to complex medical conditions, a supplement to the direct care component of the facility rate under subd. 1. b. may be made to that facility according to a method developed by the department.

cm. Funding distributed to facilities for the provision of active treatment to residents with a diagnosis of developmental disability shall be distributed in accordance with a method developed by the department which is consistent with a prudent buyer approach to payment for services.

2. For support service costs, the department shall establish one or more standards for the payment of support service costs that take into account support service costs for a sample of all facilities within the state.

4. For net property taxes or municipal services, payment shall be made for the amount of the previous calendar year's tax or the amount of municipal service costs for a period specified by the department, subject to a maximum limit as determined by the department.

6. Capital payment shall be based on a replacement value for a facility. The replacement value shall be determined by a commercial estimator contracted for by the department and paid for by the facility. The replacement value shall be subject to limitations determined by the department.

(av) The department shall calculate a payment rate for a facility by applying the criteria set forth under pars. (ag) 1. to 5. and 7., (am) 1. bm., 4., 5m. and 6., and (ar) 1., 4., and 6. to information from cost reports submitted by the facility, as affected by any adjustment for ancillary services and materials under par. (b).

(b) The charges for ancillary materials and services that would be incurred by a prudent buyer may be included as an adjustment to the rate determined by par. (av) when so determined by the department. The department may not authorize any adjustments to the rate established under par. (av) to pay for a cost overrun that the department fails to approve under s. 150.11 (3). Ancillary materials and services for which payment may be made include, if provided, oxygen, medical transportation and laboratory and X-ray services. Payment for these services and materials shall not exceed medical assistance limitations for reimbursement of the services and materials. For services in a facility for which the department may make payment to a service provider other than a facility, the department may make payment to the facility but not in excess of the estimated amount of payment available if a separate service provider provided the service. The department may promulgate rules setting forth conditions of and limitations to this paragraph.

(bg) The department shall determine payment levels for the provision of skilled, intermediate, limited, personal or residential



care or care for the mentally retarded in the state centers for the developmentally disabled and in a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50 separately from the payment principles, applicable costs and methods established under this subsection.

(bm) Except as provided in par. (bo), the department may establish payment methods for a facility for which any of the following applies:

1. The facility is newly constructed.
2. The total of licensed beds for the facility has significantly increased or decreased prior to calculation of its rate under the payment system.
3. The facility has undergone a change in certification or licensure level.
5. The facility has received approval or disapproval for provision of service to residents requiring supplemental skilled care due to complex medical conditions.
6. The facility has received approval or been disapproved for provision of service to residents who have any of the following:
  - a. Brain injury, as defined in s. 51.01 (2g).
  - b. A diagnosis of acquired immunodeficiency syndrome.
  - c. An HIV infection, as defined in s. 252.01 (2), and illness or injury associated with the development of acquired immunodeficiency syndrome.

(bo) The department may establish payment methods for capital payment for a newly constructed facility that first provided services after June 30, 1984.

(bp) Notwithstanding pars. (am) 6. and (ar) 6., the department may establish payment methods based on actual costs for capital payment for a facility to which, after December 31, 1982, any of the following applies:

1. The facility was constructed.
2. The facility was purchased.
3. The facility incurred annual remodeling costs of more than \$600,000.
4. The facility incurred remodeling costs necessary to meet physical plant requirements under 42 USC 1396a (a) (13) (A).

(br) If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds under applicable federal acts or programs for the reduction of operation deficits under sub. (6u), all of the following apply:

1. Notwithstanding s. 20.410 (3) (cd), 20.435 (4) (bt) or (7) (b) or 20.445 (3) (dz), the department shall reduce allocations of funds to counties in the amount of the disallowance from the appropriation account under s. 20.435 (4) (bt) or (7) (b), or the department shall direct the department of workforce development to reduce allocations of funds to counties or Wisconsin works agencies in the amount of the disallowance from the appropriation account under s. 20.445 (3) (dz) or direct the department of corrections to reduce allocations of funds to counties in the amount of the disallowance from the appropriation account under s. 20.410 (3) (cd), in accordance with s. 16.544 to the extent applicable.
2. If a city, village or town owns and operates a facility that has received funds to reduce an operating deficit, the city, village or town shall reimburse the county in which the city, village or town is located in the amount of funds so received.

(c) As a condition of payment under this section a facility shall:

1. Meet the staffing standard requirements for direct care costs including the supplement, if any, made under par. (ar) 1. c. and maintain such records as prescribed by the department to document that such level of care was actually provided.
2. Provide at the time of a patient's admission to a home, for the development and implementation of a rehabilitation plan including the development of an alternate care plan for the patient.
3. Provide, upon request, cost information relating to the overall financial operation of the facility, including, but not lim-

ited to wages and hours worked, costs of food, housekeeping, maintenance and administration.

4. Agree to admit patients 7 days of the week.

5. Admit only patients assessed or who waive or are exempt from the requirement of assessment under s. 46.27 (6) (a) or, if required under s. 50.035 (4n) or 50.04 (2h), who have been referred to a resource center.

6. Provide, upon request, such information as the department considers necessary to determine allowable interest expenses under par. (am) 5m.

(d) The department shall:

2. Terminate payment to a facility for a patient, unless a utilization review team established pursuant to federal regulations upon review of the patient's needs and the implementation of a rehabilitation plan for that patient determines that the patient's need for care and services can only be provided in a facility and determines the appropriate level of care.

3. Establish, maintain, and periodically update a patient needs evaluation system to be used in determining the need and level of care at a facility, which shall include the social and rehabilitative needs of the patient, provide levels of care to correspond to the actual staff time required to provide such care, and define the contents of the services to be provided.

4. Periodically audit all nursing homes and intermediate care facilities receiving funds under this paragraph, and recover payments made where the home is not meeting the conditions under which the payment was made as specified in par. (c) 1. and 2. Erroneous information provided under par. (c) 3. shall constitute grounds for recovery.

5. Beginning October 1, 1989, deny payment to a facility for a patient who is admitted to the facility after the department has provided newspaper notice and notice under s. 50.03 (2m) (b) that the facility violates 42 USC 1396 to 1396s and before the date, if any, that the department determines that the facility is in substantial compliance with 42 USC 1396 to 1396s.

(e) The department shall establish an appeals mechanism within the department to review petitions from facilities providing skilled, intermediate, limited, personal or residential care or providing care for the mentally retarded for modifications to any payment under this subsection. The department may, upon the presentation of facts, modify a payment if demonstrated substantial inequities exist for the period appealed. Upon review of the department's decision the secretary may grant the modifications, which may exceed maximum payment levels allowed under this subsection but may not exceed federal maximum reimbursement levels. The department shall develop specific criteria and standards for granting payment modifications, and shall take into account the following, without limitation because of enumeration, in reviewing petitions for modification:

1. The efficiency and effectiveness of the facility if compared with facilities providing similar services and if valid cost variations are considered.
2. The effect of rate modifications upon compliance with federal regulations authorized under 42 USC 1396 to 1396p.
3. The need for additional revenue to correct licensure and certification deficiencies.
4. The relationship between total revenue and total costs for all patients.
5. The existence and effectiveness of specialized programs for the chronically mentally ill or developmentally disabled.
6. Exceptional patient needs.
7. Demonstrated experience in providing high quality patient care.

(g) Payment under this section to a facility may not include the cost of care reimbursable for persons eligible for medicare benefits under 42 USC 1395 to 1395zz. Medical assistance recipients are not liable for these costs. The department may require that a facility recover these costs from the appropriate agencies. The

department may, by rule, require medicare certification under [42 USC 1395](#) to [1395zz](#), in whole or in part, of skilled nursing facilities. Any intermediate care facility or skilled nursing facility is subject to a fine of not less than \$10 nor more than \$100 for each day it refuses to recover costs or refuses to obtain the required certification.

(h) The department may require by rule that all claims for payment of services provided facility residents under this subchapter be submitted or countersigned by the respective facility administrator. The department may specify those categories of services for which payment will be made only if the services are rendered or authorized in writing by a primary health care provider designated by the recipient for the particular category of services.

(i) 1. On or after October 1, 1981, medical assistance payment for inpatient nursing care may only be provided for persons receiving skilled, intermediate, or limited levels of nursing care as these levels are defined under s. [HFS 132.13](#), Wis. Adm. Code.

2. Payment for personal or residential care is available for a person in a facility certified under [42 USC 1396](#) to [1396p](#) only if the person entered a facility before the date specified in subd. 1. and has continuously resided in a facility since the date specified in subd. 1. If the person has a primary diagnosis of developmental disabilities or serious and persistent mental illness, payment for personal or residential care is available only if the person entered a facility on or before November 1, 1983.

(j) The department may develop a separate rate of payment, under this subsection, for persons requiring intense skilled nursing care, as defined by the department.

(k) Notwithstanding pars. (ag) to (b), (bp) and (br), the department may participate in a demonstration project on case mix nursing home reimbursement authorized under [42 USC 1315](#) (a) and may modify the payment system under this section, on an experimental basis, as necessary for participation in the demonstration project.

(L) For purposes of ss. [46.27 \(11\) \(c\) 7.](#) and [46.277 \(5\) \(e\)](#), the department shall, by July 1 annually, determine the statewide medical assistance daily cost of nursing home care and submit the determination to the department of administration for review. The department of administration shall approve the determination before payment may be made under s. [46.27 \(11\) \(c\) 7.](#) or [46.277 \(5\) \(e\)](#).

**(6tw)** PAYMENTS TO CITY HEALTH DEPARTMENTS. From the appropriation account under s. [20.435 \(7\) \(b\)](#), the department may make payments to local health departments, as defined under s. [250.01 \(4\) \(a\) 3.](#) Payment under this subsection to such a local health department may not exceed on an annualized basis payment made by the department to the local health department under s. [49.45 \(6t\)](#), 2003 stats., for services provided by the local health department in 2002.

**(6u)** SUPPLEMENTAL PAYMENTS TO CERTAIN FACILITIES AND CARE MANAGEMENT ORGANIZATIONS. (ag) In this subsection:

1. “Care management organization” means a care management organization, as defined in s. [46.2805 \(1\)](#), that contracts under s. [46.284 \(4\) \(d\)](#) for provision of services with a facility that is established under s. [49.70 \(2\)](#) or that is owned and operated by a city, village, or town.

2. “Facility” has the meaning given in sub. (6m) (a) 3.

(am) Notwithstanding sub. (6m), from the appropriations under s. [20.435 \(4\) \(o\)](#), and (w), for reduction of operating deficits, as defined under the methodology used by the department in December 2000, incurred by a facility that is established under s. [49.70 \(1\)](#) or that is owned and operated by a city, village, or town, and as payment to care management organizations, the department may not distribute to these facilities and to care management organizations more than \$37,100,000 in each fiscal year, as determined by the department. The total amount that a county certifies under this subsection may not exceed 100% of other-wise-unreimbursed care. In distributing funds under this subsection, the department shall perform all of the following:

1. Estimate the availability of federal medical assistance funds that may be matched to county funds or funds of a city, village or town for the reduction of operating deficits incurred by the facility.

2. Based on the amount estimated available under subd. 1., develop a method to distribute this allocation to the individual facilities that have incurred operating deficits that shall include:

a. Development of criteria for determining operating deficits.

b. Agreement by the county in which is located the facility established under s. [49.70 \(1\)](#) and agreement by the city, village, or town that owns and operates the facility that the applicable county, city, village, or town shall provide funds to match federal medical assistance matching funds under this paragraph.

bm. Identification by the county in which is located the facility established under s. [49.70 \(1\)](#) of all county funds expended in each calendar year to operate the facility, and certification by the county to the department of this amount.

c. Consideration of the size of a facility’s operating deficit.

3. Distribute the allocation under the distribution method that is developed, unless a county has failed to comply with subd. 2. bm.

4. If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. [20.435 \(4\) \(o\)](#) and (w) that result in a lesser allocation amount than that allocated under this paragraph, allocate not more than the lesser amount so approved by the federal department of health and human services.

5. If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. [20.435 \(4\) \(o\)](#) and (w) that result in a lesser allocation amount than that allocated under this paragraph, submit a revision of the method developed under subd. 2. for approval by the joint committee on finance in that state fiscal year.

6. If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds distributed under subd. 3., apply the requirements under sub. (6m) (br).

7. If a facility that is otherwise eligible for an allocation of funds under this section is found by the federal health care financing administration or the department to be an institution for mental diseases, as defined under [42 CFR 435.1009](#), cease distributing to that facility funds under this section after the date on which the finding is made.

(b) Notwithstanding the limitation on the amount of disbursements under par. (am) (intro.), from the appropriation under s. [20.435 \(4\) \(wm\)](#), the department shall, using the criteria specified in par. (am) 1. to 7., disburse any federal medical assistance funds that are received by the state as matching funds to operating deficits incurred by a facility that is operated by a county, city, village, or town and that are in excess of the amount of match anticipated and budgeted as revenue in the biennial budget act for the fiscal year in which the funds are received.

**(6v)** REPORT. (a) In this subsection, “facility” has the meaning given in sub. (6m) (a) 3.

(b) The department shall, each year, submit to the joint committee on finance a report for the previous fiscal year, except for the 1997–98 fiscal year, that provides information on the utilization of beds by recipients of medical assistance in facilities and a discussion and detailed projection of the likely balances, expenditures, encumbrances and carry over of currently appropriated amounts in the appropriation accounts under s. [20.435 \(4\) \(b\)](#), (gp), and (o).

(c) If the report specified in par. (b) indicates that utilization of beds by recipients of medical assistance in facilities is less than estimates for that utilization reflected in the intentions of the joint committee on finance, legislature and governor, as expressed by them in the budget determinations, the department shall include a proposal to transfer moneys from the appropriation under s. [20.435 \(4\) \(b\)](#) to the appropriation under s. [20.435 \(7\) \(bd\)](#) for the

purpose of increasing funding for the community options program under s. 46.27. The amount proposed for transfer may not reduce the balance in the appropriation account under s. 20.435 (4) (b) below an amount necessary to ensure that that appropriation account will end the current fiscal year or the current fiscal biennium with a positive balance. The secretary shall transfer the amount identified under the proposal.

**(6w) HOSPITAL OPERATING DEFICIT REDUCTION.** From the appropriation under s. 20.435 (4) (o), for reduction of operating deficits, as defined under criteria developed by the department, incurred by a hospital, as defined under s. 50.33 (2) (a) and (b), that is operated by the state, established under s. 49.71 or owned and operated by a city or village, the department shall allocate up to \$3,300,000 in each fiscal year to these hospitals, as determined by the department, and shall perform all of the following:

(a) For the reduction of operating deficits incurred by the hospital, estimate the availability of federal medicaid funds that may be matched to any of the following:

1. State general purpose revenues, for a hospital operated by the state.
2. County funds, for a hospital established under s. 49.71.
3. Funds of a city or village, for a hospital owned and operated by a city or village.

(b) Based on the amount estimated available under par. (a), develop a method to distribute this allocation to the individual hospitals that have incurred operating deficits that shall include:

1. Development of criteria for determining operating deficits.
2. With respect to funds to match federal medicaid matching funds under this section, any of the following, as applicable:
  - a. Provision by the state of matching funds from general purpose revenues for a hospital operated by the state.
  - b. Agreement to provide matching funds by the county in which is located a hospital established under s. 49.71.
  - c. Agreement to provide matching funds by the city or village that owns and operates a hospital.
3. Consideration of the size of a hospital's operating deficit.

(c) Except as provided in par. (d), distribute the allocation under the distribution method that is developed.

(d) If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (4) (o) that result in a lesser allocation amount than that allocated under this subsection or disallows use of the allocation of federal medicaid funds under par. (c), reduce allocations under this subsection and distribute on a prorated basis, as determined by the department.

**(6x) FUNDING FOR ESSENTIAL ACCESS CITY HOSPITAL.** (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w), the department shall distribute not more than \$4,748,000 in each fiscal year, to provide funds to an essential access city hospital, except that the department may not allocate funds to an essential access city hospital to the extent that the allocation would exceed any limitation under 42 USC 1396b (i) (3).

(b) The department shall develop procedures for solicitation and review of requests for funds and a method to distribute the funds under par. (a) to an individual hospital that shall include establishment of criteria for the designation as an essential access city hospital.

(c) Except as provided in par. (d), the department shall distribute the funds under par. (a) under the distribution method that is developed under par. (b).

(d) If the federal department of health and human services approves for state expenditure in any state fiscal year amounts under s. 20.435 (4) (o) that result in a lesser distribution amount than that distributed under this subsection or disallows use of federal medicaid funds under par. (a), the department of health and

family services shall reduce the distributions under this subsection.

(e) The department need not promulgate as rules under ch. 227 the procedures, method of distribution and criteria required for distribution under this subsection.

**(6y) SUPPLEMENTAL FUNDING FOR CERTAIN HOSPITALS.** (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w), the department shall distribute supplemental funding in each fiscal year to provide supplemental payment to hospitals that enter into a contract under s. 49.02 (2) to provide health care services funded by a relief block grant, as determined by the department, for hospital services that are not in excess of the hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3). If no relief block grant is awarded under this chapter or if the allocation of funds to such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department may distribute funds to hospitals that have not entered into a contract under s. 49.02 (2).

(am) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (h), (gp), (o), and (w), the department shall distribute funding in each fiscal year to provide supplemental payments to hospitals that enter into contracts under s. 49.02 (2) with a county having a population of 500,000 or more to provide health care services funded by a relief block grant, as determined by the department, for hospital services that are not in excess of the hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3).

(b) The department need not promulgate as rules under ch. 227 the procedures, methods of distribution and criteria required for distribution under pars. (a) and (am).

**(6z) SUPPLEMENTAL FUNDING FOR CERTAIN HOSPITALS SERVING LOW-INCOME PATIENTS.** (a) Notwithstanding sub. (3) (e), from the appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w), the department shall distribute funding in each fiscal year to supplement payment for services to hospitals that enter into a contract under s. 49.02 (2) to provide health care services funded by a relief block grant under this chapter, if the department determines that the hospitals serve a disproportionate number of low-income patients with special needs. If no medical relief block grant under this chapter is awarded or if the allocation of funds to such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department may distribute funds to hospitals that have not entered into a contract under s. 49.02 (2). The department may not distribute funds under this subsection to the extent that the distribution would do any of the following:

1. Be inconsistent with 42 USC 1396r-4 (c) (3).
2. Exceed the limitation on payment under 42 USC 1396r-4 (f) (B) in any fiscal year.

(b) The department need not promulgate as rules under ch. 227 the procedures, methods of distribution and criteria required for distribution under par. (a).

**(7) PERSONAL FUNDS.** (a) A recipient who is a patient in a public medical institution or an accommodated person and has a monthly income exceeding the payment rates established under 42 USC 1382 (e) may retain \$45 unearned income or the amount of any pension paid under 38 USC 5503 (d), whichever is greater, per month for personal needs. Except as provided in s. 49.455 (4) (a), the recipient shall apply income in excess of \$45 or the amount of any pension paid under 38 USC 5503 (d), whichever is greater, less any amount deducted under rules promulgated by the department, toward the cost of care in the facility.

(b) Where a facility participating in the medical assistance program has been delegated in writing by a resident within that facility to manage and control the personal funds of the resident including but not limited to those funds identified in par. (a) the facility shall establish for the resident a personal fund account. All deposits and withdrawals of funds shall be documented by the facility to indicate the amount and date of deposit and amount, date and

purpose of withdrawal. Such documentation shall be maintained in the resident's records.

(c) Upon the removal of a resident from the facility as a result of death or permanent transfer, the facility shall transfer the balance of the resident's trust account to the personal representative of the resident's estate, the legal guardian of the resident or if appropriate to the resident personally. A copy of the trust account records shall be transferred with the funds. No facility or any of its employees or representatives may benefit from the distribution of a deceased resident's personal funds unless they are specifically named in the resident's will or constitute an heir at law.

(d) 1. The department shall accept from any person a verified complaint concerning any violation of this subsection. The department shall forward to the accused within 10 days a copy of such complaint. The department, upon such investigation as it deems necessary, may dismiss the complaint or may find probable cause to believe that a violation of this subsection has occurred.

2. If the department finds probable cause to believe that a violation of this subsection has occurred, it may assess a forfeiture of not less than \$25 nor more than \$500 for each occurrence, and in addition may order that any amount illegally charged against a resident's account be restored. The department shall immediately inform the complainant and respondent of any such decision and the amount of forfeiture or repayment, if any. If the department is not notified in writing that a party wishes to contest a decision within 15 working days after the parties are informed of such decision, the department's determination shall be deemed final and may not be appealed to a court.

3. The department shall inform the nursing home administrators examining board of all decisions made under this paragraph.

4. The department's determination of serious misconduct under this subsection shall be cause for terminating the facility's participation in the state-funded portion of the medical assistance program under this subchapter.

(e) Nursing homes shall adopt a uniform accounting system prescribed by the department for purposes of managing residents personal fund accounts.

**(8) PER-VISIT LIMITS ON HOME HEALTH SERVICES REIMBURSEMENT.** (a) In this subsection:

1. "Home health aide" has the meaning given in s. 146.40 (1) (bm).

2. "Licensed practical nurse" has the meaning given in s. 146.40 (1) (c).

3. "Occupational therapist" has the meaning given in s. 448.96 (4).

4. "Patient care visit" means a personal contact with a patient in a patient's home that is made by a registered nurse, licensed practical nurse, home health aide, physical therapist, occupational therapist or speech-language pathologist who is on the staff of or under contract or arrangement with a home health agency, or by a registered nurse or licensed practical nurse practicing independently, to provide a service that is covered under s. 49.46 or 49.47. "Patient care visit" does not include time spent by a nurse, therapist or home health aide on case management, care coordination, travel, record keeping or supervision that is related to the patient care visit.

5. "Physical therapist" has the meaning given in s. 448.50 (3).

6. "Registered nurse" has the meaning given in s. 146.40 (1) (f).

7. "Speech-language pathologist" means an individual engaged in the practice of speech-language pathology, as regulated under ch. 459.

(b) Reimbursement under s. 20.435 (4) (b), (gp), (o), and (w) for home health services provided by a certified home health agency or independent nurse shall be made at the home health agency's or nurse's usual and customary fee per patient care visit, subject to a maximum allowable fee per patient care visit that is established under par. (c).

(c) The department shall establish a maximum statewide allowable fee per patient care visit, for each type of visit with respect to provider, that may be no greater than the cost per patient care visit, as determined by the department from cost reports of home health agencies, adjusted for costs related to case management, care coordination, travel, record keeping and supervision.

**(8m) RATES FOR RESPIRATORY CARE SERVICES.** Notwithstanding the limit under sub. (8), the rates under sub. (8) and rates charged by providers under s. 49.46 (2) (a) 4. d. that are not home health agencies, for reimbursement for respiratory care services for ventilator-dependent individuals under ss. 49.46 (2) (b) 6. m. and 49.47 (6) (a) 1., shall be as follows:

(a) For visits subsequent to an initial visit and for extended visits by a licensed registered nurse, \$31.21 per hour.

(b) For visits subsequent to an initial visit and for extended visits by a licensed practical nurse, \$20.81 per hour.

**(8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE.** The rate of payment for obstetric and gynecological care provided in primary care shortage areas, as defined in s. 560.183 (1) (cm), or provided to recipients of medical assistance who reside in primary care shortage areas, that is equal to 125% of the rates paid under this section to primary care physicians in primary care shortage areas, shall be paid to all certified primary care providers who provide obstetric or gynecological care to those recipients.

**(8v) INCENTIVE-BASED PHARMACY PAYMENT SYSTEM.** The department shall establish a system of payment to pharmacies for legend and over-the-counter drugs provided to recipients of medical assistance that has financial incentives for pharmacists who perform services that result in savings to the medical assistance program. Under this system, the department shall establish a schedule of fees that is designed to ensure that any incentive payments made are equal to or less than the documented savings. The department may discontinue the system established under this subsection if the department determines, after performance of a study, that payments to pharmacists under the system exceed the documented savings under the system.

**(9) FREE CHOICE.** Any person eligible for medical assistance under ss. 49.46, 49.468 and 49.47 may use the physician, chiropractor, dentist, pharmacist, hospital, skilled nursing home, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care of his or her choice, except that free choice of a provider may be limited by the department if the department's alternate arrangements are economical and the recipient has reasonable access to health care of adequate quality. The department may also require a recipient to designate, in any or all categories of health care providers, a primary health care provider of his or her choice. After such a designation is made, the recipient may not receive services from other health care providers in the same category as the primary health care provider unless such service is rendered in an emergency or through written referral by the primary health care provider. Alternate designations by the recipient may be made in accordance with guidelines established by the department. Nothing in this subsection shall vitiate the legal responsibility of the physician, chiropractor, dentist, pharmacist, skilled nursing home, hospital, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care to patients. All contract and tort relationships with patients shall remain, notwithstanding a written referral under this section, as though dealings are direct between the physician, chiropractor, dentist, pharmacist, skilled nursing home, hospital, health maintenance organization, limited service health organization, preferred provider plan or other licensed, registered or certified provider of health care and the patient. No physician, chiropractor, pharmacist or dentist may be required to practice exclusively in the medical assistance program.

**(9m) REFERRALS.** The department may, consistent with sub. (9), specify services for which reimbursement will be made only if the services are provided in accordance with a referral, in writing, which specifies the services to be rendered and the duration of such services. The referral form shall describe the referred services as required by the department.

**(9s) DISCLOSURE.** Any person who is an employee of, or an owner, partner, member, stockholder or investor in, any legal entity providing services which are reimbursed under this section, shall notify the department, on forms provided by the department for that purpose, if such person is an employee of, or an owner, partner, member, stockholder or investor in, any other legal entity providing services which are reimbursed under this section.

**(10) RULE-MAKING POWERS AND DUTIES.** The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance. The department shall promulgate a rule defining the term “part-time intermittent care” for the purpose of s. 49.46.

**(11) PENALTY.** Any person who receives or assists another in receiving assistance under this section, to which the recipient is not entitled, shall be subject to the penalties under s. 49.95.

**(12) MACHINE-READABLE MEDICAL ASSISTANCE CARDS.** (a) The department shall assist the commissioner of insurance to conduct the study of health insurance identification cards under s. 601.57 (1).

(b) If the commissioner of insurance promulgates rules under s. 601.57 (2) establishing a health insurance identification card system and its computerized support system, the department shall develop a plan to coordinate a system of machine-readable identification cards for medical assistance recipients with the systems established by the commissioner and shall submit the plan to the governor, and to the legislature under s. 13.172 (2), before issuing a request for proposals under par. (c).

(c) The department shall request proposals for a system of machine-readable identification cards for medical assistance recipients and a computerized support system for the cards that will accept and respond to electronically conveyed requests from health care providers for information related to medical assistance recipients, such as eligibility, coverages and authorizations. The request for proposals shall specify that the systems are to be operating by January 1, 1997.

**(13) FINANCIAL REPORTS.** (a) The department may require service providers to prepare and submit cost reports or financial reports for purposes of rate certification under Title XIX, cost verification, fee schedule determination or research and study purposes. These financial reports may include independently audited financial statements which shall include balance sheets and statements of revenues and expenses. The department may withhold reimbursement or may decrease or not increase reimbursement rates if a provider does not submit the reports required under this paragraph or if the costs on which the reimbursement rates are based cannot be verified from the provider’s cost or financial reports or records from which the reports are derived.

(b) The department may require any provider who fails to submit a cost report or financial report under par. (a) within the period specified by the department to forfeit not less than \$10 nor more than \$100 for each day the provider fails to submit the report.

**(15) COMMUNITY CARE ORGANIZATION PROJECT GUARANTEE.** Upon termination of the community care organization demonstration projects in Barron, La Crosse and Milwaukee counties, any client who was receiving services through any of those projects may continue to receive the full range of community care organization services. The cost of the services shall continue to be paid by medical assistance.

**(16) CERTIFICATION.** On or after January 1, 1984, the department may only continue to certify as a medical assistance provider a community-based residential facility that is so certified on December 31, 1983. On or after January 1, 1984, no community-

based residential facility may be certified for more beds than the number for which it was certified on December 31, 1983.

**(18) RECIPIENT COST SHARING.** (ac) Except as provided in pars. (am) to (d), and subject to par. (ag), any person eligible for medical assistance under s. 49.46, 49.468, or 49.47 shall pay up to the maximum amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided under s. 49.46 (2). The service provider shall collect the specified or allowable copayment, coinsurance, or deductible, unless the service provider determines that the cost of collecting the copayment, coinsurance, or deductible exceeds the amount to be collected. The department shall reduce payments to each provider by the amount of the specified or allowable copayment, coinsurance, or deductible. No provider may deny care or services because the recipient is unable to share costs, but an inability to share costs specified in this subsection does not relieve the recipient of liability for these costs.

(ag) Except as provided in pars. (am), (b), and (c), and subject to par. (d), a recipient specified in par. (ac) shall pay all of the following:

1. A copayment of \$1 for each prescription of a drug that bears only a generic name, as defined in s. 450.12 (1) (b).

2. A copayment of \$3 for each prescription of a drug that bears a brand name, as defined in s. 450.12 (1) (a).

(am) No person is liable under this subsection for services provided through prepayment contracts.

(b) The following services are not subject to recipient cost sharing under this subsection:

1. Any service provided to a person receiving care as an inpatient in a skilled nursing home or intermediate care facility certified under 42 USC 1396 to 1396k.

2. Any service provided to a person who is less than 18 years old.

3. Any service provided under s. 49.46 (2) to a pregnant woman, if the service relates to the pregnancy or to other conditions that may complicate the pregnancy.

4. Emergency services.

5. Family planning services, as defined in s. 253.07 (1) (b).

6. Transportation by common carrier or private motor vehicle, if authorized in advance by a county department under s. 46.215 or 46.22.

7. Home health services or, if a home health agency is unavailable, nursing services.

11. Personal care services.

12. Case management services.

(c) The department may limit any medical assistance recipient’s liability under this subsection for services it designates.

(d) No person who designates a pharmacy or pharmacist as his or her sole provider of prescription drugs and who so uses that pharmacy or pharmacist is liable under this subsection for more than \$12 per month for prescription drugs received.

**(19) ESTABLISHING PATERNITY AND ASSIGNING SUPPORT RIGHTS.** (a) As a condition of eligibility for medical assistance, a person shall:

1. Fully cooperate in good faith with efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which the person and the dependent child or children may have rights. This cooperation shall be in accordance with federal law and regulations applying to paternity establishment and collection of support payments and may not be required if the person has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

2. Notwithstanding other provisions of the statutes, be deemed to have assigned to the state, by applying for or receiving medical assistance, any rights to medical support or other payment of medical expenses from any other person, including rights to unpaid amounts accrued at the time of application for medical

assistance as well as any rights to support accruing during the time for which medical assistance is paid.

(b) If a person charged with the care and custody of a dependent child or children does not comply with the requirements of this subsection, the person is ineligible for medical assistance. In this case, medical assistance payments shall continue to be made on behalf of the eligible child or children.

(bm) The department or the county department under s. 46.215 or 46.22 shall notify applicants of the requirements of this subsection at the time of application.

(c) If the mother of a child was enrolled in a health maintenance organization or other prepaid health care plan under medical assistance at the time of the child's birth, birth expenses that may be recovered by the state under this subsection are the birth expenses incurred by the health maintenance organization or other prepaid health care plan.

**(20) EXEMPTION FROM CONTINUATION REQUIREMENTS.** An insurer, as defined in s. 632.897 (1) (d), with which the department contracts under sub. (2) (b) 2. for the provision of health care to medical assistance recipients is exempt from the continuation of group coverage requirements of s. 632.897 with regard to those recipients, their spouses and dependents.

**(21) TAKING OVER PROVIDER'S OPERATION; REPAYMENTS REQUIRED.** (ag) In this subsection, "take over the operation" means obtain, with respect to an aspect of a provider's business for which the provider has filed claims for medical assistance reimbursement, any of the following:

1. Ownership of the provider's business or all or substantially all of the assets of the business.
2. Majority control over decisions.
3. The right to any profits or income.
4. The right to contact and offer services to patients, clients, or residents served by the provider.
5. An agreement that the provider will not compete with the person at all or with respect to a patient, client, resident, service, geographical area, or other part of the provider's business.
6. The right to perform services that are substantially similar to services performed by the provider at the same location as those performed by the provider.
7. The right to use any distinctive name or symbol by which the provider is known in connection with services to be provided by the person.

(ar) Before a person may take over the operation of a provider that is liable for repayment of improper or erroneous payments or overpayments under ss. 49.43 to 49.497, full repayment shall be made. Upon request, the department shall notify the provider or the person that intends to take over the operation of the provider as to whether the provider is liable.

(b) If, notwithstanding the prohibition under par. (ar), a person takes over the operation of a provider and the applicable amount under par. (ar) has not been repaid, the department may, in addition to withholding certification as authorized under sub. (2) (b) 8., proceed against the provider or the person. Within 30 days after the certified provider receives notice from the department, the amount shall be repaid in full. If the amount is not repaid in full, the department may bring an action to compel payment, may proceed under sub. (2) (a) 12., or may do both.

(c) The department may enforce this subsection within 4 years following a transfer.

(d) This subsection supersedes any provision of chs. 180, 181, 185, and 193.

(e) The department shall promulgate rules to implement this subsection.

**(22) MEDICAL ASSISTANCE SERVICES PROVIDED BY HEALTH MAINTENANCE ORGANIZATIONS.** If the department contracts with health maintenance organizations for the provision of medical assistance it shall give special consideration to health mainte-

nance organizations that provide or that contract to provide comprehensive, specialized health care services to pregnant teenagers. If the department contracts with health maintenance organizations for the provision of medical assistance, the department shall determine which medical assistance recipients who have attained the age of 2 but have not attained the age of 6 and who are at risk for lead poisoning have not received lead screening from those health maintenance organizations. The department shall report annually to the appropriate standing committees of the legislature under s. 13.172 (3) on the percentage of medical assistance recipients under the age of 2 who received a lead screening test in that year provided by a health maintenance organization compared with the percentage that the department set as a goal for that year.

**(24) PRIMARY CARE PROVIDER PILOT.** The department may request a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (b) (1) to permit the establishment of a primary care provider pilot project. If the waiver is granted, the department may establish a primary care provider pilot project under which primary care providers act as case managers for medical assistance beneficiaries. If the department establishes a primary care provider pilot project, it shall reimburse a case manager for the allowable charges for case management services provided to a beneficiary participating in the pilot project.

**(24g) MANAGED CARE FOR DENTAL SERVICES PILOT.** (a) The department shall, in consultation with the Wisconsin Dental Association, develop a pilot project for the provision of dental services under a managed care system. The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to implement the pilot project developed under this subsection. If the waiver is granted and in effect, and if the department of health and family services determines that the costs of providing dental services under s. 49.46 (2) (b) 1. under the pilot project will not exceed the costs of providing those dental services in the absence of the pilot project, the department shall implement the pilot project in Ashland, Douglas, Bayfield and Iron counties. Only those dental services covered under s. 49.46 (2) (b) 1. may be covered under the pilot project.

(b) In developing the pilot project under this subsection, the department shall provide that recipients who are subject to the pilot project are required to select a dental provider from among those dentists participating in the pilot project. The department shall also provide that, if a recipient does not make a selection, a dental provider will be assigned to the recipient.

(c) If the department is able to implement the pilot project under this subsection, the department shall contract with a person to do all of the following:

1. Accept a capitation payment from the department for each recipient who is subject to the pilot project.
2. Enroll dentists to be participating providers under the pilot project.
3. Coordinate with county departments to provide outreach and education to recipients and persons who are eligible to be recipients.
4. Pay all allowable charges on a fee-for-service basis to participating dentists on behalf of recipients in the pilot counties for dental services received by those recipients.

**(24m) HOME HEALTH CARE AND PERSONAL CARE PILOT PROGRAM.** From the appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w), in order to test the feasibility of instituting a system of reimbursement for providers of home health care and personal care services for medical assistance recipients that is based on competitive bidding, the department shall:

(a) By September 1, 1990, select a county in this state and solicit bids from providers of home health care and personal care services in that county for the provision, on a contractual basis, of

home health and personal care services authorized under ss. 49.46 (2) (a) 4. d. and (b) 6. j. and 49.47 (6) (a) 1.

(b) Award contracts for the provision of home health care and personal care services from the bids received under par. (a) only if the department determines that the contracts would result in a lower cost alternative to fee-for-service reimbursement.

**(24r) FAMILY PLANNING DEMONSTRATION PROJECT.** The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to conduct a demonstration project to provide family planning services, as defined in s. 253.07 (1) (b), under medical assistance to any woman between the ages of 15 and 44 whose family income does not exceed 185% of the poverty line for a family the size of the woman's family. If the waiver is granted and in effect, the department shall implement the waiver no later than July 1, 1998, or on the effective date of the waiver, whichever is later.

**(25) CASE MANAGEMENT SERVICES.** (a) In this subsection, "severely emotionally disturbed child" means an individual under 21 years of age who has emotional and behavioral problems that:

1. Are severe in degree;
2. Are expected to persist for at least one year;
3. Substantially interfere with the individual's functioning in his or her family, school or community and with his or her ability to cope with the ordinary demands of life; and
4. Cause the individual to need services from 2 or more agencies or organizations that provide social services or services or treatment for mental health, juvenile justice, child welfare, special education or health.

(am) Except as provided under pars. (be), (bg), and (bj) and sub. (24), case management services under s. 49.46 (2) (b) 9. and (bm) are reimbursable under Medical Assistance only if provided to a Medical Assistance beneficiary who receives case management services from or through a certified case management provider in a county, city, village, or town that elects, under par. (b), to make the services available and who meets at least one of the following conditions:

1. Has a developmental disability, as defined under s. 51.01 (5) (a).
2. Has a serious and persistent mental illness.
3. Has Alzheimer's disease, as defined under s. 46.87 (1) (a).
4. Is an alcoholic, as defined under s. 51.01 (1).
5. Is drug dependent, as defined under s. 51.01 (8).
6. Is physically disabled, as defined by the department.
7. Is a severely emotionally disturbed child.
8. Is age 65 or over.
9. Is a member of a family that has a child who is at risk of serious physical, mental or emotional dysfunction, as defined by the department.
10. Has HIV infection, as defined in s. 252.01 (2).
11. Is a child who is eligible for early intervention services under s. 51.44.
12. Is infected with tuberculosis.
13. Is a child with asthma.
14. Is a woman who is aged 45 to 64 and who is not a resident of a nursing home or otherwise receiving case management services under this paragraph.

(b) A county, city, village, town or, in a county having a population of 500,000 or more, the department may elect to make case management services under this subsection available in the county, city, village or town to one or more of the categories of beneficiaries under par. (am) through the medical assistance program. A county, city, village, town or, in a county having a population of 500,000 or more, the department that elects to make the services available shall reimburse a case management provider for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government.

(be) A private nonprofit agency that is a certified case management provider may elect to provide case management services to medical assistance beneficiaries who have HIV infection, as defined in s. 252.01 (2). The amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government shall be paid from the appropriation under s. 20.435 (5) (am).

(bg) An independent living center, as defined in s. 46.96 (1) (ah), that is a certified case management provider may elect to provide case management services to one or more of the categories of medical assistance beneficiaries specified under par. (am). The amount of allowable charges for the services under the medical assistance program that is not provided by the federal government shall be paid from nonfederal, public funds received by the independent living center from a county, city, village or town or from funds distributed as a grant under s. 46.96.

(bj) The department of corrections may elect to provide case management services under this subsection to persons who are under the supervision of that department under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), who are Medical Assistance beneficiaries, and who meet one or more of the conditions specified in par. (am). The amount of the allowable charges for those services under the Medical Assistance program that is not provided by the federal government shall be paid from the appropriation account under s. 20.410 (3) (hm), (ho), or (hr).

(bm) Case management services under this subsection may not be provided to a person under par. (am) 7. unless any of the following is true:

1. A team of mental health experts appointed by the case management provider determines that the person is a severely emotionally disturbed child. The team shall consist of at least 3 members. The case management provider shall appoint at least one member of the team who is a licensed psychologist or a physician specializing in psychiatry. The case management provider shall appoint at least 2 members of the team who are members of the professions of school psychologist, school social worker, registered nurse, social worker, child care worker, occupational therapist or teacher of emotionally disturbed children. The case management provider shall appoint as a member of the team at least one person who personally participated in a psychological evaluation of the child.

2. A service coordination agency has determined under s. 46.56 (8) (d) that the person is a child with emotional and behavioral disabilities that meet the requirements under s. 46.56 (1) (c) 1. to 4.

(c) Except as provided in pars. (b), (be), (bg), and (bj), the department shall reimburse a provider of case management services under this subsection only for the amount of the allowable charges for those services under the Medical Assistance program that is provided by the federal government.

(d) This subsection does not apply to case management services provided under sub. (15) or s. 49.46 (2) (a) 2. or through a community support program under s. 49.46 (2) (b) 6. L.

**(26) MANAGED CARE SYSTEM.** The department shall study alternatives for a system to manage the usage of alcohol and other drug abuse services, including day treatment services, provided under the medical assistance program. On or before September 1, 1988, the department shall submit a plan for a medical assistance alcohol and other drug abuse managed care system to the joint committee on finance. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan within 14 working days after the date of the department's submittal, the department may implement the plan. If within 14 working days after the date of the department's submittal the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the department may not implement the plan until it is approved by the committee, as submitted or as modified. If a

waiver from the secretary of the federal department of health and human services is necessary to implement the proposed plan, the department of health and family services may request the waiver, but it may not implement the waiver until it is authorized to implement the plan, as provided in this subsection.

**(27) ELIGIBILITY OF ALIENS.** A person who is not a U.S. citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law may not receive medical assistance benefits except as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v).

**(29) HOSPICE REIMBURSEMENT.** The department shall promulgate rules limiting aggregate payments made to a hospice under ss. 49.46 and 49.47.

**(30) SERVICES PROVIDED BY COMMUNITY SUPPORT PROGRAMS.** (a) A county shall provide the portion of the cost of services under s. 49.46 (2) (b) 6. L. that is not provided by the federal government.

(b) The department shall reimburse a provider of services under s. 49.46 (2) (b) 6. L. only for the amount of the allowable charges for those services that is provided by the federal government.

**(30e) COMMUNITY-BASED PSYCHOSOCIAL SERVICE PROGRAMS.** (a) *When services are reimbursable.* Services under s. 49.46 (2) (b) 6. Lm. provided to an individual are reimbursable under the medical assistance program only if all of the following conditions are met:

1. Reimbursement for the services under s. 49.46 (2) (b) 6. Lm. in the manner provided under this subsection is permitted pursuant to federal law or pursuant to a waiver from the secretary of the federal department of health and human services.

2. The county in which the individual resides elects to make the services under s. 49.46 (2) (b) 6. Lm. available in the county through the medical assistance program.

3. The individual's psychosocial health needs require more than outpatient counseling, but less than the services provided by a community support program under s. 51.421.

4. The psychosocial services are provided by a community-based psychosocial service program certified under rules promulgated by the department under par. (b) 3.

5. Any other condition required by rule under par. (b) 4. is satisfied.

(b) *Rules.* The department shall promulgate rules regarding all of the following:

1. Standards for determining whether an individual is eligible under par. (a) 3.

2. The scope of psychosocial services that may be provided under s. 49.46 (2) (b) 6. Lm.

3. Requirements for certification of community-based psychosocial service programs.

4. Any other conditions for coverage of community-based psychosocial services under the Medical Assistance Program.

(c) *Provider reimbursement.* A county that elects to make the services under s. 49.46 (2) (b) 6. Lm. available shall reimburse a provider of the services for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government. The department shall reimburse the provider only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

**Cross Reference:** See also ch. HFS 36, Wis. adm. code.

**(30m) CERTAIN SERVICES FOR DEVELOPMENTALLY DISABLED.** (a) Except as provided in par. (am), a county shall provide the portion of payment that is not provided by the federal government for all of the following services to individuals with developmental disability who are eligible for medical assistance:

1. Services under s. 51.06 (1m) (d).

2. Services in an intermediate care facility for the mentally retarded, as defined in s. 46.278 (1m) (am), other than a state center for the developmentally disabled.

3. Services for which payment is permitted under sub. (6c) (d) 2. that are provided in a nursing facility, as defined in s. 46.279 (1) (c).

(am) The department shall provide the portion of the payment that is not provided by the federal government for any of the services specified in par. (a) 1. to 3. that are provided to an individual with developmental disability who is eligible for medical assistance, as determined under the contract under s. 46.279 (4m).

(b) No payment under this section may be made for services specified under par. (a) or (am) unless the individual who receives the services is provided protective placement under s. 55.06 (9) (a), 2003 stats., or s. 55.12, is provided emergency protective services under s. 55.05 (4), 2003 stats., or s. 55.13, or is provided an emergency protective placement under s. 55.06 (11) (a), 2003 stats., or s. 55.135 or a temporary protective placement under s. 55.06 (11) (c), 2003 stats., or s. 55.135 (5) or 55.055 (5).

(c) No payment under this section may be made for services specified under par. (a) 2. or 3. that are provided to an individual who was placed in or admitted to an intermediate facility, as defined in s. 46.279 (1) (b), or nursing facility, as defined in s. 46.279 (1) (c), unless one of the following applies:

1. Any placement or admission that is made after April 30, 2005, complied with the requirements of s. 46.279.

2. For an individual who was provided protective placement under ch. 55 at any time, any annual review that is conducted under s. 55.18 (1) (a) (intro.) after April 30, 2005, complies with the requirements of s. 55.18 (1) (ar).

**(31) ELIGIBILITY FOR LONG-TERM CARE INSURANCE BENEFICIARIES.** The department shall seek federal approval of, and federal financial participation in, a pilot project under which a person who is the beneficiary of a long-term care insurance policy that satisfies criteria established by the department may become eligible for medical assistance while exceeding the usual medical assistance resource limits.

**(32) COMMUNITY CARE FOR THE ELDERLY.** The department may request a waiver under 42 USC 1315 to permit the establishment of a community care for the elderly demonstration project to provide medical care, case management services, adult day care and other support services that promote independence and enhance the quality of life of frail elderly persons. If the waiver is approved, the department may establish the community care for the elderly demonstration project and pay a fixed per person fee for the services.

**(34) MEDICAL ASSISTANCE MANUAL.** The department shall prepare a medical assistance manual that is clear, comprehensive and consistent with this subchapter and 42 USC 1396a to 1396u and shall, no later than July 1, 1992, provide the manual to counties for use by county employees who administer the medical assistance program.

**(35) TRAINING FOR NONPROFIT ORGANIZATIONS.** The department shall provide training to employees and volunteers of private nonprofit organizations concerning medical assistance eligibility under s. 49.47 of persons whose incomes exceed the levels under s. 49.47 (4) (am) and (c) 1. before consideration, under s. 49.47 (4) (c) 2., of the level of those persons' medical expenses.

**(35m) COMPUTER SYSTEM REDESIGN.** The department shall ensure that any redesign or replacement of the computer network that is used by counties on May 12, 1992, to determine eligibility for medical assistance includes the capability of determining eligibility for medical assistance under s. 49.47 (4) (c) 2.

**(36) HOMELESS BENEFICIARIES.** The department or a county department under s. 46.215, 46.22, or 46.23 may not place the word "homeless" on the medical assistance identification card of



any person who is determined to be eligible for medical assistance benefits and who is homeless.

**(37) PLANS OF CARE.** The department may seek a waiver of the requirement under 42 USC 1396n (c) (1) that the department review and approve every written plan of care developed for each individual who receives, under 42 USC 1396n (c) (1), home or community–based services under ss. 49.46 (2) (b) 8. and 49.47 (6) (a) 1. The waiver of the requirement, if granted, shall apply to those county departments or private nonprofit agencies that administer the services and that the department finds and certifies have implemented effective quality assurance systems for service plan development and implementation. If the federal health care financing administration approves the department’s request for waiver of the requirement, the department shall, in evaluating a quality assurance system for certification, consider all of the following:

(a) The adequacy, safety and comprehensiveness of plans of care developed for individuals and of the services provided to them.

(b) Opportunities for individuals to exercise choice and be involved in the provision of services.

(c) Overall conformance to required state and federal quality assurance standards.

(d) Factors in addition to those in pars. (a) to (c) that are required by the federal health care financing administration, if any.

**(38) HOME OR COMMUNITY–BASED SERVICES FOR DISABLED WORKERS.** The department shall request a waiver from the secretary of the federal department of health and human services to authorize federal financial participation for medical assistance coverage of persons described in ss. 49.46 (1) (a) 14. and 49.47 (4) (as).

**(39) SCHOOL MEDICAL SERVICES.** (a) *Definitions.* In this subsection:

1. “School” means a public school described under s. 115.01 (1), a charter school, as defined in s. 115.001 (1), the Wisconsin Center for the Blind and Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing. It includes school–operated early childhood programs for developmentally delayed and disabled 4–year–old and 5–year–old children.

2. “School medical services” means health care services that are provided in a school to children who are eligible for medical assistance that are appropriate to a school setting, as provided in the amendment to the state medical assistance plan under par. (am).

(am) *Plan amendment.* No later than September 30, 1995, the department shall submit to the federal department of health and human services an amendment to the state medical assistance plan to permit the application of pars. (b) and (c). If the amendment to the state plan is approved, school districts, cooperative educational service agencies, and the department of public instruction on behalf of the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing claim reimbursement under pars. (b) and (c). Paragraphs (b) and (c) do not apply unless the amendment to the state plan is approved and in effect. The department shall submit to the federal department of health and human services an amendment to the state plan if necessary to permit the application of pars. (b) and (c) to the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

(b) *School medical services.* 1. ‘Payment for school medical services.’ If a school district or a cooperative educational service agency elects to provide school medical services and meets all requirements under par. (c), the department shall reimburse the school district or the cooperative educational service agency for 60% of the federal share of allowable charges for the school medical services that it provides and, as specified in subd. 2., for allow-

able administrative costs. If the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing elects to provide school medical services and meets all requirements under par. (c), the department shall reimburse the department of public instruction for 60% of the federal share of allowable charges for the school medical services that the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing provides and, as specified in subd. 2., for allowable administrative costs. A school district, cooperative educational service agency, the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may submit, and the department shall allow, claims for common carrier transportation costs as a school medical service unless the department receives notice from the federal health care financing administration that, under a change in federal policy, the claims are not allowed. If the department receives the notice, a school district, cooperative educational service agency, the Wisconsin Center for the Blind and Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may submit, and the department shall allow, unreimbursed claims for common carrier transportation costs incurred before the date of the change in federal policy. The department shall promulgate rules establishing a methodology for making reimbursements under this paragraph. All other expenses for the school medical services provided by a school district or a cooperative educational service agency shall be paid for by the school district or the cooperative educational service agency with funds received from state or local taxes. The school district, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the cooperative educational service agency shall comply with all requirements of the federal department of health and human services for receiving federal financial participation.

2. ‘Payment for school medical services administrative costs.’ The department shall reimburse a school district or a cooperative educational service agency specified under subd. 1. and shall reimburse the department of public instruction on behalf of the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing for 90% of the federal share of allowable administrative costs, using time studies, beginning in fiscal year 1999–2000. A school district or a cooperative educational service agency may submit, and the department of health and family services shall allow, claims for administrative costs incurred during the period that is up to 24 months before the date of the claim, if allowable under federal law.

(c) *Certification and reporting requirements.* The department shall promulgate rules establishing specific certification and reporting requirements with respect to school medical services under this subsection.

**(40) PERIODIC RECORD MATCHES.** If the department contracts with the department of workforce development under s. 49.197 (5), the department shall cooperate with the department of workforce development in matching records of medical assistance recipients under s. 49.32 (7).

**(41) MENTAL HEALTH CRISIS INTERVENTION SERVICES.** (a) In this subsection, “mental health crisis intervention services” means services that are provided by a mental health crisis intervention program operated by, or under contract with, a county, if the county is certified as a medical assistance provider.

(b) If a county elects to become certified as a provider of mental health crisis intervention services, the county may provide mental health crisis intervention services under this subsection in the county to medical assistance recipients through the medical assistance program. A county that elects to provide the services shall pay the amount of the allowable charges for the services under the medical assistance program that is not provided by the federal government. The department shall reimburse the county

under this subsection only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

**(42) PERSONAL CARE SERVICES.** Personal care services under s. 49.46 (2) (b) 6. j. provided to an individual are reimbursable under medical assistance only if all of the following conditions are met:

(a) The provider of the personal care services receives prior authorization from the department for all personal care services that are provided to the individual in excess of 50 hours in a calendar year.

(b) The individual is not eligible to receive home health aide services under medicare, as defined in sub. (3) (L) 1. b.

**(42m) PHYSICAL AND OCCUPATIONAL THERAPY.** (a) If, in authorizing the provision of physical or occupational therapy services under s. 49.46 (2) (b) 6. b., the department authorizes a reduced duration of services from the duration that the provider specifies in the authorization request, the department shall substantiate the reduction that the department made in the duration of the services if the provider of the services requests any additional authorizations for the provision of physical or occupational therapy services to the same individual.

(b) The division of the department that is responsible for health care financing shall monitor compliance with the requirement under par. (a) in concert with representatives of the Wisconsin Physical Therapy Association and the Wisconsin Occupational Therapy Association.

**(43) CASE MANAGEMENT SERVICES FOR HIGH-COST RECIPIENTS.** The department may establish a program to provide case management services for medical assistance recipients with high-cost chronic health conditions or high-cost catastrophic health conditions. If the department establishes a program to provide these case management services, the department shall provide reimbursement for providers of these case management services under the medical assistance program.

**(44) PRENATAL, POSTPARTUM AND YOUNG CHILD CARE COORDINATION.** Providers in Milwaukee County that are certified to provide care coordination services under s. 49.46 (2) (b) 12. may be certified to provide to medical assistance recipients prenatal and postpartum care coordination services and care coordination services for children who have not attained the age of 7. A provider of those care coordination services shall provide to a person receiving those services the information relating to shaken baby syndrome and impacted babies required under s. 253.15 (6). The department shall provide reimbursement for those care coordination services only if at least one of the following conditions is met:

(a) The recipient is a resident of Milwaukee County and has received services under s. 49.46 (2) (b) 12. and is pregnant or has given birth within 8 weeks after the individual ceased to receive services under s. 49.46 (2) (b) 12.

(b) The recipient is a resident of Milwaukee County, is pregnant and has received a risk assessment approved by the department.

(c) The recipient is a resident of Milwaukee County, has given birth within the 8 weeks immediately preceding the request for services under s. 49.46 (2) (b) 12m. and has received a risk assessment approved by the department.

**(45) IN-HOME AND COMMUNITY MENTAL HEALTH AND ALCOHOL AND OTHER DRUG ABUSE SERVICES.** (a) Services under s. 49.46 (2) (b) 6. fm. provided to an individual are reimbursable under the medical assistance program only if all of the following conditions are met:

1. Reimbursement for the services under s. 49.46 (2) (b) 6. fm. in the manner provided under this subsection is permitted pursuant to federal law or pursuant to a waiver from the secretary of the federal department of health and human services.

2. The county, city, town or village in which the individual resides elects to make the services under s. 49.46 (2) (b) 6. fm.

available in the county, city, town or village through the medical assistance program.

(b) A county, city, town or village that elects to make the services under s. 49.46 (2) (b) 6. fm. available shall reimburse a provider of the services for the amount of the allowable charges for those services under the medical assistance program that is not provided by the federal government. The department shall reimburse the provider only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

**(47) ADULT DAY CARE CENTERS.** (a) In this subsection, “adult day care center” means an entity that provides services for part of a day in a group setting to adults who need an enriched health-supportive or social experience and who may need assistance with activities of daily living, supervision or protection.

(b) No person may receive reimbursement under s. 46.27 (11) for the provision of services to clients in an adult day care center unless the adult day care center is certified by the department under sub. (2) (a) 11. as a provider of medical assistance.

(c) The biennial fee for the certification required under par. (b) of an adult day care center is \$100. Fees collected under this paragraph shall be credited to the appropriation account under s. 20.435 (6) (jm).

(d) The department, by rule, may increase any fee specified in par. (c).

**(48) PAYMENT OF MEDICARE PART B OUTPATIENT HOSPITAL SERVICES COINSURANCES.** The department shall include in the state plan for medical assistance a methodology for payment of the medicare part B outpatient hospital services coinsurance amounts that are authorized under ss. 49.46 (2) (c) 2., 4., and 5m., 49.468 (1) (b), and 49.47 (6) (a) 6. b., d., and f.

**(49) PRESCRIPTION DRUG PRIOR AUTHORIZATION.** (a) The secretary shall exercise his or her authority under s. 15.04 (1) (c) to create a prescription drug prior authorization committee to advise the department on issues related to prior authorization decisions made concerning prescription drugs on behalf of medical assistance recipients. The secretary shall appoint as members at least all of the following:

1. Two physicians, as defined in s. 448.01 (5), who are currently in practice.
2. Two pharmacists, as defined in s. 450.01 (15).
3. One advocate for recipients of medical assistance who has sufficient medical background, as determined by the department, to evaluate a prescription drug’s clinical effectiveness.

(b) The prescription drug prior authorization committee shall accept information or commentary from representatives of the pharmaceutical manufacturing industry in the committee’s review of prior authorization policies.

**(49m) PRESCRIPTION DRUG COST CONTROLS; PURCHASING AGREEMENTS.** (a) In this section:

1. “Brand name” has the meaning given in s. 450.12 (1) (a).
2. “Generic name” has the meaning given in s. 450.12 (1) (b).
3. “Prescription drug” has the meaning given in s. 450.01 (20).

(b) The department may enter into a multi-state purchasing agreement with another state or a purchasing agreement with a purchaser of prescription drugs if the other state or purchaser agrees to participate in one or more of the activities specified in par. (c) 1. to 4.

(c) The department may design and implement a program to reduce the cost of prescription drugs and to maintain high quality in prescription drug therapies, which shall include all of the following:

1. A list of the prescription drugs that are included as a benefit under s. 49.46 (2) (b) 6. h. that identifies preferred choices within therapeutic classes and includes prescription drugs that bear only generic names.

2. Establishing supplemental rebates under agreements with prescription drug manufacturers for prescription drugs provided to recipients under Medical Assistance and Badger Care and to eligible persons under s. 49.688 and, if it is possible to implement the program without adversely affecting supplemental rebates for Medical Assistance, Badger Care, and prescription drug assistance under s. 49.688, to beneficiaries of participants under par. (b).

3. Utilization management and fraud and abuse controls.

4. Any other activity to reduce the cost of or expenditures for prescription drugs and maintain high quality in prescription drug therapies.

(d) The department may enter into a contract with an entity to perform any of the duties and exercise any of the powers of the department under this subsection.

**(50) DISEASE MANAGEMENT.** (a) In this subsection, “disease management” means an integrated and systematic approach for managing the health care needs of patients who are at risk of or are diagnosed with a specific disease, using all of the following:

1. Best practices.
2. Prevention strategies.
3. Clinical practice improvement.
4. Clinical interventions and protocols.
5. Outcomes research, information, and technology.
6. Other tools and resources to reduce overall costs and improve measurable outcomes.

(b) The department may contract with an entity, under the department’s request-for-proposal procedures, to engage in disease management activities on behalf of recipients of medical assistance.

**(51) MEDICAL CARE TRANSPORTATION SERVICES.** (a) By November 1 annually, the department shall provide to the department of revenue information concerning the estimated amounts of supplements payable from the appropriation under s. 20.435 (4) (b) to specific local governmental units for the provision of transportation for medical care, as specified under s. 49.46 (2) (b) 3., during the fiscal year. Beginning November 1, 2004, the information that the department provides under this paragraph shall include any adjustments necessary to reflect actual claims submitted by service providers in the previous fiscal year.

(b) On the date that is the 3rd Monday in November, the department shall annually pay to specific local governmental units the estimated net amounts specified in par. (a).

**(52) PAYMENT ADJUSTMENTS.** Beginning on January 1, 2003, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payment adjustments to county departments under s. 46.215, 46.22, 46.23, or 51.42, or 51.437 or to local health departments, as defined in s. 250.01 (4), as appropriate, for covered services under s. 49.46 (2) (a) 2. and 4. d. and f. and (b) 6. b., c., f., fm., g., j., k., L., Lm., and m., 9., 12., 12m., 13., 15., and 16. Payment adjustments under this subsection shall include the state share of the payments. The total of any payment adjustments under this subsection and Medical Assistance payments made from appropriation accounts under s. 20.435 (4) (b), (gp), (o), and (w) may not exceed applicable limitations on payments under 42 USC 1396a (a) (30) (A).

**(53) PAYMENTS FOR CERTAIN SERVICES.** Beginning on January 1, 2003, the department may, from the appropriation account under s. 20.435 (7) (b), make Medical Assistance payments to providers for covered services under s. 49.46 (2) (a) 4. d. and (b) 6. j. and m.

**History:** 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340; 1987 a. 27 ss. 989r to 1000s, 2247, 3202 (24); 1987 a. 186, 307, 339, 399; 1987 a. 403 s. 256; 1987 a. 413; 1989 a. 6; 1989 a. 31 ss. 1402 to 1452g, 2909g, 2909i; 1989 a. 107, 173, 310, 336, 351, 359; 1991 a. 22, 39, 80, 250, 269, 315, 316; 1993 a. 16 ss. 1362g to 1403,

3883; 1993 a. 27, 107, 112, 183, 212, 246, 269, 335, 356, 437, 446, 469; 1995 a. 20; 1995 a. 27 ss. 2947 to 3002r, 7299, 9126 (19), 9130 (4), 9145 (1); 1995 a. 191, 216, 225, 289, 303, 398, 417, 457; 1997 a. 3, 13, 27, 114, 175, 191, 237, 252, 293; 1999 a. 9, 63, 103, 180, 185; 2001 a. 13, 16, 35, 38, 57, 67, 104, 109; 2003 a. 33, 318, 321; 2005 a. 22; 2005 a. 25 ss. 1120 to 1149f, 2503 to 2510; 2005 a. 107, 165, 253, 254, 264, 301, 340, 386, 441.

**Cross Reference:** See also chs. HA 3 and HFS 101, 102, 103, 104, 105, 106, 107, and 108, Wis. adm. code.

Wisconsin has no medical assistance plan independent of Medicaid. Non-residence under federal Medicaid regulations is determinative of medical assistance eligibility. Pope v. DHSS, 187 Wis. 2d 207, 522 N.W.2d 22 (Ct. App. 1994).

Section 49.89, not sub. (19) (a) 2., specifically addresses assignment of actions and subrogation of rights by a public assistance recipient who is injured and has a tort claim against a 3rd party. Ellsworth v. Schelbrock, 2000 WI 63, 235 Wis. 2d 678, 611 N.W.2d 764, 98–0294.

Sub. (7) (a) requires that a health care facility resident who is a recipient of certain funds apply those funds toward the cost of care in the health care facility. The agent who received funds from the Social Security Administration on behalf of the resident has an obligation to pay the funds to the health care facility and is subject to an action for conversion. Methodist Manor of Waukesha, Inc. v. Martin, 2002 WI App 130, 255 Wis. 2d 707, 647 N.W.2d 409, 01–2877.

Medical assistance eligibility is not a default position that the department must rebut, but a privilege for which the applicant must prove eligibility. An initial determination of eligibility does not preclude a later redetermination of that status. The state has an ongoing duty to ensure that a MA recipient is eligible and the recipient bears the ongoing burden of proving eligibility. Estate of Gonwa v. DHFS, 2003 WI App 152, 265 Wis. 2d 913, 668 N.W.2d 122, 02–2901.

A contract between the trustees of a nursing home and a medical clinic for exclusive medical services under the medical assistance act for residents of such home violates public policy of this state. 59 Atty. Gen. 68.

Medical Assistance & Divestment. Canellos. Wis. Law. Aug. 1991.

**49.453 Divestment of assets. (1) DEFINITIONS.** In this section and in s. 49.454:

(a) “Assets” has the meaning given in 42 USC 1396p (e) (1).

(am) “Covered individual” means an individual who is an institutionalized individual or a noninstitutionalized individual.

(b) “Disabled” has the meaning given in 42 USC 1382c (a) (3).

(c) “Expected value of the benefit” means the amount that an irrevocable annuity will pay to the annuitant during his or her expected lifetime as determined under sub. (4) (c).

(d) “Income” has the meaning given in 42 USC 1396p (e) (2).

(e) “Institutionalized individual” has the meaning given in 42 USC 1396p (e) (3).

(f) “Look-back date” means for a covered individual, the date that is 36 months before, or with respect to payments from a trust or portions of a trust that are treated as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the date that is 60 months before:

1. For a covered individual who is an institutionalized individual, the first date on which the covered individual is both an institutionalized individual and has applied for medical assistance.

2. For a covered individual who is a noninstitutionalized individual, the date on which the covered individual applies for medical assistance or, if later, the date on which the covered individual, his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transferred assets for less than fair market value.

(fm) “Noninstitutionalized individual” has the meaning given in 42 USC 1396p (e) (4).

(g) “Reasonable compensation” means the prevailing local market rate of compensation for the service or care provided.

(h) “Relative” means an individual who is related to another by blood, marriage or adoption.

(i) “Resources” has the meaning given in 42 USC 1396p (e) (5).

(j) “Trust” has the meaning given in 42 USC 1396p (d) (6).

**(2) INELIGIBILITY FOR MEDICAL ASSISTANCE FOR CERTAIN SERVICES.** (a) *Institutionalized individuals.* Except as provided in sub. (8), if an institutionalized individual or his or her spouse, or another person acting on behalf of the institutionalized individual or his or her spouse, transfers assets for less than fair market value on or after the institutionalized individual’s look-back date, the institutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

1. For nursing facility services.
2. For a level of care in a medical institution equivalent to that of a nursing facility.
3. For services under a waiver under [42 USC 1396n](#).

(b) *Noninstitutionalized individuals.* Except as provided in sub. (8), if a noninstitutionalized individual or his or her spouse, or another person acting on behalf of the noninstitutionalized individual or his or her spouse, transfers assets for less than fair market value on or after the noninstitutionalized individual's look-back date, the noninstitutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

1. Services that are described in [42 USC 1396d](#) (a) (7), (22) or (24).
2. Other long-term care services specified by the department by rule.

(3) **PERIOD OF INELIGIBILITY.** (a) The period of ineligibility under this subsection begins on the first day of the first month beginning on or after the look-back date during or after which assets have been transferred for less than fair market value and that does not occur in any other periods of ineligibility under this subsection.

(b) The department shall determine the number of months of ineligibility as follows:

1. The department shall determine the total, cumulative uncompensated value of all assets transferred by the covered individual or his or her spouse on or after the look-back date.
2. The department shall determine the average monthly cost to a private patient of nursing facility services in the state at the time that the covered individual applied for medical assistance.
3. The number of months of ineligibility equals the number determined by dividing the amount determined under subd. 1. by the amount determined under subd. 2.

(c) If the spouse of an individual makes a transfer of assets that results in a period of ineligibility under this section and otherwise becomes eligible for medical assistance, the department shall apportion the period of ineligibility between the individual and the spouse. The department shall promulgate rules establishing a reasonable methodology for apportioning a period of ineligibility under this paragraph.

(4) **IRREVOCABLE ANNUITIES, PROMISSORY NOTES AND SIMILAR TRANSFERS.** (a) For the purposes of sub. (2), whenever a covered individual or his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transfers assets to an irrevocable annuity, or transfers assets by promissory note or similar instrument, in an amount that exceeds the expected value of the benefit, the covered individual or his or her spouse transfers assets for less than fair market value. A transfer to an annuity, or a transfer by promissory note or similar instrument, is not in excess of the expected value only if all of the following are true:

1. The periodic payments back to the transferor include principal and interest that, at the time that the transfer is made, is at least at one of the following:
  - a. For an annuity, promissory note or similar instrument that is not specified under subd. 1. b. or par. (am), the applicable federal rate required under section 1274 (d) of the Internal Revenue Code, as defined in s. 71.01 (6).
  - b. For an annuity with a guaranteed life payment, the appropriate average of the applicable federal rates based on the expected length of the annuity minus 1.5%.
2. The terms of the instrument provide for a payment schedule that includes equal periodic payments, except that payments may be unequal if the interest payments are tied to an interest rate and the inequality is caused exclusively by fluctuations in that rate.

(am) Paragraph (a) 1. does not apply to a variable annuity that is tied to a mutual fund that is registered with the federal securities and exchange commission.

(b) The amount of assets that is transferred for less than fair market value under par. (a) is the amount by which the transferred amount exceeds the expected value of the benefit.

(c) The department shall promulgate rules specifying the method to be used in calculating the expected value of the benefit, based on [26 CFR 1.72–1 to 1.72–18](#), and specifying the criteria for adjusting the expected value of the benefit based on a medical condition diagnosed by a physician before the assets were transferred to the annuity, or transferred by promissory note or similar instrument. In calculating the amount of the divestment when a transfer to an annuity, or a transfer by promissory note or similar instrument, is made, payments made to the transferor in any year subsequent to the year in which the transfer was made shall be discounted to the year in which the transfer was made by the applicable federal rate specified under par. (a) on the date of the transfer.

(5) **CARE OR PERSONAL SERVICES.** For the purposes of sub. (2), whenever a covered individual or his or her spouse, or another person acting on behalf of the covered individual or his or her spouse, transfers assets to a relative as payment for care or personal services that the relative provides to the covered individual, the covered individual or his or her spouse transfers assets for less than fair market value unless the care or services directly benefit the covered individual, the amount of the payment does not exceed reasonable compensation for the care or services that the relative performs and, if the amount of the payment exceeds 10% of the community spouse resource allowance limit specified in s. 49.455 (6) (b) 1., the agreement to pay the relative is specified in a notarized written agreement that exists at the time that the relative performs the care or services.

(6) **COMMON OWNERSHIP.** For purposes of sub. (2), if a covered individual holds an asset in common with another person in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, is considered to be transferred by the covered individual when an action is taken, either by the covered individual or by any other person, that reduces or eliminates the covered individual's ownership or control of the asset.

(7) **CERTAIN AUTHORIZATIONS.** For the purposes of sub. (2), if a covered individual or his or her spouse authorizes another person to transfer, encumber, lease, consume or otherwise act with respect to an asset as though the asset belonged to that other person; if that other person exercises the authority in a way that causes the asset to be unavailable for the support and maintenance of the covered individual or his or her spouse; and if the covered individual does not receive fair market value for the asset, then the covered individual or his or her spouse transfers assets for less than fair market value at the time that the other person exercises the authority.

(8) **INAPPLICABILITY.** Subsections (2) and (3) do not apply to transfers of assets if the assets are exempt under [42 USC 1396p](#) (c) (2) or if the department determines that application of this section would work an undue hardship. The department shall promulgate rules concerning the transfer of assets exempt under [42 USC 1396p](#) (c) (2).

**History:** 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185.

A wife's failure to assert a claim against her deceased husband's estate for her statutorily granted share of the estate constituted an act of divestment. *Tannler v. DHSS*, 211 Wis. 2d 179, 564 N.W.2d 735 (1997), 96-0118.

The grantor of an irrevocable trust that allowed the grantor to live in trust property for her life unless the grantor was found incompetent, in which case the trust could be terminated and the property distributed, did not divest an asset when she was found incompetent and the trustee distributed the residence pursuant to the trust document. *Artac v. DHFS*, 2000 WI App 88, 234 Wis. 2d 480, 610 N.W.2d 115, 99-1253.

Although this section has specific requirements with which an annuity must comply, the initial question is whether the transfer of assets to the annuity was made for less than fair market value under sub. (2) (a). *Buettner v. DHFS*, 2003 WI App 90, 264 Wis. 2d 700, 663 N.W.2d 282, 01-0981.

An administrative determination that a nursing home resident's purchase of a life estate in 66% of her son's residence was a sham transaction of no value by which the purchaser divested herself of an annuity balloon payment was reasonable when she had entered a nursing home as permanent to the home, had lived there for 5 years with no realistic expectation of release, could not use the life estate at the time of purchase, and had no reasonable future expectation of being able to do so, and if the son sold

the property, the life estate would be extinguished. *Hagenstein v. DHFS*, 2006 WI App 90, \_\_\_ Wis. 2d \_\_\_, 715 N.W.2d 645, 05–1303.

**49.454 Treatment of trust amounts. (1) APPLICABILITY.**

(a) Except as provided in sub. (4), this section applies to an individual with respect to a trust if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust and if any of the following persons established the trust other than by will:

1. The individual.
2. The individual's spouse.
3. A person, including a court or administrative body with legal authority to act in place of or on behalf of the individual or the individual's spouse.
4. A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(b) If the corpus of a trust under par. (a) includes assets of a person other than the individual or the individual's spouse, this section applies only with respect to the portion of the trust attributable to the assets of the individual or the individual's spouse.

**(2) TREATMENT OF REVOCABLE TRUST AMOUNTS.** For purposes of determining an individual's eligibility for, or amount of benefits under, medical assistance:

- (a) The corpus of a revocable trust is considered a resource available to the individual.
- (b) Payments from a revocable trust to or for the benefit of the individual are considered income of the individual.
- (c) Other payments from a revocable trust are considered transfers of assets by the individual subject to s. 49.453.

**(3) TREATMENT OF IRREVOCABLE TRUST AMOUNTS.** For purposes of determining an individual's eligibility for, or amount of benefits under, medical assistance:

- (a) If there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to or for the benefit of the individual could be made is considered a resource available to the individual, and payments from that portion of the corpus or income:
  1. To or for the benefit of the individual, are considered income of the individual.
  2. For any other purpose, are considered transfers of assets by the individual subject to s. 49.453.
- (b) Any portion of an irrevocable trust from which, or any income on the corpus from which, no payment could under any circumstances be made to or for the benefit of the individual, is considered to be an asset transferred by the individual subject to s. 49.453. The asset is considered to be transferred as of the date of the establishment of the trust, or, if later, the date on which payment to the individual was foreclosed. The value of the trust shall be determined for purposes of s. 49.453 by including the amount of any payments made from that portion of the trust after that date.

**(4) INAPPLICABILITY.** This section does not apply to any trust described in 42 USC 1396p (d) (4) or if the department determines, pursuant to procedures established by the department by rule, that the application of this section would work an undue hardship on an individual.

**History:** 1993 a. 437.

Transfer of a disabled ward's property to a newly-established "Medicaid Payback Trust" was in the ward's best interest and authorized by ss. 49.454 (4) and 880.19 (5) (b) [now s. 54.22]. *Marjorie A. G. v. Dodge County Department of Human Services*, 2003 WI App 52, 261 Wis. 2d 679, 659 N.W.2d 438, 02–1121.

Regardless of whether the asset held in an irrevocable trust is transferred as an annuity, it is nevertheless held in an irrevocable trust governed by s. 49.454, which specifically governs the treatment of trust amounts for purposes of MA eligibility. *Estate of Gonva v. DHFS*, 2003 WI App 152, 265 Wis. 2d 913, 668 N.W.2d 122, 02–2901.

**49.455 Protection of income and resources of couple for maintenance of community spouse. (1) DEFINITIONS.**

In this section:

(a) "Community spouse" means an individual who is married to an institutionalized spouse.

(b) "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

(c) "Family member" means a minor or dependent child, dependent parent or dependent sibling of an institutionalized or community spouse who resides with the community spouse.

(d) "Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a waiver under 42 USC 1396n (c) or (d) and is married to an individual who is not in a medical institution or nursing facility and does not receive services under a waiver under 42 USC 1396n (c) or (d).

(e) "Resources" does not include items excluded under 42 USC 1382b (a) or (d) or items that would be excluded under 42 USC 1382b (a) (2) (A) but for the limitation on total value established under that provision.

**(2) APPLICABILITY.** The department shall use the provisions of this section in determining the eligibility for medical assistance under s. 49.46 or 49.47 and the required contribution toward care of an institutionalized spouse.

**(3) ATTRIBUTION OF INCOME.** (a) Except as provided in par. (b), no income of a spouse is considered to be available to the other spouse during any month in which that other spouse is an institutionalized spouse.

(b) Notwithstanding ch. 766, for the purposes of sub. (4), the following criteria apply in determining the income of an institutionalized spouse or a community spouse:

1. Except as determined under subd. 2. or 3., unless the instrument providing the income specifically provides otherwise:
  - a. Income paid solely in the name of one spouse is considered to be available only to that spouse.
  - b. Income paid in the names of both spouses is considered to be available one-half to each spouse.
  - c. Income paid in the name of either or both spouses and to one or more other persons is considered to be available to each spouse in proportion to the spouse's interest or, if payment is made to both spouses and each spouse's individual interest is not specified, one-half of the joint interest is considered to be available to each spouse.
2. Except as provided in subd. 3., if there is no trust or other instrument establishing ownership, income received by a couple is considered to be available one-half to each spouse.
3. Subdivisions 1. and 2. do not apply to income other than income from a trust if the institutionalized spouse establishes, by a preponderance of the evidence, that the ownership interests in the income are other than as provided in subds. 1. and 2.

**(4) PROTECTING INCOME FOR COMMUNITY SPOUSE.** (a) After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of that institutionalized spouse's income that must be applied monthly to payment for the costs of care in the institution, the department shall deduct the following amounts in the following order from the institutionalized spouse's income:

1. The personal needs allowance under s. 49.45 (7) (a).
2. The community spouse monthly income allowance calculated under par. (b) or the amount of income of the institutionalized spouse that is actually made available to, or for the benefit of, the community spouse, whichever is less.
3. A family allowance for each family member equal to one-third of the amount by which the family member's monthly income is exceeded by the following:

- a. Beginning on September 30, 1989, and ending on June 30, 1991, 122% of one-twelfth of the poverty line for a family of 2 persons.

b. Beginning on July 1, 1991, and ending on June 30, 1992, 133% of one-twelfth of the poverty line for a family of 2 persons.

c. Beginning on July 1, 1992, 150% of one-twelfth of the poverty line for a family of 2 persons.

4. The amount incurred as expenses for medical or remedial care for the institutionalized spouse.

(b) The community spouse monthly income allowance equals the greater of the following:

1. The minimum monthly maintenance needs allowance determined under par. (c) or the amount determined at a fair hearing under sub. (8) (c), if such an amount has been determined, minus the amount of monthly income otherwise available to the community spouse.

2. The amount of monthly support which a court orders the institutionalized spouse to pay for the support of the community spouse.

(c) 1. For any year, the minimum monthly maintenance needs allowance equals the lesser of the amount determined under subd. 2., or the sum of the following:

a. One-twelfth of 200% of the poverty line for a family of 2 persons.

b. Any excess shelter allowance under par. (d).

2. The minimum monthly maintenance needs allowance in a year may not exceed \$1,500 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the year involved.

3. In making the calculation under subd. 1. a., when the poverty line is revised the department shall use the revised amount starting on the first day of the 2nd calendar quarter beginning after the date of publication of the revision.

(d) The excess shelter allowance equals the amount by which 30% of the amount determined under par. (c) 1. a. is exceeded by the sum of the following:

1. The community spouse's expenses for rent or mortgage principal and interest, taxes and insurance for his or her principal residence and, if the community spouse lives in a condominium, a cooperative, or an unincorporated cooperative association, any required maintenance charge.

2. The standard utility allowance established under 7 USC 2014 (e), except that if the community spouse lives in a condominium, a cooperative, or an unincorporated cooperative association for which the maintenance charge includes utility expenses, the standard utility allowance under 7 USC 2014 (e) is reduced by the amount of the utility expenses included in the maintenance charge.

(5) RULES FOR TREATMENT OF RESOURCES. (a) 1. The department shall determine the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse in resources as of the beginning of the first continuous period of institutionalization beginning after September 29, 1989. The spousal share of resources equals one-half of that total value.

2. At the beginning of the first continuous period of institutionalization beginning after September 29, 1989, upon the request of an institutionalized spouse or a community spouse and the receipt of necessary documentation, the department shall assess and document the total value of resources under subd. 1. and shall provide a copy of the assessment and documentation to each spouse and retain a copy for departmental use. If the request is not part of an application for medical assistance, the department may charge a fee not exceeding the reasonable expenses of providing and documenting the assessment. When the department provides a copy of an assessment, it shall provide notice that a spouse has the right to a fair hearing under sub. (8) after an application for medical assistance is filed.

(b) Notwithstanding ch. 766, in determining the resources of an institutionalized spouse at the time of application for medical assistance, the amount of resources considered to be available to

the institutionalized spouse equals the value of all of the resources held by either or both spouses minus the greatest of the amounts determined under sub. (6) (b) 1. to 4.

(c) The amount of resources determined under par. (b) to be available for the cost of care does not cause an institutionalized spouse to be ineligible for medical assistance, if any of the following applies:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse.

2. The institutionalized spouse lacks the ability to execute an assignment under subd. 1. due to a physical or mental impairment but the state has the right to bring a support proceeding against the community spouse without an assignment.

3. The department determines that denial of eligibility would work an undue hardship.

(d) During a continuous period of institutionalization, after an institutionalized spouse is determined to be eligible for medical assistance, no resources of the community spouse are considered to be available to the institutionalized spouse.

(6) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE. (a) Notwithstanding s. 49.453 (2), an institutionalized spouse may transfer an amount of resources equal to the community spouse resource allowance determined under par. (b) to, or for the sole benefit of, the community spouse without becoming ineligible for medical assistance for the period of ineligibility under s. 49.453 (3) as a result of the transfer. The institutionalized spouse shall make the transfer as soon as practicable after the initial determination of eligibility for medical assistance, taking into account the amount of time that is necessary to obtain a court order under par. (c).

(b) The community spouse resource allowance equals the amount by which the amount of resources otherwise available to the community spouse is exceeded by the greatest of the following:

1. In any year, \$12,000 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the calendar year involved.

1m. \$50,000.

2. The lesser of the following:

a. The spousal share computed under sub. (5) (a) 1.

b. In any year, \$60,000 increased by the same percentage as the percentage increase in the consumer price index between September 1988 and September of the year before the year involved.

3. The amount established in a fair hearing under sub. (8) (d).

4. The amount transferred under a court order under par. (c).

(c) If a court has entered a support order against a community spouse, s. 49.453 does not apply to resources transferred under the order for the support of the community spouse or a family member.

(7) NOTICE. The department shall notify both spouses upon a determination of medical assistance eligibility of an institutionalized spouse, or shall notify the spouse making the request upon a request by either an institutionalized spouse or a community spouse, of all of the following:

(a) The amount of the community spouse monthly income allowance calculated under sub. (4) (b).

(b) The amount of any family allowances under sub. (4) (a) 3.

(c) The method for computing the amount of the community spouse resource allowance under sub. (6) (b).

(d) The spouse's right to a fair hearing under sub. (8) concerning ownership or availability of income or resources and the determination of the community spouse monthly income or resource allowance.

(8) FAIR HEARING. (a) An institutionalized spouse or a community spouse is entitled to a departmental fair hearing concerning any of the following:

1. The determination of the community spouse monthly income allowance under sub. (4) (b).
2. The determination of the amount of monthly income otherwise available to the community spouse used in the calculation under sub. (4) (b).
3. After an application for medical assistance benefits is filed, the computation of the spousal share of resources under sub. (5) (a) 1.
4. The attribution of resources under sub. (5) (b).
5. The determination of the community spouse resource allowance under sub. (6) (b).

(b) If the institutionalized spouse has made an application for medical assistance, and a fair hearing is requested under par. (a) concerning the determination of community spouse resource allowance, the department shall hold the hearing within 30 days after the request.

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4) (c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4) (b).

(d) If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6) (b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c), the department shall establish an amount to be used under sub. (6) (b) 3. that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4) (c). Except in exceptional cases which would result in financial duress for the community spouse, the department may not establish an amount to be used under sub. (6) (b) 3. unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if the institutionalized spouse does not have sufficient income to make available to the community spouse the maximum monthly income allowance permitted under sub. (4) (b), unless the institutionalized spouse makes all of his or her income, except for an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and the amount incurred as expenses for medical or remedial care for the institutionalized spouse under sub. (4) (a) 4., available to the community spouse as a community spouse monthly income allowance under sub. (4) (b).

**History:** 1989 a. 31, 81; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27; 2005 a. 441.

**Cross Reference:** See also ch. HFS 103, Wis. adm. code.

An ineligible spouse's IRA is excluded in determining whether the applying spouse is eligible for medical assistance. *Keip v. DHFS*, 2000 WI App 13, 232 Wis. 2d 380, 606 N.W.2d 543, 99–0193.

Sub. (8) (d) does not conflict with federal law. Federal law does not require an institutionalized spouse's income-producing assets to be shifted to the community spouse's minimum monthly maintenance needs allowance before his or her income is shifted to the community spouse. *DHFS v. Blumer*, 534 U.S. 473, 151 L. Ed 2d 935 (2002).

Medical Assistance & Divestment. *Canellos*. Wis. Law. Aug. 1991.

*Wisconsin Department of Health and Family Services v. Blumer*: A "Case" Study in Pragmatism and the Expansion of Judicial Deference to Agency Interpretations. *Kindstrand*. 2002 WLR 1467.

**49.46 Medical assistance; recipients of social security aids. (1) ELIGIBILITY.** (a) The following shall receive medical assistance under this section:

1. Notwithstanding s. 49.19 (20), any individual who, without regard to the individual's resources, would qualify for a grant of aid to families with dependent children under s. 49.19.

1g. Notwithstanding s. 49.19 (20), any individual who, without regard to the individual's resources, would qualify for a grant

of aid to families with dependent children but who would not receive the aid solely because of the application of s. 49.19 (11) (a) 7.

1m. Any pregnant woman whose income does not exceed the standard of need under s. 49.19 (11) and whose pregnancy is medically verified. Eligibility continues to the last day of the month in which the 60th day after the last day of the pregnancy falls.

3. Any essential person.

4. Any person receiving benefits under s. 49.77 or federal Title XVI.

4m. Any child for whom a payment is made under s. 49.775.

5. Any child in an adoption assistance, foster care, kinship care, long-term kinship care, treatment foster care, or subsidized guardianship placement under ch. 48 or 938, as determined by the department.

6. Any person not described in pars. (c) to (e) who, without regard to the individual's resources, would be considered, under federal law, to be receiving aid to families with dependent children for the purpose of determining eligibility for medical assistance.

6m. Any person not described in pars. (c) to (e) who is considered, under federal law, to be receiving supplemental security income for the purpose of determining eligibility for medical assistance.

9. Any pregnant woman not described under subd. 1., 1g., or 1m. whose family income does not exceed 133% of the poverty line for a family the size of the woman's family.

10. Any child not described under subd. 1. or 1g. who is under 6 years of age and whose family income does not exceed 133% of the poverty line for a family the size of the child's family.

11. If a waiver under s. 49.665 is granted and in effect, any child not described under subd. 1. or 1g. who has attained the age of 6 but has not attained the age of 19 and whose family income does not exceed 100% of the poverty line for a family the size of the child's family. If a waiver under s. 49.665 is not granted or in effect, any child not described in subd. 1. or 1g. who was born after September 30, 1983, who has attained the age of 6 but has not attained the age of 19 and whose family income does not exceed 100% of the poverty line for a family the size of the child's family.

12. Any child not described under subd. 1. or 1g. who is under 19 years of age and whose income does not exceed the standard of need under s. 49.19 (11).

13. Any child who is under one year of age, whose mother was determined to be eligible under subd. 9. and who lives with his or her mother.

14. Any person who would meet the financial and other eligibility requirements for home or community-based services under s. 46.27 (11), 46.277, or 46.2785 but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3), if a waiver under s. 49.45 (38) is in effect or federal law permits federal financial participation for medical assistance coverage of the person and if funding is available for the person under s. 46.27 (11), 46.277, or 46.2785.

14m. Any person who would meet the financial and other eligibility requirements for home or community-based services under the family care benefit but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3), if a waiver under s. 46.281 (1) (c) is in effect or federal law permits federal financial participation for medical assistance coverage of the person and if funding is available for the person under the family care benefit.

15. Any individual who is infected with tuberculosis and meets the income and resource eligibility requirements for the federal Supplemental Security Income program under 42 USC 1381 to 1383d.

16. Any child who is living with a relative who is eligible to receive payments under s. 48.57 (3m) or (3n) with respect to that

child, if the department determines that no other insurance is available to the child.

(am) 1. If the change requested under subd. 2. in the approved state plan for services under 42 USC 1396 is approved by the federal department of health and human services, the department shall disregard income from the following individuals, in an amount sufficient for the individual to become eligible for medical assistance under this section:

a. A pregnant woman whose family income, before any income is disregarded under this paragraph, does not exceed, in state fiscal year 1994–95, 155% of the poverty line for a family the size of the woman's family; and, in each state fiscal year after the 1994–95 state fiscal year, 185% of the poverty line for a family the size of the woman's family.

b. A child who is under 6 years of age and whose family income, before any income is disregarded under this paragraph, does not exceed, in state fiscal year 1994–95, 155% of the poverty line for a family the size of the child's family; and, in each state fiscal year after the 1994–95 state fiscal year, 185% of the poverty line for a family the size of the child's family.

c. A child who is under one year of age, whose mother was determined to be eligible under subd. 1. a. and who lives with his or her mother.

2. The department shall request a change in the approved state plan for services under 42 USC 1396 to allow, pursuant to the authority granted under 42 USC 1396a (r) (2), the use of federal matching funds to provide medical assistance coverage to individuals under subd. 1., beginning on July 1, 1994.

(b) Any person shall be considered a recipient of aid for 3 months prior to the month of application if the proper agency determines eligibility existed during such prior month.

(c) Except as provided under par. (co), a family that becomes ineligible for aid to families with dependent children under s. 49.19 because of increased income from employment or increased hours of employment or because of the expiration of the time during which the disregards under s. 49.19 (5) (a) 4. or 4m. or (am) apply shall receive medical assistance for:

1. Six calendar months following the month in which the family becomes ineligible for aid to families with dependent children if all of the following apply:

a. The family is eligible for aid to families with dependent children for at least 3 of the 6 months immediately preceding the month in which the family becomes ineligible.

b. The family continues to include a child who is, or would be if needy, a dependent child under s. 49.19.

c. The family complies with reporting requirements established by the department by rule.

2. Six calendar months following the 6 months under subd. 1. if all of the following apply:

a. The family chooses to continue to receive medical assistance.

b. The family continues to include a child who is, or would be if needy, a dependent child under s. 49.19.

c. The family complies with reporting requirements established by the department by rule.

d. The caretaker relative has earnings in each month of the period unless the caretaker lacks earnings because of illness, involuntary loss of employment or other good cause as determined by the department.

e. The family's average gross monthly earnings, less the cost of child care necessary for the employment of the caretaker relative, during the immediately preceding 3-month period do not exceed 185% of the poverty line for a family the size of the family.

(cg) Medical assistance shall be provided to a dependent child, a relative with whom the child is living or the spouse of the relative, if the spouse meets the requirements of s. 49.19 (1) (c) 2. a. or b., for 4 calendar months beginning with the month in which the child, relative or spouse is ineligible for aid to families with depen-

dent children because of the collection or increased collection of maintenance or support, if the child, relative or spouse received aid to families with dependent children in 3 or more of the 6 months immediately preceding the month in which that ineligibility begins.

(co) 1. Except as provided under subd. 2., medical assistance shall be provided to a family for 12 consecutive calendar months following the month in which the family becomes ineligible for aid to families with dependent children because of increased income from employment, because the family no longer receives the earned income disregard under s. 49.19 (5) (a) 4. or 4m. or (am) due to the expiration of the time limit during which the disregards are applied or because of the application of the monthly employment time eligibility limitation under 45 CFR 233.100 (a) (1) (i).

2. If a waiver under subd. 3. is granted, the department may select individuals to receive medical assistance benefits as provided under par. (c), rather than under subd. 1., as a control group for part or all of the period during which the waiver is in effect.

3. The department shall request a waiver from the secretary of the federal department of health and human services to permit the extension of medical assistance benefits under subds. 1. and 2. Subdivision 1. does not apply unless a federal waiver is in effect. If a waiver is received, the department shall implement subds. 1. and 2. no later than the first day of the 6th month beginning after the waiver is approved.

(d) For the purposes of this section:

1. Children who are placed in licensed foster homes or licensed treatment foster homes by the department and who would be eligible for payment of aid to families with dependent children in foster homes or treatment foster homes except that their placement is not made by a county department under s. 46.215, 46.22 or 46.23 will be considered as recipients of aid to families with dependent children.

2. Any accommodated person or any patient in a public medical institution shall be considered a recipient for purposes of this section if such person or patient would have inadequate means to meet his or her need for care and services if living in his or her usual living arrangement.

3. Any child adopted under s. 48.48 (12) shall be considered a recipient for any medical condition which exists at the time of the adoption or develops subsequent to the adoption.

4. A child who meets the conditions under 42 USC 1396a (e) (3) shall be considered a recipient of benefits under s. 49.77 or federal Title XVI.

(e) If an application under s. 49.47 (3) shows that the individual meets the income limits under s. 49.19 or meets the income and resource requirements under federal Title XVI or s. 49.77, or that the individual is an essential person, an accommodated person, or a patient in a public medical institution, the individual shall be granted the benefits enumerated under sub. (2) whether or not the individual requests or receives a grant of any of such aids.

(j) An individual determined to be eligible for benefits under par. (a) 9. remains eligible for benefits under par. (a) 9. for the balance of the pregnancy and to the last day of the month in which the 60th day after the last day of the pregnancy falls without regard to any change in the individual's family income.

(k) 1. If a child eligible for benefits under par. (a) 10. is receiving inpatient services covered under sub. (2) on the day before the birthday on which the child attains the age of 6 and, but for attaining that age, the child would remain eligible for benefits under par. (a) 10., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.

2. If a child eligible for benefits under par. (a) 11. is receiving inpatient services covered under sub. (2) on the day before the birthday on which the child attains the age of 19 and, but for attaining that age, the child would remain eligible for benefits under par. (a) 11., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.



(L) For the purposes of par. (a) 9. to 12., “income” includes income that would be used in determining eligibility for aid to families with dependent children under s. 49.19, except to the extent that that determination is inconsistent with 42 USC 1396a (a) 17., and excludes income that would be excluded in determining eligibility for aid to families with dependent children under s. 49.19. For the purposes of par. (am), “income” shall be determined in accordance with the approved state plan for services under 42 USC 1396.

(m) 1. Except as provided in subd. 2., any individual who is otherwise eligible under this subsection and who is eligible for enrollment in a group health plan shall, as a condition of eligibility for medical assistance and if the department determines it is cost-effective to do so, apply for enrollment in the group health plan, except that, for a minor, the parent of the minor shall apply on the minor’s behalf.

2. If a parent of a minor fails to enroll the minor in a group health plan in accordance with subd. 1., the failure does not affect the minor’s eligibility under this subsection.

**(1m) PILOT PROJECT FOR WORKING RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME OR SOCIAL SECURITY DISABILITY INCOME.** The department shall request that the secretary of the federal department of health and human services and the commissioner of the federal social security administration waive the income and asset requirements for recipients of benefits under federal Title II or XVI to allow the department to conduct a pilot project to allow those recipients to work without losing eligibility for benefits under federal Title II or XVI or for medical assistance or medicare, as defined in s. 49.45 (3) (L) 1. b. If the request is approved, the department may implement the program and may require participants in the program to pay, on a sliding scale, a copayment for the cost of the program.

**(1p) DEMONSTRATION PROJECT FOR PERSONS WITH HIV.** The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to provide under this section coverage of services specified under sub. (2) for persons who have HIV infection, as defined in s. 252.01 (2). If a waiver is granted and in effect, the department shall provide coverage for the services specified under sub. (2) for persons who qualify under the terms of the waiver.

**(2) BENEFITS.** (a) Except as provided in par. (be), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following federally mandated benefits:

1. Physicians’ services, excluding services provided under par. (b) 6. f.
2. Early and periodic screening and diagnosis, including case management services, of persons under 21 years of age and all medical treatment and dentists’ services found necessary by this screening and diagnosis.
3. Rural health clinic services.
4. The following medical services if prescribed by a physician:
  - a. Inpatient hospital services other than services in an institution for mental diseases, including psychiatric and alcohol or other drug abuse treatment services.
  - b. Services specified in this paragraph, provided by any hospital on an outpatient basis.
  - c. Skilled nursing home services other than in an institution for mental diseases, except as limited under s. 49.45 (6c) and (30m) (b) and (c).
  - d. Home health services, subject to the limitation under s. 49.45 (8), or, if a home health agency is unavailable, nursing services.
  - e. Laboratory and X-ray services.
  - f. Services and supplies for family planning, as defined in s. 253.07 (1) (a).

4m. Nurse–midwifery services.

6. Premiums, deductibles and coinsurance and other cost-sharing obligations for items and services otherwise paid under this subsection that are required for enrollment in a group health plan, as specified in sub. (1) (m), except that, if enrollment in the group health plan requires enrollment of family members who are not eligible under this subsection, the department shall pay, if it is cost-effective, for an ineligible family member only the premium that is required for enrollment in the group health plan.

(b) Except as provided in par. (be), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following services:

1. Dentists’ services, limited to basic services within each of the following categories:
  - a. Diagnostic services.
  - b. Preventive services.
  - c. Restorative services.
  - d. Endodontic services.
  - e. Periodontic services.
  - f. Oral and maxillofacial surgery services.
  - g. Emergency treatment of dental pain.
  - hm. Removable prosthodontic services.
  - im. Fixed prosthodontic services.
2. Optometrists’ or opticians’ services.
3. Transportation by emergency medical vehicle to obtain emergency medical care, transportation by specialized medical vehicle to obtain medical care including the unloaded travel of the specialized medical vehicle necessary to provide that transportation or, if authorized in advance by the county department under s. 46.215 or 46.22, transportation by common carrier or private motor vehicle to obtain medical care.
  4. Chiropractors’ services.
  5. Eyeglasses.
  6. The following services if prescribed by a physician:
    - a. Intermediate care facility services other than in an institution for mental diseases, except as limited under s. 49.45 (30m) (b) and (c).
    - b. Physical and occupational therapy.
    - c. Speech, hearing and language disorder services.
    - d. Medical supplies and equipment.
    - e. Inpatient hospital, skilled nursing facility and intermediate care facility services for patients of any institution for mental diseases who are under 21 years of age, are under 22 years of age and who were receiving these services immediately prior to reaching age 21, or are 65 years of age or older.
    - f. Medical day treatment services, mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist.
      - fm. Subject to the limitations under s. 49.45 (45), mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist, to an individual who is 21 years of age or older in the individual’s home or in the community.
      - g. Nursing services, including services performed by a nurse practitioner, as defined in rules that the department shall promulgate.
      - h. Legend drugs, as listed in the Wisconsin medical assistance drug index.
        - i. Over-the-counter drugs listed by the department in the Wisconsin medical assistance drug index.
        - j. Personal care services, subject to the limitation under s. 49.45 (42).
        - k. Alcohol and other drug abuse day treatment services.
      - L. Mental health and psychosocial rehabilitative services, including case management services, provided by the staff of a community support program certified under s. 49.45 (2) (a) 11.

Lm. Subject to the limitations under s. 49.45 (30e), psychosocial services, including case management services, provided by the staff of a community-based psychosocial service program.

m. Respiratory care services for ventilator-dependent individuals.

8. Home or community-based services, if provided under s. 46.27 (11), 46.275, 46.277, 46.278, or 46.2785, under the family care benefit if a waiver is in effect under s. 46.281 (1) (c), or under a waiver requested under 2001 Wisconsin Act 16, section 9123 (16rs), or 2003 Wisconsin Act 33, section 9124 (8c).

9. Case management services, as specified under s. 49.45 (24) or (25).

10. Hospice care as defined in 42 USC 1396d (o) (1).

11. Podiatrists' services.

12. Care coordination for women with high-risk pregnancies.

12m. Prenatal, postpartum and young child care coordination services under s. 49.45 (44).

13. Care coordination and follow-up of persons having lead poisoning or lead exposure, as defined in s. 254.11 (9), including lead inspections.

14. School medical services under s. 49.45 (39).

15. Mental health crisis intervention services under s. 49.45 (41).

16. Case management services for recipients with high-cost chronic health conditions or high-cost catastrophic health conditions, if the department operates a program under s. 49.45 (43).

(be) Benefits for an individual eligible under sub. (1) (a) 9. are limited to those services under par. (a) or (b) that are related to pregnancy, including postpartum services and family planning services, as defined in s. 253.07 (1) (b), or related to other conditions which may complicate pregnancy.

(bm) Benefits for an individual who is eligible for medical assistance only under sub. (1) (a) 15. are limited to those services related to tuberculosis that are described in 42 USC 1396a (z) (2).

(c) 1. In this paragraph and par. (cm):

a. "Entitled to coverage under part A of medicare" means eligible for and enrolled in part A of medicare under 42 USC 1395c to 1395f.

b. "Entitled to coverage under part B of medicare" means eligible for and enrolled in part B of medicare under 42 USC 1395j to 1395L.

2. For an individual who is entitled to coverage under part A of medicare, entitled to coverage under part B of medicare, meets the eligibility criteria under sub. (1) and meets the limitation on income under subd. 6., medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395zz which are not paid under 42 USC 1395 to 1395zz, including those medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums payable under 42 USC 1395v; the monthly premiums, if applicable, under 42 USC 1395i-2 (d); and the late enrollment penalty, if applicable, for premiums under part A of medicare. Payment of coinsurance for a service under part B of medicare under 42 USC 1395j to 1395w, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

3. For an individual who is only entitled to coverage under part A of medicare, meets the eligibility criteria under sub. (1) and meets the limitation on income under subd. 6., medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395i which are not paid under 42 USC 1395 to 1395i, including those medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums, if applicable, under 42 USC 1395i-2 (d); and the late enrollment penalty, if applicable, for premiums under part A of medicare.

4. For an individual who is entitled to coverage under part A of medicare, entitled to coverage under part B of medicare and meets the eligibility criteria for medical assistance under sub. (1), but does not meet the limitation on income under subd. 6., medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395zz which are not paid under 42 USC 1395 to 1395zz, including those medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under part B of medicare under 42 USC 1395j to 1395w, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

5. For an individual who is only entitled to coverage under part A of medicare and meets the eligibility criteria for medical assistance under sub. (1), but does not meet the limitation on income under subd. 6., medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395i which are not paid under 42 USC 1395 to 1395i, including those medicare services that are not included in the approved state plan for services under 42 USC 1396.

5m. For an individual who is only entitled to coverage under part B of medicare and meets the eligibility criteria under sub. (1), but does not meet the limitation on income under subd. 6., medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395j to 1395w, including those medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under part B of medicare, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

6. The income limitation under this paragraph is income that is equal to or less than 100% of the poverty line, as established under 42 USC 9902 (2).

(cm) 1. Beginning on January 1, 1993, for an individual who is entitled to coverage under part A of medicare, is entitled to coverage under part B of medicare, meets the eligibility criteria under sub. (1) and meets the limitation on income under subd. 2., medical assistance shall pay the monthly premiums under 42 USC 1395r.

2. Benefits under subd. 1. are available for an individual whose income is greater than 100% of the poverty line but less than 120% of the poverty line.

(d) Benefits authorized under this subsection may not include payment for that part of any service payable through 3rd-party liability or any federal, state, county, municipal or private benefit system to which the beneficiary is entitled. "Benefit system" does not include any public assistance program such as, but not limited to, Hill-Burton benefits under 42 USC 291c (e), in effect on April 30, 1980, or relief funded by a relief block grant.

(dm) Benefits under this section may not include payment for services to individuals aged 21 to 64 who are residents of an institution for mental diseases and who are otherwise eligible for medical assistance, except for individuals under 22 years of age who were receiving these services immediately prior to reaching age 21 and continuously thereafter and except for services to individuals who are on convalescent leave or are conditionally released from the institution for mental diseases. For purposes of this paragraph, the department shall define "convalescent leave" and "conditional release" by rule.

(f) Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.

**History:** 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122, 173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277.

446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 253.

**Cross Reference:** See also chs. [HFS 102](#), [103](#), and [107](#), Wis. adm. code.

A categorically needy person applying for assistance under this section was not required to comply with divestment requirements. *Sinclair v. DHSS*, 77 Wis. 2d 322, 253 N.W.2d 245 (1977).

Sub. (1) (b) and s. 49.47 (6) (d) limit retroactive medical assistance payments to services received not more than 3 months prior to the date the application was submitted. *St. Paul Ramsey Medical Center v. DHSS*, 186 Wis. 2d 37, 519 N.W.2d 706 (Ct. App. 1994).

States need not fund nontherapeutic abortions. *Beal v. Doe*, 432 U.S. 438.

#### 49.465 Presumptive medical assistance eligibility.

(1) In this section, “qualified provider” means a provider which satisfies the requirements under [42 USC 1396r–1](#) (b) (2), as determined by the department.

(2) A pregnant woman is eligible for medical assistance benefits, as provided under sub. (3), during the period beginning on the day on which a qualified provider determines, on the basis of preliminary information, that the woman’s family income does not exceed the highest level for eligibility for benefits under s. [49.46](#) (1) or [49.47](#) (4) (am) or (c) 1. and ending as follows:

(a) If the woman applies for benefits under s. [49.46](#) or [49.47](#) within the time required under sub. (4), the day on which the department or the county department under s. [46.215](#), [46.22](#) or [46.23](#) determines whether the woman is eligible for benefits under s. [49.46](#) or [49.47](#).

(c) If the woman does not apply for benefits under s. [49.46](#) or [49.47](#) within the time required under sub. (4), the last day of the month following the month in which the provider makes the determination under this subsection.

(3) The department shall audit and pay allowable charges to a provider certified under s. [49.45](#) (2) (a) 11. for medical assistance on behalf of a recipient under this section only for ambulatory prenatal care covered under s. [49.46](#) (2).

(4) A woman who is determined to be eligible under this section shall apply for benefits under s. [49.46](#) or [49.47](#) on or before the last day of the month following the month in which the qualified provider makes that determination.

(5) A qualified provider which determines that a woman is eligible under this section shall do all of the following:

(a) Notify the department of that determination within 5 working days after the day the determination is made.

(b) Notify the woman of the requirement under sub. (4).

(6) The department shall provide qualified providers with application forms for medical assistance under ss. [49.46](#) and [49.47](#) and information on how to assist women in completing the forms.

**History:** 1987 a. 27, 307, 413; 1989 a. 9; 1989 a. 31 ss. 1460p, 2909g, 2909i; 1991 a. 269; 1995 a. 289; 1997 a. 27.

**49.468 Expanded medicare buy-in.** (1) (a) In this subsection and sub. (1m):

1. “Disabled” means blind, as defined under [42 USC 1382c](#) (a) (2) and disabled, as defined under [42 USC 1382c](#) (a) (3).

2. “Elderly” means 65 years of age or older.

3. “Entitled to coverage under part A of medicare” means eligible for and enrolled in part A of medicare under [42 USC 1395c](#) to [1395f](#).

4. “Entitled to coverage under part B of medicare” means eligible for and enrolled in part B of medicare under [42 USC 1395j](#) to [1395L](#).

(b) For an elderly or disabled individual who is entitled to coverage under part A of medicare, entitled to coverage under part B of medicare and who does not meet the eligibility criteria for medical assistance under s. [49.46](#) (1), [49.465](#) or [49.47](#) (4) but meets the limitations on income and resources under par. (d), medical assistance shall pay the deductible and coinsurance portions of medicare services under [42 USC 1395](#) to [1395zz](#) which are not paid under [42 USC 1395](#) to [1395zz](#), including those medicare services that are not included in the approved state plan for services under [42 USC 1396](#); the monthly premiums payable under [42 USC 1395v](#); the monthly premiums, if applicable, under [42 USC](#)

[1395i–2](#) (d); and the late enrollment penalty, if applicable, for premiums under part A of medicare. Payment of coinsurance for a service under part B of medicare under [42 USC 1395j](#) to [1395w](#), other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

(c) For an elderly or disabled individual who is only entitled to coverage under part A of medicare and who does not meet the eligibility criteria for medical assistance under s. [49.46](#) (1), [49.465](#) or [49.47](#) (4) but meets the limitations on income and resources under par. (d), medical assistance shall pay the deductible and coinsurance portions of medicare services under [42 USC 1395](#) to [1395i](#) which are not paid under [42 USC 1395](#) to [1395i](#), including those medicare services that are not included in the approved state plan for services under [42 USC 1396](#); the monthly premiums, if applicable, under [42 USC 1395i–2](#) (d); and the late enrollment penalty for premiums under part A of medicare, if applicable.

(d) Benefits under par. (b) or (c) are available for an individual who has resources that are equal to or less than 200% of the allowable resources as determined under [42 USC 1381](#) to [1385](#) and income that is equal to or less than 100% of the poverty line.

(e) In determining under this subsection the income of an individual who is entitled to a monthly social security benefit under [42 USC 401](#) to [433](#), the department shall exclude, from December until the month after the month in which the annual revision of the poverty line is published, the amount of the social security benefit attributable to a cost-of-living increase under [42 USC 415](#) (i).

(1m) (a) Beginning on January 1, 1993, for an elderly or disabled individual who is entitled to coverage under part A of medicare and is entitled to coverage under part B of medicare, does not meet the eligibility criteria for medical assistance under s. [49.46](#) (1), [49.465](#) or [49.47](#) (4) but meets the limitations on income and resources under par. (b), medical assistance shall pay the monthly premiums under [42 USC 1395r](#).

(b) Benefits under par. (a) are available for an individual who has resources that are equal to or less than 200% of the allowable resources determined under [42 USC 1381](#) to [1385](#) and income that is greater than 100% of the poverty line but less than 120% of the poverty line.

(2) (a) Beginning on January 1, 1991, for a disabled working individual who is entitled under P.L. 101–239, section 6012 (a), to coverage under part A of medicare and who does not meet the eligibility criteria for medical assistance under s. [49.46](#) (1), [49.465](#) or [49.47](#) (4) but meets the limitations on income and resources under par. (b), medical assistance shall pay the monthly premiums for the coverage under part A of medicare, including late enrollment fees, if applicable.

(b) Benefits under par. (a) are available for an individual who has resources that are equal to or less than 200% of the allowable resources under [42 USC 1381](#) to [1385](#) and income that is equal to or less than 200% of the poverty line.

**History:** 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16; 2001 a. 16.

**49.47 Medical assistance; medically indigent.** (1) PURPOSE. Medical assistance as set forth herein shall be provided to persons over 65, if eligible under this section, all disabled children under 18, if eligible under this section, and persons who are blind or disabled, if eligible under this section.

(2) DEFINITIONS. As used in this section, unless the context indicates otherwise:

(a) “Beneficiary” means a person eligible for, and a recipient of, medical assistance under this section.

(b) “Illness” means a bodily disorder, bodily injury, disease or mental disease. All illnesses existing simultaneously which are due to the same or related causes shall be considered “one illness.” Successive periods of illness less than 6 months apart, which are due to the same or related causes, shall also be considered “one illness.”

(3) APPLICATION. (a) At any time any resident of this state who believes himself or herself medically indigent and qualified for

aid under this section may make application, on forms prescribed by the department. If eligibility is questionable by reason of the information contained on the application or is incomplete, further investigation shall be made to determine eligibility.

(b) The agency shall promptly review the application and shall issue a certificate to the individual showing eligibility when eligibility has been established.

(c) The department shall simplify applications for benefits for pregnant women and children under sub. (4) and shall make the simplified applications available in the offices of health care providers.

**(4) ELIGIBILITY.** (a) Any individual who meets the limitations on income and resources under pars. (b) and (c) and who complies with par. (cm) shall be eligible for medical assistance under this section if such individual is:

1. Under 21 years of age and resides in an intermediate care facility, skilled nursing facility, or inpatient psychiatric hospital.

3. 65 years of age or older.

4. Blind or totally and permanently disabled as defined under federal Title XVI.

(ag) Any individual whose income does not exceed the limits under par. (c) and who complies with par. (cm) is eligible for medical assistance under this section if the individual is one of the following:

1. Under the age of 18.

2. Pregnant and the woman's pregnancy is medically verified. Eligibility continues to the last day of the month in which the 60th day after the last day of the pregnancy falls.

(am) An individual who does not meet the limitation on income in par. (c) is eligible for medical assistance under this section if the individual is one of the following:

1. A pregnant woman whose family income does not exceed 155% of the poverty line for a family the size of the woman's family, except that if a waiver under par. (j) or a change in the approved state plan under s. 49.46 (1) (am) 2. is in effect, the income limit is 185% of the poverty line for a family the size of the woman's family in each state fiscal year after the 1994–95 state fiscal year.

2. A child who is under 6 years of age and whose family income does not exceed 155% of the poverty line for a family the size of the child's family, except that if a waiver under par. (j) or a change in the approved state plan under s. 49.46 (1) (am) 2. is in effect, the income limit is 185% of the poverty line for a family the size of the child's family in each state fiscal year after the 1994–95 state fiscal year.

3. A child who is under one year of age, whose mother was determined to be eligible under subd. 1. and who lives with his or her mother.

(as) A person is eligible for benefits under this section if all of the following apply:

1. The person would meet the financial and other eligibility requirements for home or community-based services under s. 46.27 (11), 46.277, or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1) (c) but for the fact that the person engages in substantial gainful activity under 42 USC 1382c (a) (3).

2. A waiver under s. 49.45 (38) is in effect or federal law authorizes federal financial participation for medical assistance coverage of the person.

3. Funding is available for the person under s. 46.27 (11), 46.277, or 46.2785 or under the family care benefit if a waiver is in effect under s. 46.281 (1) (c).

(av) 1. In this paragraph, "migrant worker" means any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or hor-

ticultural commodity in its unmanufactured state. "Migrant worker" does not include any of the following:

a. A person who is employed only by a state resident if the resident or the resident's spouse is related to the person as the child, parent, grandchild, grandparent, brother, sister, aunt, uncle, niece, nephew, or the spouse of any such relative.

b. A student who is enrolled or, during the past 6 months has been enrolled, in any school, college or university unless the student is a member of a family or household which contains a migrant worker.

c. Any other person qualifying for an exemption under rules promulgated by the department.

2. The department shall request a waiver from the secretary of the federal department of health and human services to allow the application of subd. 3. The waiver shall also seek a waiver from those federal quality control standards under the medical assistance program that the department determines to be necessary in order to make the application of subd. 3. feasible. Subdivision 3. applies only while the waiver under this subdivision is in effect.

3. In determining the eligibility for a migrant worker and his or her dependents for medical assistance under this section, the department shall do all of the following:

a. Grant the migrant worker and his or her dependents eligibility for medical assistance in this state, if the migrant worker and his or her dependents have a valid medical assistance identification card issued in another state and the migrant worker completes a Wisconsin medical assistance application provided by the department. Eligibility under this subd. 3. a. continues for the period specified on the identification card issued in the other state. The department shall notify the other state that the migrant worker and his or her dependents are eligible for medical assistance in Wisconsin.

b. Determine medical assistance eligibility using an income-averaging method described in the waiver under subd. 2., if the migrant worker and his or her dependents do not meet the income limitations under par. (c) using prospective budgeting.

(b) Eligibility exists if the applicant's property does not exceed the following:

1. A home and the land used and operated in connection therewith or in lieu thereof a mobile home if the home or mobile home is used as the person's or his or her family's place of abode.

2. Household and personal possessions.

2m. One or more motor vehicles as specified in this subdivision.

a. For persons who are eligible under par. (a) 1., one vehicle is exempt from consideration as an asset. A 2nd vehicle is exempt from consideration as an asset only if the department determines that it is necessary for the purpose of employment or to obtain medical care. The equity value of any nonexempt vehicles owned by the applicant is an asset for the purposes of determining eligibility for medical assistance under this section.

b. For persons who are eligible under par. (a) 3. or 4., motor vehicles are exempt from consideration as an asset to the same extent as provided under 42 USC 1381 to 1385.

2r. For a person who is eligible under par. (a) 3. or 4., the value of any burial space or agreement representing the purchase of a burial space held for the purpose of providing a place for the burial of the person or any member of his or her immediate family.

2w. For a person who is eligible under par. (a) 3. or 4., life insurance with cash surrender values if the total face value of all life insurance policies is not more than \$1,500.

3. For a person who is eligible under par. (a) 3. or 4., funds set aside to meet the burial and related expenses of the person and his or her spouse in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life insurance excluded under subd. 2w. and the amount in any irrevocable burial trust under s. 445.125 (1) (a).

3g. Liquid assets for a single person limited to:

- a. In 1985, \$1,600.
- b. In 1986, \$1,700.
- c. In 1987, \$1,800.
- d. In 1988, \$1,900.
- e. After December 31, 1988, \$2,000.

3m. Liquid assets for a family of 2, limited to:

- a. In 1985, \$2,400.
- b. In 1986, \$2,550.
- c. In 1987, \$2,700.
- d. In 1988, \$2,850.
- e. In 1989, \$3,000.

3r. Liquid assets limited to \$300 for each legal dependent in addition to a family of 2.

4. Additional tangible personal property of reasonable value, considering the number of members in the family group, used in the production of income.

(c) 1. Except as provided in par. (am) and as limited by subd. 3., eligibility exists if income does not exceed 133 1/3% of the maximum aid to families with dependent children payment under s. 49.19 (11) for the applicant's family size or the combined benefit amount available under supplemental security income under 42 USC 1381 to 1383c and state supplemental aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled under 42 USC 1381 to 1385. "Income" does not include earned or unearned income which would be excluded in determining eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled individual under 42 USC 1381 to 1385.

2. Whenever an applicant has excess income under subd. 1. or par. (am), no certification may be issued until the excess income above the applicable limits has been obligated or expended for medical care or for any other type of remedial care recognized under state law or for personal health insurance premiums or both.

3. Except as provided in par. (am), no person is eligible for medical assistance under this section if the person's income exceeds the maximum income levels that the U.S. department of health and human services sets for federal financial participation under 42 USC 1396b (f).

(cm) 1. Except as provided in subd. 2., any individual who is otherwise eligible under this subsection and who is eligible for enrollment in a group health plan shall, as a condition of eligibility for medical assistance and if the department determines it is cost-effective to do so, apply for enrollment in the group health plan, except that, for a minor, the parent of the minor shall apply on the minor's behalf.

2. If a parent of a minor fails to enroll the minor in a group health plan in accordance with subd. 1., the failure does not affect the minor's eligibility under this subsection.

3. An individual who is otherwise eligible under this subsection and who has set aside funds in an irrevocable burial trust under s. 445.125 (1) (a) 2. shall, as a condition of eligibility for medical assistance, specify the state as a secondary beneficiary of the trust with respect to all funds in the trust that exceed the burial costs but do not exceed the amount of medical assistance paid on behalf of the individual.

(d) An individual is eligible for medical assistance under this section for 3 months prior to the month of application if the individual met the eligibility criteria under this section during those months.

(e) Temporary absence of a resident from the state shall not be grounds for denying the certificate or for the cancellation of an existing certificate.

(f) An individual determined to be eligible for benefits under par. (am) 1. remains eligible for benefits under par. (am) 1. for the balance of the pregnancy and to the last day of the first month which ends at least 60 days after the last day of the pregnancy without regard to any change in the individual's family income.

(g) If a child eligible for benefits under par. (am) 2. is receiving inpatient services covered under sub. (6) on the day before the birthday on which the child attains the age of 6 and, but for attaining that age, the child would remain eligible for benefits under par. (am) 2., the child remains eligible for benefits until the end of the stay for which the inpatient services are furnished.

(h) For the purposes of par. (am), "income" includes income that would be used in determining eligibility for aid to families with dependent children under s. 49.19 and excludes income that would be excluded in determining eligibility for aid to families with dependent children under s. 49.19.

(i) 1. The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of subd. 2. The waiver shall request approval to implement the waiver on a statewide basis, unless the department of health and family services determines that statewide implementation of the waiver would present an obstacle to the approval of the waiver by the secretary of the federal department of health and human services, in which case the waiver shall request approval to implement the waiver in 48 pilot counties to be selected by the department of health and family services. Within 30 days after August 12, 1993, the department of regulation and licensing shall notify funeral directors licensed under ch. 445, cemetery associations, as defined in s. 157.061 (1r), and cemetery authorities, as defined in s. 157.061 (2), of the terms of the waiver required to be requested under this subdivision. If the waiver is approved by the secretary of the federal department of health and human services and if the waiver remains in effect, subd. 2. shall apply.

2. Notwithstanding par. (b) 2r. and 3., a person who is described in par. (a) 3. or 4. is not eligible for benefits under this section if any of the following criteria is met:

a. For the person or his or her spouse, the sum of the following, less the cash value of any life insurance excluded under par. (b) 2w. that was obtained after July 1, 1993, exceeds \$8,000: the value of any burial space or agreement described in par. (b) 2r. that was acquired after July 1, 1993; the amount in any irrevocable burial trust under s. 445.125 (1) (a) that was acquired after July 1, 1993; and any funds set aside after July 1, 1993, to meet the burial and related expenses under par. (b) 3.

b. The value of any burial space or agreement described in par. (b) 2r. that is held for any other member of the person's immediate family and that was acquired after July 1, 1993, exceeds \$8,000.

c. For the person or his or her spouse, the value of amounts set aside under par. (b) 3. for cemetery property and fees to open and close grave sites, including mausoleum spaces, exceeds \$1,000.

(j) If the change in the approved state plan under s. 49.46 (1) (am) 2. is denied, the department shall request a waiver from the secretary of the federal department of health and human services to allow the use of federal matching funds to provide medical assistance coverage under par. (am) 1. and 2. to individuals whose family incomes do not exceed 185% of the poverty line in each state fiscal year after the 1994–95 state fiscal year.

(5) INVESTIGATION BY DEPARTMENT. The department may make additional investigation of eligibility:

(a) When there is reasonable ground for belief that an applicant may not be eligible or that the beneficiary may have received benefits to which the beneficiary is not entitled; or

(b) Upon the request of the secretary of the U.S. department of health and human services.

**(6) BENEFITS.** (a) The department shall audit and pay charges to certified providers for medical assistance on behalf of the following:

1. Except as provided in subds. 6. to 7., all beneficiaries, for all services under s. 49.46 (2) (a) and (b).

6. a. In this subdivision, “entitled to coverage under part A of medicare” means eligible for and enrolled in part A of medicare under 42 USC 1395c to 1395f.

ag. In this subdivision, “entitled to coverage under part B of medicare” means eligible for and enrolled in part B of medicare under 42 USC 1395j to 1395L.

ar. In this subdivision, “income limitation” means income that is equal to or less than 100% of the poverty line, as established under 42 USC 9902 (2).

b. An individual who is entitled to coverage under part A of medicare, entitled to coverage under part B of medicare, meets the eligibility criteria under sub. (4) (a) and meets the income limitation, the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395zz which are not paid under 42 USC 1395 to 1395zz, including those medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums payable under 42 USC 1395v; the monthly premiums, if applicable, under 42 USC 1395i–2 (d); and the late enrollment penalty, if applicable, for premiums under part A of medicare. Payment of coinsurance for a service under part B of medicare under 42 USC 1395j to 1395w, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

c. An individual who is only entitled to coverage under part A of medicare, meets the eligibility criteria under sub. (4) (a) and meets the income limitation, the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395i which are not paid under 42 USC 1395 to 1395i, including those medicare services that are not included in the approved state plan for services under 42 USC 1396; the monthly premiums, if applicable, under 42 USC 1395i–2 (d); and the late enrollment penalty, if applicable, for premiums under part A of medicare.

d. An individual who is entitled to coverage under part A of medicare, entitled to coverage under part B of medicare and meets the eligibility criteria for medical assistance under sub. (4) (a) but does not meet the income limitation, the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395zz which are not paid under 42 USC 1395 to 1395zz, including those medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under part B of medicare under 42 USC 1395j to 1395w, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

e. An individual who is only entitled to coverage under part A of medicare and meets the eligibility criteria for medical assistance under sub. (4) (a), but does not meet the income limitation, the deductible and coinsurance portions of medicare services under 42 USC 1395 to 1395i, including those services that are not included in the approved state plan for services under 42 USC 1396.

f. For an individual who is only entitled to coverage under part B of medicare and meets the eligibility criteria under sub. (4), but does not meet the income limitation, medical assistance shall include payment of the deductible and coinsurance portions of medicare services under 42 USC 1395j to 1395w, including those medicare services that are not included in the approved state plan for services under 42 USC 1396. Payment of coinsurance for a service under part B of medicare, other than payment of coinsurance for outpatient hospital services, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

6m. An individual who is entitled to coverage under part A of medicare, as defined in subd. 6. a. is entitled to coverage under part B of medicare, as defined in subd. 6. ag. and meets the eligibility criteria under sub. (4) (a) and whose income is greater than 100% of the poverty line but less than 120% of the poverty line for the monthly premiums under 42 USC 1395r.

7. Beneficiaries eligible under sub. (4) (ag) 2. or (am) 1., for services under s. 49.46 (2) (a) and (b) that are related to pregnancy, including postpartum services and family planning services, as defined in s. 253.07 (1) (b), or related to other conditions which may complicate pregnancy.

(b) In no event may payments be made for medical assistance rendered during a period when the beneficiary would not have been eligible for benefits under this section.

(c) Benefits shall not include any payment with respect to:

1. Care or services in any private or public institution, unless the institution has been approved by a standard-setting authority responsible by law for establishing and maintaining standards for such institution.

2. That part of any service otherwise authorized under this section which is payable through 3rd-party liability or any federal, state, county, municipal or private benefit systems, to which the beneficiary may otherwise be entitled.

3. Care or services for an individual who is an inmate of a public institution, except as a patient in a medical institution or a resident in an intermediate care facility.

4. Services to individuals aged 21 to 64 who are residents of an institution for mental diseases and who are otherwise eligible for medical assistance, except for individuals under 22 years of age who were receiving these services immediately prior to reaching age 21 and continuously thereafter and except for services to individuals who are on convalescent leave or are conditionally released from the institution for mental diseases. For purposes of this subdivision, the department shall define “convalescent leave” and “conditional release” by rule.

(d) No payment under this subsection may include care for services rendered earlier than 3 months preceding the month of application.

**(7) REDUCTION OF BENEFITS.** If the funds appropriated become or are estimated to be insufficient to make full payment of benefits provided under this section, all charges for service so authorized shall be prorated on the basis of funds available or by limiting the benefits provided.

**(8) ENROLLMENT FEE.** As long as an enrollment fee or premium is required for persons receiving benefits under Title XIX of the social security act, the department shall charge the minimum enrollment fee or premium required under federal law. The fee or premium so charged shall be related to the beneficiary’s income, in accordance with guidelines established by the secretary of the U.S. department of health and human services.

**(9m) ELIGIBILITY FOR LONG-TERM CARE INSURANCE BENEFICIARIES.** (a) In this subsection, “long-term care insurance” has the meaning given in s. 146.91 (1).

(b) A person who meets the eligibility requirements for medical assistance under sub. (4) except that the person has liquid assets in excess of the limits under sub. (4) (b) is eligible for medical assistance under this section if all of the following conditions are satisfied:

1. The person is 65 years of age or older.

2. The person is the beneficiary of a long-term care insurance policy that is certified to meet the standards set by the department by rule.

3. The long-term care insurance policy paid for institutional or community-based long-term care services, or both, up to the limits specified in the long-term care insurance policy.

4. The person required the services paid for under the long-term care insurance policy because of a severe limitation in activi-

ties of daily living or because of medical necessity, as defined by the department by rule.

5. The amount of liquid assets retained by the person does not exceed the amount paid under the policy or the actual charges, whichever is lower, for the following services provided to the beneficiary that are reimbursed under the medical assistance program:

- a. Skilled nursing home services under s. 49.46 (2) (a) 4. c.
- b. Home health services under s. 49.46 (2) (a) 4. d.
- c. Intermediate care facility services under s. 49.46 (2) (b) 6.
- a. d. Nursing services under s. 49.46 (2) (b) 6. g.
- e. Home or community–based services under s. 49.46 (2) (b) 8.
- f. Case management services under s. 49.46 (2) (b) 9.

(c) A person who seeks benefits under this subsection shall apply to an office of the department designated by the department.

(d) Paragraphs (b) and (c) do not apply unless the federal department of health and human services approves a waiver of federal medical assistance eligibility limits that authorizes federal financial participation in providing medical assistance benefits to persons eligible under par. (b). If a waiver is approved, the department shall implement pars. (b) and (c) no later than 3 months after the date on which it is notified of that approval.

**History:** 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253.

**Cross Reference:** See also chs. HFS 102, 103, and 107, Wis. adm. code.

Compliance of state spend–down requirements with federal requirements are discussed. Swanson v. DHSS, 105 Wis. 2d 78, 312 N.W.2d 833 (Ct. App. 1981).

Evaluating disability claims requires determining whether the claimant: 1) is working; 2) has significant impairments that significantly limit physical or mental ability to work; 3) has impairments that are federal “listed impairments;” 4) does not have “listed impairments” and can return to prior work; 5) cannot return to prior work but can perform other work. Clauer v. DHSS, 174 Wis. 2d 344, 497 N.W.2d 738 (Ct. App. 1993).

Section 49.46 (1) (b) and sub. (6) (d) limit retroactive medical assistance payments to services received not more than three months prior to the date the application was submitted. St. Paul Ramsey Medical Center v. DHSS, 186 Wis. 2d 37, 519 N.W.2d 706 (Ct. App. 1994).

A regulation that “deemed” resources of one spouse to be “available” to the other was valid. Schweiker v. Gray Panthers, 453 U.S. 34 (1981).

#### 49.472 Medical assistance purchase plan. (1) DEFINITIONS. In this section:

(a) “Earned income” has the meaning given in 42 USC 1382a (a) (1).

(am) “Family” means an individual, the individual’s spouse and any dependent child, as defined in s. 49.141 (1) (c), of the individual.

(b) “Health insurance” means surgical, medical, hospital, major medical or other health service coverage, including a self–insured health plan, but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits.

(c) “Independence account” means an account approved by the department that consists solely of savings, and dividends or other gains derived from those savings, from income earned from paid employment after the initial date on which an individual began receiving medical assistance under this section.

(d) “Medical assistance purchase plan” means medical assistance, eligibility for which is determined under this section.

(e) “Unearned income” has the meaning given in 42 USC 1382a (a) (2).

(2) WAIVERS AND AMENDMENTS. The department shall submit to the federal department of health and human services an amendment to the state medical assistance plan, and shall request any necessary waivers from the secretary of the federal department of health and human services, to permit the department to expand

medical assistance eligibility as provided in this section. If the state plan amendment and all necessary waivers are approved and in effect, the department shall implement the medical assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later.

(3) ELIGIBILITY. Except as provided in sub. (6) (a), an individual is eligible for and shall receive medical assistance under this section if all of the following conditions are met:

(a) The individual’s family’s net income is less than 250% of the poverty line for a family the size of the individual’s family. In calculating the net income, the department shall apply all of the exclusions specified under 42 USC 1382a (b).

(b) The individual’s assets do not exceed \$15,000. In determining assets, the department may not include assets that are excluded from the resource calculation under 42 USC 1382b (a) or assets accumulated in an independence account. The department may exclude, in whole or in part, the value of a vehicle used by the individual for transportation to paid employment.

(c) The individual would be eligible for supplemental security income for purposes of receiving medical assistance but for evidence of work, attainment of the substantial gainful activity level, earned income and unearned income in excess of the limit established under 42 USC 1396d (q) (2) (B) and (D).

(e) The individual is legally able to work in all employment settings without a permit under s. 103.70.

(f) The individual maintains premium payments calculated by the department in accordance with sub. (4), unless the individual is exempted from premium payments under sub. (4) (b) or (5).

(g) The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.

(h) The individual meets all other requirements established by the department by rule.

(4) PREMIUMS. (a) Except as provided in par. (b) and sub. (5), an individual who is eligible for medical assistance under sub. (3) and receives medical assistance shall pay a monthly premium to the department. The department shall establish the monthly premiums by rule in accordance with the following guidelines:

1. The premium for any individual may not exceed the sum of the following:

- a. Three and one–half percent of the individual’s earned income after the disregards specified in subd. 2m.
- b. One hundred percent of the individual’s unearned income after the deductions specified in subd. 2.

2. In determining an individual’s unearned income under subd. 1., the department shall disregard all of the following:

a. A maintenance allowance established by the department by rule. The maintenance allowance may not be less than the sum of \$20, the federal supplemental security income payment level determined under 42 USC 1382 (b) and the state supplemental payment determined under s. 49.77 (2m).

b. Medical and remedial expenses and impairment–related work expenses.

2m. If the disregards under subd. 2. exceed the unearned income against which they are applied, the department shall disregard the remainder in calculating the individual’s earned income.

3. The department may reduce the premium by 25% for an individual who is covered by private health insurance.

(b) The department may waive monthly premiums that are calculated to be below \$10 per month. The department may not assess a monthly premium for any individual whose income level, after adding the individual’s earned income and unearned income, is below 150% of the poverty line.

(5) COMMUNITY OPTIONS PARTICIPANTS. From the appropriation under s. 20.435 (7) (bd), the department may pay all or a por-

tion of the monthly premium calculated under sub. (4) (a) for an individual who is a participant in the community options program under s. 46.27 (11).

(6) **INSURED PERSONS.** (a) Notwithstanding sub. (4) (a) 3., from the appropriation account under s. 20.435 (4) (b), (gp), or (w), the department shall, on the part of an individual who is eligible for medical assistance under sub. (3), pay premiums for or purchase individual coverage offered by the individual's employer if the department determines that paying the premiums for or purchasing the coverage will not be more costly than providing medical assistance.

(b) If federal financial participation is available, from the appropriation account under s. 20.435 (4) (b), (gp), or (w), the department may pay medicare Part A and Part B premiums for individuals who are eligible for medicare and for medical assistance under sub. (3).

(7) **DEPARTMENT DUTIES.** The department shall do all of the following:

(a) Determine eligibility, or contract with a county department, as defined in 49.45 (6c) (a) 3., or with a tribal governing body to determine eligibility, of individuals for the medical assistance purchase plan in accordance with sub. (3).

(b) Ensure, to the extent practicable, continuity of care for a medical assistance recipient under this section who is engaged in paid employment, or is enrolled in a home-based or community-based waiver program under section 1915 (c) of the Social Security Act, and who becomes ineligible for medical assistance.

**History:** 1999 a. 9, 185; 2001 a. 16; 2003 a. 33.

**Cross Reference:** See also chs. HFS 103 and 107 and s. HFS 103.087, Wis. adm. code.

#### 49.473 Medical assistance; women diagnosed with breast or cervical cancer or precancerous conditions.

(1) In this section:

(a) "County department" means a county department under s. 46.215, 46.22, or 46.23.

(b) "Qualified entity" has the meaning given in 42 USC 1396r-1b (b) (2).

(2) A woman is eligible for medical assistance as provided under sub. (5) if, after applying to the department or a county department, the department or a county department determines that she meets all of the following requirements:

(a) The woman is not eligible for medical assistance under ss. 49.46 (1) and (1m), 49.465, 49.468, 49.47, and 49.472, and is not eligible for health care coverage under s. 49.665.

(b) The woman is under 65 years of age.

(c) The woman is not eligible for health care coverage that qualifies as creditable coverage in 42 USC 300gg (c), excluding the coverage specified in 42 USC 300gg (c) (1) (F).

(d) The woman has been screened for breast or cervical cancer under a breast and cervical cancer early detection program that is authorized under a grant received under 42 USC 300k.

(e) The woman requires treatment for breast or cervical cancer or for a precancerous condition of the breast or cervix.

(3) Prior to applying to the department or a county department for medical assistance, a woman is eligible for medical assistance as provided under sub. (5) beginning on the date on which a qualified entity determines, on the basis of preliminary information, that the woman meets the requirements specified in sub. (2) and ending on one of the following dates:

(a) If the woman applies to the department or a county department for medical assistance within the time limit required under sub. (4), the day on which the department or county department determines whether the woman meets the requirements under sub. (2).

(b) If the woman does not apply to the department or county department for medical assistance within the time limit required under sub. (4), the last day of the month following the month in

which the qualified entity determines that the woman is eligible for medical assistance.

(4) A woman who a qualified entity determines under sub. (3) is eligible for medical assistance shall apply to the department or county department no later than the last day of the month following the month in which the qualified entity determines that the woman is eligible for medical assistance.

(5) The department shall audit and pay, from the appropriation accounts under s. 20.435 (4) (b), (gp), and (o), allowable charges to a provider who is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who meets the requirements under sub. (2) for all benefits and services specified under s. 49.46 (2).

(6) A qualified entity that determines under sub. (3) that a woman is eligible for medical assistance as provided under sub. (5) shall do all of the following:

(a) Notify the department of the determination no later than 5 days after the date on which the determination is made.

(b) Inform the woman at the time of the determination that she is required to apply to the department or a county department for medical assistance no later than the last day of the month following the month in which the qualified entity determines that the woman is eligible for medical assistance.

(7) The department shall provide qualified entities with application forms for medical assistance and information on how to assist women in completing the form.

**History:** 2001 a. 16, 104; 2003 a. 33.

#### 49.475 Information about medical assistance beneficiaries. (1) DEFINITIONS. In this section:

(a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

(b) "Insurer" has the meaning given in s. 600.03 (27).

(2) **DISCLOSURE TO DEPARTMENT.** An insurer that issues or delivers a disability insurance policy that provides coverage to a resident of this state shall provide to the department, upon the department's request, information contained in the insurer's records regarding all of the following:

(a) Information that the department needs to identify beneficiaries of medical assistance who satisfy any of the following:

1. Are eligible for benefits under a disability insurance policy.
2. Would be eligible for benefits under a disability insurance policy if the beneficiary were enrolled as a dependent of a person insured under the disability insurance policy.

(b) Information required for submittal of claims under the insurer's disability insurance policy.

(c) The types of benefits provided by the disability insurance policy.

(3) **WRITTEN AGREEMENT.** Upon requesting an insurer to provide the information under sub. (2), the department shall enter into a written agreement with the insurer that satisfies all of the following:

(a) Identifies in detail the information to be disclosed.

(b) Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.

(c) Specifies how the insurer's reimbursable costs under sub. (5) will be determined and specifies the manner of payment.

(4) **DEADLINE FOR RESPONSE; ENFORCEMENT.** (a) An insurer shall provide the information requested under sub. (2) within 180 days after receiving the department's request if it is the first time that the department has requested the insurer to disclose information under this section.

(b) An insurer shall provide the information requested under sub. (2) within 30 days after receiving the department's request if the department has previously requested the insurer to disclose information under this section.



(c) If an insurer fails to comply with par. (a) or (b), the department may notify the commissioner of insurance, and the commissioner of insurance may initiate enforcement proceedings against the insurer under s. 601.41 (4) (a).

(5) REIMBURSEMENT OF COSTS. From the appropriations under s. 20.435 (4) (bm) and (pa), the department shall reimburse an insurer that provides information under this section for the insurer's reasonable costs incurred in providing the requested information, including its reasonable costs, if any, to develop and operate automated systems specifically for the disclosure of information under this section.

History: 1991 a. 39; 1999 a. 9.

**49.48 Denial, nonrenewal and suspension of certification of service providers based on certain delinquency in payment.** (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, as a condition of issuing or renewing a certification under s. 49.45 (2) (a) 11. as an eligible provider of services.

(1m) If an individual who applies for or to renew a certification under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certification issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

(2) The department of health and family services may not disclose any information received under sub. (1) to any person except to the department of workforce development for the purpose of making certifications required under s. 49.857.

(3) The department of health and family services shall deny an application for the issuance or renewal of a certification specified in sub. (1), shall suspend a certification specified in sub. (1) or may, under a memorandum of understanding under s. 49.857 (2), restrict a certification specified in sub. (1) if the department of workforce development certifies under s. 49.857 that the applicant for or holder of the certificate is delinquent in the payment of court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

History: 1997 a. 191; 1999 a. 9.

**49.49 Medical assistance offenses.** (1) FRAUD. (a) *Prohibited conduct.* No person, in connection with a medical assistance program, may:

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

2. Knowingly and willfully make or cause to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment.

3. Having knowledge of the occurrence of any event affecting the initial or continued right to any such benefit or payment or the initial or continued right to any such benefit or payment of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceal or fail to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully convert such benefit or payment or any part thereof to a use other than for the use and benefit of such other person.

(b) *Penalties.* Violators of this subsection may be punished as follows:

1. In the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing by that person of items or services for which medical assistance is or may be made, a person violating this subsection is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

2. In the case of such a statement, representation, concealment, failure, or conversion by any other person, a person convicted of violating this subsection may be fined not more than \$10,000 or imprisoned for not more than one year in the county jail or both.

(c) *Damages.* If any person is convicted under this subsection, the state shall have a cause of action for relief against such person in an amount 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under this section in a civil action shall be conclusive regarding the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages shall consist of the total amount of excess payments, any part of which is paid by state funds. In any such civil action the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

(2) KICKBACKS, BRIBES AND REBATES. (a) *Solicitation or receipt of remuneration.* Any person who solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a medical assistance program, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

(b) *Offer or payment of remuneration.* Whoever offers or pays any remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under a medical assistance program, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

(c) *Exceptions.* This subsection shall not apply to:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a medical assistance program.

2. Any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(3) FRAUDULENT CERTIFICATION OF FACILITIES. No person may knowingly and willfully make or cause to be made, or induce or seek to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify either upon initial certification or upon recertification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. A person who violates this subsection is

guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

**(3m) PROHIBITED PROVIDER CHARGES.** (a) No provider may knowingly impose upon a recipient charges in addition to payments received for services under ss. 49.45 to 49.47 or knowingly impose direct charges upon a recipient in lieu of obtaining payment under ss. 49.45 to 49.47 except under the following conditions:

1. Benefits or services are not provided under s. 49.46 (2) and the recipient is advised of this fact prior to receiving the service.

2. If an applicant is determined to be eligible retroactively under s. 49.46 (1) (b) and a provider bills the applicant directly for services and benefits rendered during the retroactive period, the provider shall, upon notification of the applicant's retroactive eligibility, submit claims for reimbursement under s. 49.45 for covered services or benefits rendered during the retroactive period. Upon receipt of payment, the provider shall reimburse the applicant or other person who has made prior payment to the provider. No provider may be required to reimburse the applicant or other person in excess of the amount reimbursed under s. 49.45.

3. Benefits or services for which recipient copayment, coinsurance or deductible is required under s. 49.45 (18), not to exceed maximum amounts allowable under 42 CFR 447.53 to 447.58.

(b) A person who violates this subsection is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

**(3p) OTHER PROHIBITED PROVIDER CHARGES.** No provider may knowingly violate s. 609.91 (2).

**(4) PROHIBITED FACILITY CHARGES.** (a) No person, in connection with the medical assistance program when the cost of the services provided to the patient is paid for in whole or in part by the state, may knowingly and willfully charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under a medical assistance program, any gift, money, donation or other consideration, other than a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing facility or intermediate care facility, or as a requirement for the patient's continued stay in such a facility.

(b) A person who violates this subsection is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

**(4m) PROHIBITED CONDUCT; FORFEITURES.** (a) No person, in connection with medical assistance, may:

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

2. Knowingly make or cause to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment.

3. Knowingly conceal or fail to disclose any event of which the person has knowledge that affects his or her initial or continued right to a benefit or payment or affects the initial or continued right to a benefit or payment of any other person in whose behalf he or she has applied for or is receiving a benefit or payment.

(b) A person who violates this subsection may be required to forfeit not less than \$100 nor more than \$15,000 for each statement, representation, concealment or failure.

**(5) COUNTY COLLECTION.** Any county may retain 15% of state medical assistance funds that are recovered due to the efforts of a county employee or officer or, if the county initiates action by the department of justice, due to the efforts of the department of justice under s. 49.495. This subsection applies only to recovery of medical assistance that was provided as a result of fraudulent activity by a recipient or by a provider.

**(6) RECOVERY.** In addition to other remedies available under this section, the court may award the department of justice the reasonable and necessary costs of investigation, an amount reasonably necessary to remedy the harmful effects of the violation and the reasonable and necessary expenses of prosecution, including attorney fees, from any person who violates this section. The department of justice shall deposit in the state treasury for deposit in the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

**History:** 1977 c. 418; 1979 c. 89; 1981 c. 317; 1985 a. 29 s. 3202 (23); 1985 a. 269; 1989 a. 23, 31; 1995 a. 27; 1997 a. 283; 2001 a. 109; 2003 a. 309.

The only state of mind requirement for a violation of sub. (1) (a) 1. is the intentional making or causing the making of a false statement that appears in an application; that anyone actually received a medical assistance benefit need not be proved. *State v. Williams*, 179 Wis. 2d 80, 505 N.W.2d 468 (Ct. App. 1993).

Sub. (3m) and related rules require medical assistance providers to refund only the amount paid by the medical assistance program on behalf of retroactively eligible persons. A private pay patient subsequently found retroactively eligible does not have a federally protected right to reimbursement from a medical assistance provider for the amount originally paid by the patient in excess of the medical assistance reimbursement. *Keup v. DHFS*, 2004 WI 16, 269 Wis. 2d 59, 675 N.W.2d 755, 02–0456.

Nursing home guarantor agreements may violate sub. (4) after resident becomes certified Medicaid eligible. 76 Atty. Gen. 295.

**49.493 Benefits under uninsured health plans. (1)** In this section:

(a) "Department or contract provider" means the department, the county providing the medical benefits or assistance or a health maintenance organization that has contracted with the department to provide the medical benefits or assistance.

(b) "Medical benefits or assistance" means medical benefits under s. 49.02 or 253.05 or medical assistance.

(c) "Uninsured health plan" means a partially or wholly uninsured plan, including a plan that is subject to 29 USC 1001 to 1461, providing health care benefits.

**(2)** The providing of medical benefits or assistance constitutes an assignment to the department or contract provider, to the extent of the medical benefits or assistance provided, for benefits to which the recipient would be entitled under any uninsured health plan.

**(3)** An uninsured health plan may not do any of the following:

(a) Exclude a person or a person's dependent from coverage under the uninsured health plan because the person or the dependent is eligible for medical assistance.

(b) Terminate its coverage of a person or a person's dependent because the person or the dependent is eligible for medical assistance.

(c) Provide different benefits of coverage to a person or the person's dependent because the person or the dependent is eligible for medical assistance than it provides to persons and their dependents who are not eligible for medical assistance.

(d) Impose on the department or contract provider, as assignee of a person or a person's dependent who is covered under the uninsured health plan and who is eligible for medical benefits or assistance, requirements that are different from those imposed on any other agent or assignee of a person who is covered under the uninsured health plan.

**(4)** Benefits provided by an uninsured health plan shall be primary for medical benefits or assistance.

**History:** 1991 a. 178, 214; 1993 a. 481; 1995 a. 27, 407; 1999 a. 32.

**49.495 Jurisdiction of the department of justice.** The department of justice or the district attorney may institute, manage, control and direct, in the proper county, any prosecution for violation of criminal laws affecting the medical assistance program including but not limited to laws relating to medical assistance contained in this subchapter and laws affecting the health, safety and welfare of recipients of medical assistance. For this purpose the department of justice shall have and exercise all powers conferred upon district attorneys in such cases. The department of justice or district attorney shall notify the medical exami-

ing board or the interested affiliated credentialing board of any such prosecution of a person holding a license granted by the board or affiliated credentialing board.

**History:** 1977 c. 418; 1985 a. 340; 1993 a. 107; 1995 a. 27.

**49.496 Recovery of correct medical assistance payments. (1) DEFINITIONS.** In this section:

- (a) “Disabled” has the meaning given in s. 49.468 (1) (a) 1.
- (b) “Home” means property in which a person has an ownership interest consisting of the person’s dwelling and the land used and operated in connection with the dwelling.
- (c) “Nursing home” has the meaning given in s. 50.01 (3).
- (d) “Recipient” means a person who receives or received medical assistance.

**(2) LIENS ON THE HOMES OF NURSING HOME RESIDENTS AND INPATIENTS AT HOSPITALS.** (a) Except as provided in par. (b), the department may obtain a lien on a recipient’s home if the recipient resides in a nursing home, or if the recipient resides in a hospital and is required to contribute to the cost of care, and the recipient cannot reasonably be expected to be discharged from the nursing home or hospital and return home. The lien is for the amount of medical assistance paid on behalf of the recipient that is recoverable under sub. (3) (a).

(b) The department may not obtain a lien under this subsection if any of the following persons lawfully reside in the home:

- 1. The recipient’s spouse.
- 2. The recipient’s child who is under age 21 or is disabled.
- 3. The recipient’s sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the recipient was admitted to the nursing home or hospital.

(c) Before obtaining a lien on a recipient’s home under this subsection, the department shall do all of the following:

1. Notify the recipient in writing of its determination that the recipient cannot reasonably be expected to be discharged from the nursing home or hospital, its intent to impose a lien on the recipient’s home and the recipient’s right to a hearing on whether the requirements for the imposition of a lien are satisfied.

2. Provide the recipient with a hearing if he or she requests one.

(d) The department shall obtain a lien under this subsection by recording a lien claim in the office of the register of deeds of the county in which the home is located.

(e) The department may not enforce a lien under this subsection while the recipient lives unless the recipient sells the home and does not have a living child who is under age 21 or disabled or a living spouse.

(f) The department may not enforce a lien under this subsection after the death of the recipient as long as any of the following survive the recipient:

- 1. A spouse.
- 2. A child who is under age 21 or disabled.
- 3. A child of any age who resides in the home, if that child resided in the home for at least 24 months before the recipient was admitted to the nursing home or hospital and provided care to the recipient that delayed the recipient’s admission to the nursing home or hospital.
- 4. A sibling who resides in the home, if the sibling resided in the home for at least 12 months before the recipient was admitted to the nursing home or hospital.

(g) The department may enforce a lien imposed under this subsection by foreclosure in the same manner as a mortgage on real property.

(h) The department shall file a release of a lien imposed under this subsection if the recipient is discharged from the nursing home or hospital and returns to live in the home.

**(3) RECOVERY FROM ESTATES.** (a) Except as provided in par. (b), the department shall file a claim against the estate of a recipi-

ent for all of the following unless already recovered by the department under this section:

1. The amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a hospital and was required to contribute to the cost of care.

2. The following medical assistance services paid on behalf of the recipient after the recipient attained 55 years of age:

a. Home–based or community–based services under 42 USC 1396d (a) (7) and (8) and under any waiver granted under 42 USC 1396n (c) (4) (B) or 42 USC 1396u.

b. Related hospital services, as specified by the department by rule.

c. Related prescription drug services, as specified by the department by rule.

d. Personal care services under s. 49.46 (2) (b) 6. j.

(ag) The affidavit of a person designated by the secretary to administer this subsection is evidence of the amount of the claim.

(am) The court shall reduce the amount of a claim under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the recipient’s heirs or the beneficiaries of the recipient’s will to retain the following personal property:

1. The decedent’s wearing apparel and jewelry held for personal use.

2. Household furniture, furnishings and appliances.

3. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33 (1) (a) 4.

(b) A claim under par. (a) is not allowable if the decedent has a surviving child who is under age 21 or disabled or a surviving spouse.

(c) 1. If the department’s claim is not allowable because of par. (b) and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the home subject to a lien in favor of the department for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

2. If the department’s claim is not allowable because of par. (b), the estate includes an interest in a home and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the home is assigned subject to a lien in favor of the department for the amount described in par. (a). The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgment.

(d) The department may not enforce the lien under par. (c) as long as any of the following survive the decedent:

1. A spouse.

2. A child who is under age 21 or disabled.

(e) The department may enforce a lien under par. (c) by foreclosure in the same manner as a mortgage on real property.

(f) The department may contract with or employ an attorney to probate estates to recover under this subsection the costs of care.

**(4) ADMINISTRATION.** The department may require a county department under s. 46.215, 46.22, or 46.23 or the governing body of a federally recognized American Indian tribe administering medical assistance to gather and provide the department with information needed to recover medical assistance under this section. The department shall pay to a county department or tribal governing body an amount equal to 5% of the recovery collected by the department relating to a beneficiary for whom the county department or tribal governing body made the last determination of medical assistance eligibility. A county department or tribal governing body may use funds received under this subsection only to pay costs incurred under this subsection and, if any amount

remains, to pay for improvements to functions required under s. 49.78 (2). The department may withhold payments under this subsection for failure to comply with the department's requirements under this subsection. The department shall treat payments made under this subsection as costs of administration of the Medical Assistance program.

(5) USE OF FUNDS. From the appropriation under s. 20.435 (4) (im), the department shall pay the amount of the payments under sub. (4) that is not paid from federal funds, shall pay to the federal government the amount of the funds recovered under this section equal to the amount of federal funds used to pay the benefits recovered under this section and shall spend the remainder of the funds recovered under this section for medical assistance benefits under this subchapter.

(6) APPLICABILITY. (a) The department may recover amounts under this section for medical assistance benefits paid on and after August 15, 1991.

(b) The department may file a claim under sub. (3) only with respect to a recipient who dies after September 30, 1991.

(6m) WAIVER DUE TO HARDSHIP. The department shall promulgate rules establishing standards for determining whether the application of this section would work an undue hardship in individual cases. If the department determines that the application of this section would work an undue hardship in a particular case, the department shall waive application of this section in that case.

(7) INSTALLMENT PAYMENTS. If a recovery under sub. (3) does not work an undue hardship on the heirs of the estate, and if the heirs wish to satisfy the recovery claim without selling a nonliquid asset that is subject to recovery, the department may establish a reasonable payment schedule subject to reasonable interest.

**History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2003 a. 33.

Preserving the Homestead of the Small Estate: Wisconsin's Medical Recovery Law. Gilbert. Wis. Law. July 1992.

**49.497 Recovery of incorrect Medical Assistance or Badger Care payments.** (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. The county department under s. 46.215 or 46.22 or the governing body of a federally recognized American Indian tribe administering Medical Assistance or Badger Care shall begin recovery actions on behalf of the department according to rules promulgated by the department.

(1m) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this para-

graph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

(b) If any recipient, or parent of a minor recipient, named in an order to compel payment issued under par. (a) fails to pay the department any amount due under the terms of the order and no contested case to review the order is pending and the time for filing for a contested case review has expired, the department may present a certified copy of the order to the circuit court for any county. The sworn statement of the secretary shall be evidence of the incorrect payment. The circuit court shall, without notice, render judgment in accordance with the order. A judgment rendered under this paragraph shall have the same effect and shall be entered in the judgment and lien docket and may be enforced in the same manner as if the judgment had been rendered in an action tried and determined by the circuit court.

(c) The recovery procedure under this subsection is in addition to any other recovery procedure authorized by law.

(2) A county or governing body of a federally recognized American Indian tribe may retain 15% of benefits provided under this subchapter or s. 49.665 that are recovered under this section due to the efforts of an employee or officer of the county or tribe.

(3) Cash assets of medical assistance recipients that exceed asset limitations shall be applied against the cost of medical assistance benefits provided.

(4) The department may appear for the state in any and all collection matters under this section, and may commence suit in the name of the department to recover an incorrect payment from the recipient to whom or on whose behalf it was made.

(5) The department may make an agreement with a recipient, or parent of a minor recipient, who is liable under sub. (1), providing for repayment of an incorrect payment at a specified rate or amount.

**History:** 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359; 2005 a. 25, 254.

There is no statutory authority to order a mother to repay lying-in expenses paid by medical assistance. In re Paternity of N.L.M. 166 Wis. 2d 306, 479 N.W.2d 237 (Ct. App. 1991).

**49.498 Requirements for skilled nursing facilities.**

(1) DEFINITIONS. In this section:

(a) "Active treatment for developmental disability" means a continuous program for an individual who has a developmental disability that includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services, that is directed toward the individual's acquiring behaviors necessary for him or her to function with as much self-determination and independence as possible and that is directed toward preventing or decelerating regression or loss of the individual's current optimal functional status. "Active treatment for developmental disability" does not include services to maintain generally independent individuals with developmental disability who are able to function with little supervision or in the absence of active treatment for developmental disability.

(b) "Active treatment for mental illness" means the implementation of an individualized plan of care for an individual with mental illness that is developed under and supervised by a physician licensed under ch. 448 and other qualified mental health care providers and that prescribes specific therapies and activities for the treatment of the individual while the individual experiences an acute episode of severe mental illness which necessitates supervision by trained mental health care providers.

(c) "Developmental disability" means any of the following:

1. Significantly subaverage general intellectual functioning that is concurrent with an individual's deficits in adaptive behavior and that manifested during the individual's developmental period.

2. A severe, chronic disability that meets all of the conditions for individuals with related conditions as specified in [42 CFR 435.1009](#).

(d) “Licensed health professional” has the meaning given under [42 USC 1396r](#) (b) (5) (G).

(e) “Managing employee” means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the facility.

(f) “Medicare” means coverage under part A or part B of Title XVIII of the federal social security act, [42 USC 1395](#) to [1395zz](#).

(g) “Mental illness” has the meaning given under [42 USC 1396r](#) (e) (7) (G) (i).

(h) “Nurse’s assistant” has the meaning given for “nurse aide” under [42 USC 1396r](#) (b) (5) (F).

(i) “Nursing facility” has the meaning given under [42 USC 1396r](#) (a).

(j) “Physician” has the meaning given under s. [448.01](#) (5).

(k) “Psychopharmacologic drugs” means drugs that modify psychological functions and mental states.

(L) “Registered professional nurse” means a registered nurse who is licensed under ch. [441](#) or in a party state, as defined in s. [441.50](#) (2) (j).

(m) “Resident” means an individual who resides in a nursing facility.

**(2) REQUIREMENTS RELATING TO PROVISION OF SERVICES.** (a) 1. A nursing facility shall care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

2. A nursing facility shall maintain a quality assessment and assurance committee that consists of the director of nursing services, a physician who is designated by the nursing facility and at least 3 other members of the nursing facility staff and that shall do all of the following:

a. Meet at least every 3 months to identify issues with respect to which quality assessment and assurance activities are necessary.

b. Develop and implement appropriate plans of action to correct identified quality deficiencies.

(b) A nursing facility shall provide services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written plan of care for each resident which:

1. Describes the medical, nursing and psychosocial needs of the resident and how the needs shall be met;

2. Is initially prepared, with participation to the extent practicable of the resident or the resident’s family or legal counsel, by a team which includes the resident’s attending physician and a registered professional nurse who has responsibility for the resident; and

3. Is periodically reviewed and revised by the team in subd. 2. after the conduct of an assessment under par. (c).

(c) 1. A nursing facility shall conduct a comprehensive, accurate, standardized reproducible assessment of each resident’s functional capacity that:

a. Describes the resident’s capability to perform daily life functions and significant impairments in the resident’s functional capacity.

b. Is based on a uniform minimum data set of core elements and common definitions specified as required under [42 USC 1395i–3](#) (f) (6) (A).

c. Uses an instrument which shall be specified by the department by rule.

d. Includes identification of the resident’s medical problems.

2. A registered professional nurse shall conduct or coordinate with the appropriate participation of health professionals, sign and certify the completion of an assessment under subd. 1. Each indi-

vidual who completes a portion of the assessment shall sign and certify as to the accuracy of that portion of the assessment.

3. No individual may willfully and knowingly certify under subd. 2. a material and false statement in an assessment.

4. No individual may willfully and knowingly cause another individual to certify under subd. 2. a material and false statement in an assessment.

5. If the department determines by survey of a nursing facility or otherwise that an individual has knowingly and willfully certified a false assessment under subd. 2., the department may require that individuals who are independent of the nursing facility and are approved by the department conduct and certify assessments under this paragraph.

6. A nursing facility shall:

a. Conduct an assessment under subd. 1. no later than 4 days after the admission of an individual admitted after September 30, 1990.

b. Conduct all of the assessments under subd. 1. for a resident of the nursing facility by October 1, 1991, for a resident who resides in the facility on that date; promptly after a significant change in a resident’s physical or mental condition; and, for every resident, no less often than once every 12 months.

c. Examine a resident no less frequently than once every 3 months and, as appropriate, revise the resident’s assessment under subd. 1. to assure the assessment’s continuing accuracy.

7. The assessment conducted under subd. 1. shall be used in developing, reviewing and revising a nursing facility resident’s plan of care under par. (b).

8. A nursing facility shall coordinate an assessment conducted under this paragraph with the conduct of preadmission screening under s. [49.45](#) (6c) (b) to the maximum extent practicable in order to avoid duplicative testing and effort.

(d) 1. To the extent needed to fulfill the plans of care required under par. (b), a nursing facility shall provide or arrange for the provision of all of the following, which shall meet professional standards of quality:

a. Nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

b. Medically related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

c. Pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals, to meet the needs of each resident.

d. Dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident.

e. An ongoing program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental and psychosocial well-being of each resident.

f. Routine dental services to the extent covered under the approved state medicaid plan and emergency dental services to meet the needs of each resident.

2. Services specified under subd. 1. a. to d. and f. shall be provided to a resident by qualified persons in accordance with the resident’s written plan of care under par. (b).

3. Unless waived under subd. 4., a nursing facility shall:

a. Provide 24-hour per day licensed nursing services which are sufficient to meet the nursing needs of its residents; and

b. Shall use the services of a registered professional nurse at least 8 consecutive hours per day, 7 days per week.

4. Subject to subd. 5., the department may waive the requirement under subd. 3. a. or b. if all of the following apply:

a. The nursing facility demonstrates to the satisfaction of the department that the nursing facility has been unable, despite diligent efforts including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel.

b. The department determines that a waiver of the requirement will not endanger the health or safety of nursing facility residents.

c. The department finds that a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the nursing facility for any periods in which licensed nursing services are not available.

5. A waiver under subd. 4. is subject to annual review by the department and to review by the secretary of the federal department of health and human services. The department may, in granting or reviewing a waiver, require the nursing facility to employ other qualified, licensed personnel.

(e) Except as otherwise provided in s. 146.40, all of the following apply:

1. A nursing facility shall provide, for individuals used as nurse's assistants by the facility as of July 1, 1989, for a competency evaluation program that is approved by the department under s. 146.40 (3m) and for the preparation necessary for the individual to complete the program by January 1, 1990.

2. A nursing facility may not use the individual as a nurse's assistant unless the nursing facility has inquired of the department concerning information about the individual in the registry under s. 146.40 (4g).

3. A nursing facility shall provide the regular performance review and regular in-service education that assures that individuals used as nurse's assistants are competent to perform services as nurse's assistants, including training for individuals to provide nursing and nursing-related services to nursing facility residents with cognitive impairments.

(f) A nursing facility shall do all of the following:

1. Require that the health care of every nursing facility resident be provided under the supervision of a physician.

2. Provide for the availability of a physician to furnish necessary medical care in case of emergency.

3. Maintain clinical records on all nursing facility residents which include all of the following:

a. Written plans of care, as required under par. (b).

b. Assessments, as required under par. (c).

c. Results of any preadmission screening conducted under s. 49.45 (6c) (b).

(g) A nursing facility with more than 120 beds shall employ full-time at least one social worker with at least a bachelor's degree in social work or similar professional qualifications to provide or assure the provision of social services.

**(3) RESIDENT'S RIGHTS; GENERAL RIGHTS.** (a) A nursing facility shall protect and promote the rights of each resident, including each of the following rights:

1. The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and, except with respect to a resident who is adjudicated incompetent, to participate in planning care and treatment or changes in care and treatment.

2. The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed:

a. To ensure the physical safety of the resident or other residents; and

b. Upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except in emergency circumstances until the order could reasonably be obtained.

3. The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups, except that this subdivision may not be construed to require provision of a private room.

4. The right to confidentiality of personal and clinical records.

5. The rights:

a. To reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered; and

b. To receive notice before the room or roommate of the resident in the nursing facility is changed.

6. The right to voice grievances with respect to treatment or care that is or is not furnished, without discrimination or reprisal for voicing the grievances, and the right to prompt efforts by the nursing facility to resolve grievances that the resident may have, including those with respect to the behavior of other residents.

7. The right of the resident to organize and participate in resident groups in the nursing facility and the right of the resident's family to meet in the nursing facility with the families of other residents in the nursing facility.

8. The right of the resident to participate in social, religious and community activities that do not interfere with the rights of other residents in the nursing facility.

9. The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the federal department of health and human services or the department with respect to the nursing facility and any plan of correction in effect with respect to the nursing facility.

10. Any other right specified in rules that the department shall promulgate in conformity with federal regulations.

(b) Except as provided in par. (c), a nursing facility shall do all of the following:

1. Inform each resident, orally and in writing at the time of admission to the nursing facility, of the resident's legal rights during the stay at the nursing facility, including a description of the protection of personal funds under sub. (8) and a statement that a resident may file a complaint with the department under s. 146.40 (4r) (a) concerning misappropriation of property or neglect or abuse of a resident.

2. Make available to each resident, upon reasonable request, a written statement of the rights specified in subd. 1. which is updated upon changes in nursing rights.

3. Inform each resident who is entitled to medical assistance:

a. At the time of admission to the nursing facility or, if later, at the time the resident becomes eligible for medical assistance, of the items and services that are included in nursing facility services under the approved state medicaid plan and for which the resident may not be charged, except as permitted, and of other items and services that the nursing facility offers and for which the resident may be charged and the amount of the charges for the items and services; and

b. Of changes in the items and services described in subd. 3. a. and of changes in the charges imposed for items and services described in subd. 3. a.

4. Inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the nursing facility and of related charges for the services, including any charges for services not covered under medicare or by the nursing facility's basic per diem charge.

(c) For a resident who is adjudicated incompetent in this state, the rights of a resident under this subsection devolve upon and, to the extent determined necessary by a court of competent jurisdiction, are exercised by the resident's guardian.

(d) Psychopharmacologic drugs may be administered to a resident only on the orders of a physician and only as part of a plan included in the written plan of care under par. (b) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving the pharmacologic drugs.

**(4) RESIDENT'S RIGHTS; TRANSFER AND DISCHARGE RIGHTS.** (a) A nursing facility shall permit a resident to remain in the nursing facility and may not transfer or discharge the resident from the nursing facility unless one of the following applies:

1. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the nursing facility, as documented by the resident's physician in the resident's clinical record.

2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility, as documented by the resident's physician in the resident's clinical record.

3. The safety of individuals in the nursing facility is endangered, as documented in the resident's clinical record.

4. The health of individuals in the nursing facility would otherwise be endangered, as documented by a physician in the resident's clinical record.

5. The resident has failed, after reasonable and appropriate notice, to pay or have paid on his or her behalf under medical assistance or under medicare for a stay at the nursing facility. If a resident becomes eligible for medical assistance after admission to the nursing facility, only charges that may be imposed under medical assistance may be allowed in enforcement of this subdivision.

6. The nursing facility ceases to operate.

(b) 1. Before effecting a transfer or discharge of a resident a nursing facility shall note in the resident's record and notify the resident and, if known, an immediate family member of the resident or the resident's legal counsel concerning the transfer or discharge and the reasons for it, at least 30 days in advance of the resident's transfer or discharge, except that the nursing facility shall notify as soon as practicable in the circumstances specified in par. (a) 3. or 4.; in the circumstance specified in par. (a) 2. in which the resident's health improves sufficiently to permit a more immediate transfer or discharge; in the circumstances specified in par. (a) 1. in which a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or in the instance in which a resident has resided in the nursing facility fewer than 30 days.

2. Each notice under subd. 1. shall include all of the following:

a. For transfers or discharges effected after September 30, 1990, notice of the resident's right to appeal the transfer or discharge under a mechanism for hearing the appeals that is established by the department by rule.

b. The name, mailing address and telephone number of the long-term care ombudsman program under s. 16.009 (2) (b).

c. For a resident with developmental disability or mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a).

(c) A nursing facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing facility.

(d) 1. Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility shall provide written information to the resident and an immediate family member or legal counsel concerning all of the following:

a. The provisions of the approved state medicaid plan concerning the period, if any, during which the resident is permitted to return and resume residence in the nursing facility.

b. The policies of the nursing facility regarding subd. 1. a., which shall be consistent with subd. 1. a.

2. At the time of a resident's transfer to a hospital for therapeutic leave, a nursing facility shall provide written notice to the resident and an immediate family member or legal counsel of the duration of the period, if any, specified in subd. 1. a.

3. A nursing facility shall establish and follow a written policy under which a resident, who is eligible for medical assistance for

nursing facility services, who is transferred from the nursing facility for hospitalization or therapeutic leave and whose hospitalization or therapeutic leave exceeds a period paid for by medical assistance for the resident, shall be permitted to be readmitted to the nursing facility immediately upon the first availability of a bed in a semiprivate room in the nursing facility, if at the time of readmission the resident requires the services provided by the nursing facility.

**(5) RESIDENT'S RIGHTS; ACCESS AND VISITATION RIGHTS.** A nursing facility shall do all of the following:

(a) Permit immediate access to a resident by the department, by any representative of the secretary of the federal department of health and human services, by a representative of the board on aging and long-term care, by a representative of the protection and advocacy agency designated under s. 51.62 (2) (a) or by the resident's attending physician.

(b) Permit immediate access to a resident by immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) Permit immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(d) Permit reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(e) Permit a designated representative of the long-term care ombudsman under s. 16.009 (4), with the permission of the resident or the resident's legal counsel, and in accordance with s. 16.009 (4) (b) 1. d., to examine a resident's clinical records.

**(6) EQUAL ACCESS TO QUALITY CARE.** (a) A nursing facility shall establish and maintain identical policies and practices regarding transfer, discharge and the provision of services required under the approved state medicaid plan for all individuals regardless of payment.

(b) Paragraph (a) may not be construed to prohibit a nursing facility from charging any amount for services furnished, consistent with the notice required under sub. (3) (b) 3.

(c) Paragraph (a) may not be construed to require the department to provide additional services on behalf of a resident than are otherwise provided under the approved state medicaid plan.

**(7) ADMISSIONS POLICY.** (a) Except as provided in par. (b), with respect to admissions practices of a nursing facility:

1. A nursing facility may not require individuals applying to reside or residing in the facility to waive their rights to benefits under medical assistance or under medicare.

2. A nursing facility may not require oral or written assurance that individuals applying to reside or residing in the nursing facility are ineligible for or will not apply for medical assistance or medicare.

3. A nursing facility shall prominently display written information in the nursing facility and provide oral and written information to individuals applying to reside or residing in the nursing facility concerning how to apply for and use benefits under medical assistance and how to receive refunds for previous payments covered by these benefits.

4. A nursing facility may not require a 3rd-party guarantee of payment to the nursing facility as a condition of admission or expedited admission to or continued stay in the nursing facility.

5. With respect to an individual who is entitled to medical assistance for nursing facility services, a nursing facility may not charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under the approved state medicaid plan, a gift, money, donation or other consideration as a precondition of admitting or expediting the admission of an individual to the nursing facility or as a requirement for the individual's continued stay in the facility.

(b) Paragraph (a) may not be construed to do any of the following:

1. Prevent the department from prohibiting discrimination against individuals who are entitled to medical assistance under the approved state medicaid plan with respect to admissions practices of nursing facilities.

1m. Permit a county, city, town or village to implement nursing facility admissions policies that conflict with state law.

2. Prevent a nursing facility from requiring an individual who has legal access to a resident's income or resources available to pay for care in the nursing facility, to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources for care in the nursing facility.

3. Prevent a nursing facility from charging a resident who is eligible for medical assistance for items or services that the resident has requested and received and that are not included in the approved state medicaid plan.

4. Prohibit a nursing facility from soliciting, accepting or receiving a charitable, religious or philanthropic contribution from an organization or from a person who is unrelated to the resident or potential resident, but only to the extent that the contribution is not a condition of admission, expediting admission or continued stay in the nursing facility.

**(8) PROTECTION OF RESIDENT FUNDS.** (a) A nursing facility:

1. May not require a resident to deposit his or her personal funds with the nursing facility.

2. Upon the written authorization of a resident, shall hold, safeguard and account for the resident's personal funds under a system established and maintained by the nursing facility that is in accordance with par. (b).

(b) Upon written authorization of a resident under par. (a), the nursing facility shall manage and account for the resident's personal funds deposited with the nursing facility as follows:

1. The nursing facility shall deposit any amount of a resident's personal funds in excess of \$50 in an interest-bearing account that is separate from any of the nursing facility's operating accounts and credits all interest earned on the separate account to the account. The nursing facility shall maintain a resident's personal funds that do not exceed \$50 in a noninterest-bearing account or petty cash fund.

2. The nursing facility shall assure a full and complete separate accounting of the personal funds of each resident for whom the facility has written authorization, maintain a written record of all financial transactions involving the personal funds of the resident deposited with the nursing facility and afford the resident or the resident's legal representative with reasonable access to the record.

3. The nursing facility shall notify each resident receiving medical assistance of all of the following:

a. When the amount in the resident's account is \$200 less than the dollar amount permitted under [42 USC 1381](#) to [1385](#).

b. That if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the amount under [42 USC 1382](#) (a) (3) (B) the resident may lose eligibility for medical assistance or for supplemental security income benefits.

4. Upon the death of a resident with an account under subd. 1., the nursing facility shall promptly convey the resident's personal funds and a final accounting of the funds to the individual administering the resident's estate.

5. The nursing facility shall purchase a surety bond or otherwise provide satisfactory assurance of the security of all personal funds of residents that are deposited with the nursing facility.

6. The nursing facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made by medical assistance or medicare.

**(8m) POSTING OF SURVEY RESULTS.** A nursing facility shall post in a place that is readily accessible to residents, residents'

family members and residents' legal representatives, the results of the most recent survey of the facility conducted under sub. (13).

**(9) ADMINISTRATION REQUIREMENTS.** (a) A nursing facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, consistent with federal regulations.

(b) If a change occurs in any of the following, the nursing facility shall provide notice to the department, at the time of the change, of the change and the identity of each new person or company under the change:

1. The persons with an ownership or control interest in the nursing facility.

2. The persons who are officers, directors, agents or managing employees of the nursing facility.

3. The corporation, association or other company responsible for the management of the nursing facility.

4. The individual who is the administrator or director of the nursing facility.

(c) The administrator of a nursing facility shall meet standards established under [42 USC 1396r](#) (f) (4).

**(10) LICENSING REQUIREMENTS.** (a) A nursing facility shall be licensed under s. [50.03](#) (1).

(b) Except as waived under [42 USC 1396r](#) (d) (2) (B) (i) or found under [42 USC 1396r](#) (d) (2) (B) (ii), a nursing facility shall meet the provisions that are applicable to nursing homes of the edition of the life safety code of the national fire protection association specified in federal regulations.

**(11) INFECTION CONTROL.** A nursing facility shall do all of the following:

(a) Establish and maintain an infection control program designed to provide a safe, sanitary and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

(b) Be designed, constructed, equipped and maintained in a manner so as to protect the health and safety of residents, personnel and the general public.

**(12) COMPLIANCE WITH LAWS, REGULATIONS AND PROFESSIONAL STANDARDS.** (a) A nursing facility shall operate and provide services in compliance with all applicable state laws and federal regulations and with accepted professional standards and principles that apply to professionals providing services in the nursing facility.

(b) A nursing facility shall meet requirements relating to the health and safety of residents or relating to physical facilities for the health and safety of residents under regulations promulgated by the federal department of health and human services.

**(13) ANNUAL STANDARD SURVEY.** A nursing facility is subject to a standard survey under [42 USC 1396r](#) (g) (2) (A) (i). No person may notify a nursing facility or cause a nursing facility to be notified of the time or date on which the survey is scheduled to be conducted.

**(14) RULE MAKING.** The department shall promulgate all of the following rules:

(a) Establishing a fair mechanism meeting the requirements of [42 USC 1396r](#) (e) (3) and (f) (3) for hearing appeals on transfers and discharges of residents from nursing facilities.

(b) Specifying an instrument for use in performing assessments of residents under sub. (2) (c) 1. c.

(c) Establishing criteria for the denial of payment under s. [49.45](#) (6m) (d) 5., for the imposition of forfeitures under sub. (16) (b), for the placement of a monitor or appointment of a receiver for a facility under sub. (17) and for closure of a facility under sub. (18) that do all of the following:

1. Are consistent with federal regulations promulgated to interpret [42 USC 1396r](#).



2. Are designed so as to minimize the time between the identification of violations and final imposition of the penalties.

3. Provide incrementally more severe penalties for repeated or uncorrected deficiencies.

(d) Establishing the percentage of interest to be assessed under sub. (16) (d).

**(15) CLASSIFICATION OF VIOLATIONS.** (a) A class “1” violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.

(b) A class “2” violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility directly threatening to the health, safety or welfare of a resident.

(c) A class “3” violation is a violation of this section or of the rules promulgated under this section which creates a condition or occurrence relating to the operation and maintenance of a nursing facility which does not directly threaten the health, safety or welfare of a resident.

(d) Each day of violation constitutes a separate violation. The department shall have the burden of showing that a violation existed on each day for which a forfeiture is assessed. No forfeiture may be assessed for a condition for which the nursing facility has received a variance or waiver of a standard.

**(16) FORFEITURES, PENALTY ASSESSMENTS AND INTEREST.** (a) Any operator or owner of a nursing facility which is in violation of this section or any rule promulgated under this section may be subject to the following forfeitures:

1. A class “1” violation may be subject to a forfeiture of not more than \$250 for each violation.

2. A class “2” violation may be subject to a forfeiture of not more than \$125 for each violation.

3. A class “3” violation may be subject to a forfeiture of not more than \$60 for each violation.

(b) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, factors shall be considered that are established in rules that shall be promulgated by the department consistent with federal regulations promulgated to interpret 42 USC 1396r.

(c) 1. Whenever the department imposes a forfeiture under par. (a) for a violation of this section or the rules promulgated under this section, the department shall in addition levy a penalty assessment in the following amounts:

a. For a class “1” violation, not less than \$5,100 nor more than \$10,000.

b. For a class “2” violation, not less than \$2,600 nor more than \$5,000.

c. For a class “3” violation, not less than \$100 nor more than \$2,500.

2. Notwithstanding subd. 1., whenever the department imposes a forfeiture under par. (a) for the violation of the following, the department shall levy a penalty assessment in the following amounts:

a. For a violation of sub. (2) (c) 3., \$1,000.

b. For a violation of sub. (2) (c) 4., \$5,000.

c. For a violation of sub. (13), \$2,000.

3. If multiple violations are involved, the penalty assessment levied under subd. 1. or 2. shall be based on the total forfeitures for all violations.

(d) If the period of the violation under par. (a) is longer than one day, the penalty assessment shall additionally include interest for each day of the period at a rate established in rules that the department shall promulgate, except that no interest shall be computed for a day in the period between the date on which a request

for a hearing, if any, is filed under par. (f) and the date of the conclusion of all administrative and judicial proceedings arising out of the imposition of a forfeiture under par. (a).

(dm) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, factors shall be considered that are established in rules that shall be promulgated by the department consistent with federal regulations promulgated to interpret 42 USC 1396r.

(e) The department may directly assess forfeitures provided for under par. (a), penalty assessments provided for under par. (c) and interest provided for under par. (d). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, it shall send a notice of assessment to the nursing facility. The notice shall specify the amount of the forfeiture assessed, the amount of the penalty assessment, the violation, the statute or rule alleged to have been violated, and shall inform the licensee of the right to hearing under par. (f).

(f) A nursing facility may contest an assessment of forfeiture, penalty assessment or interest, if any, by sending a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the department, if not the petitioner who was in the proceeding before the division, shall be the named respondent.

(g) All forfeitures, penalty assessments, and interest, if any, shall be paid to the department within 10 days of receipt of notice of assessment or, if the forfeiture, penalty assessment, and interest, if any, are contested under par. (f), within 10 days of receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order under sub. (19) (b). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund. The department shall deposit all penalty assessments and interest in the appropriation under s. 20.435 (6) (g).

(h) The attorney general may bring an action in the name of the state to collect any forfeiture, penalty assessment or interest, if any, imposed under par. (e) or (f) if the forfeiture, penalty assessment or interest, if any, has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture, penalty assessment or interest has been paid.

**(16m) APPEALS PROCEDURES.** Appeals procedures under this section shall be consistent with the requirements specified in 42 CFR 431.151 (a) and (b). Any appeals under this section shall be filed with the division of hearings and appeals created under s. 15.103 (1).

**(17) TEMPORARY MANAGEMENT.** Any nursing facility that is in violation of this section or any rule promulgated under this section may be subject to placement of a monitor or appointment of a receiver, under the procedures and criteria specified in s. 50.05 and under criteria promulgated as rules by the department under sub. (14) (c).

**(18) NURSING FACILITY CLOSURE AND RESIDENT TRANSFER.** (a) Any nursing facility that is in violation of this section or any rule promulgated under this section may, in an emergency as determined by the department, be subject to closure by the department or to the transfer of residents of the nursing facility to another nursing facility, or both, under criteria promulgated as rules by the department under sub. (14) (c).

(b) A nursing facility may contest closure of the nursing facility or transfer of residents of the nursing facility, if any, by sending a written request for hearing under s. 227.44 to the division of

hearings and appeals created under s. 15.103 (1). The administrator may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the department, if not the petitioner who was in the proceeding before the division, shall be the named respondent.

**(19) JUDICIAL REVIEW.** (a) All administrative remedies shall be exhausted before an agency determination under this section shall be subject to judicial review. Final decisions after hearing shall be subject to judicial review exclusively as provided in s. 227.52, except that any petition for review of department action under this section shall be filed within 15 days after receipt of notice of the final agency determination.

(b) The court may stay enforcement under s. 227.54 of the department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if a stay is not granted, and that the nursing facility will meet the requirements of this section and the rules promulgated under this section during such stay. Where a stay is granted the court may impose such conditions on the granting of the stay as may be necessary to safeguard the lives, health, rights, safety and welfare of residents, and to assure compliance by the nursing facility with the requirements of this section.

(c) The attorney general may delegate to the department the authority to represent the state in any action brought to challenge department decisions prior to exhaustion of administrative remedies and final disposition by the division of hearings and appeals created under s. 15.103 (1).

**(20) VIOLATIONS.** If an act forms the basis for a violation of this section and s. 50.04, the department or the attorney general may impose sanctions in conformity with this section or under s. 50.04, but not both.

**History:** 1989 a. 31; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27, 407; 1997 a. 27; 1999 a. 22; 2003 a. 33; 2005 a. 387.

**49.499 Nursing facility resident protection. (1)** From the appropriation under s. 20.435 (6) (g), the department shall contribute to the payment of all of the following, as needed by a resident in a nursing facility, as defined in s. 49.498 (1) (i), that is in violation of s. 49.498 or of a rule promulgated under s. 49.498:

(a) The cost of relocating the resident from the nursing facility to another nursing facility.

(b) Maintenance of operation of a nursing facility pending correction of deficiencies or closure of the nursing facility.

(c) Reimbursement of the resident for any personal funds of the resident that were misappropriated by the nursing facility staff or other persons holding an interest in the nursing facility.

**(2m)** From the appropriation under s. 20.435 (6) (g), the department may distribute funds for innovative projects designed to protect the health and property of a resident in a nursing facility, as defined in s. 49.498 (1) (i).

**History:** 1989 a. 31; 1997 a. 27; 1999 a. 9.

## SUBCHAPTER V

### OTHER SUPPORT AND MEDICAL PROGRAMS

**49.66 Definitions.** In this subchapter:

**(1)** "Department" means the department of health and family services.

**(2)** "Secretary" means the secretary of health and family services.

**History:** 1995 a. 27 ss. 3179, 9126 (19).

**49.665 Badger care. (1) DEFINITIONS.** In this section:

(b) "Child" means a person who is born and who is under the age of 19.

(c) "Employer–subsidized health care coverage" means family coverage under a group health insurance plan offered by an employer for which the employer pays at least 80% of the cost, excluding any deductibles or copayments that may be required under the plan.

(d) "Family" means a unit that consists of at least one child and his or her parent or parents, all of whom reside in the same household. "Family" includes the spouse of an individual who is a parent if the spouse resides in the same household as the individual.

(e) "Parent" has the meaning given in s. 49.141 (1) (j).

(f) "State plan" means the state child health plan under 42 USC 1397aa (b).

(g) "Unborn child" means a person from the time of conception until it is born alive.

**(2) WAIVERS.** (a) 1. The department of health and family services shall request a waiver from the secretary of the federal department of health and human services to permit the department of health and family services to implement, beginning not later than July 1, 1998, or the effective date of the waiver, whichever is later, a health care program under this section. If a waiver that is consistent with all of the provisions of this section, excluding sub. (4) (a) 3m. and (ap) and provisions related to sub. (4) (ap), is granted and in effect, the department of health and family services shall implement the program under this section, subject to subd. 2. The department of health and family services may not implement the program under this section unless a waiver that is consistent with all of the provisions of this section, excluding sub. (4) (a) 3m. and (ap) and provisions related to sub. (4) (ap), is granted and in effect.

2. The department may not implement sub. (4) (ap) or provisions related to the coverage under sub. (4) (ap) unless a state plan amendment authorizing the coverage under sub. (4) (ap) is approved by the federal department of health and human services.

(b) If the department of health and family services determines that it needs a waiver to require the verification specified in sub. (4) (a) 3m., the department shall request a waiver from the secretary of the federal department of health and human services and may not implement the verification requirement under sub. (4) (a) 3m. unless the waiver is granted. If a waiver is required and is granted, the department of health and family services may implement the verification requirement under sub. (4) (a) 3m. as appropriate. If a waiver is not required, the department of health and family services may require the verification specified in sub. (4) (a) 3m. for eligibility determinations and annual review eligibility determinations made by the department, beginning on January 1, 2004.

**(3) ADMINISTRATION.** Subject to sub. (2) (a) 2., the department shall administer a program to provide the health services and benefits described in s. 49.46 (2) to persons that meet the eligibility requirements specified in sub. (4). The department shall promulgate rules setting forth the application procedures and appeal and grievance procedures. The department may promulgate rules limiting access to the program under this section to defined enrollment periods. The department may also promulgate rules establishing a method by which the department may purchase family coverage offered by the employer of a member of an eligible family or of a member of an eligible child's household, or family or individual coverage offered by the employer of an eligible unborn child's mother or her spouse, under circumstances in which the department determines that purchasing that coverage would not be more costly than providing the coverage under this section.

**(4) ELIGIBILITY.** (a) A family is eligible for health care coverage under this section if the family meets all of the following requirements:

1. The family's income does not exceed 185% of the poverty line, except as provided in par. (at) and except that a family that

is already receiving health care coverage under this section may have an income that does not exceed 200% of the poverty line. The department shall establish by rule the criteria to be used to determine income.

2. The family does not have access to employer–subsidized health care coverage.

3. The family has not had access to employer–subsidized health care coverage within the time period established by the department by rule, but not to exceed 18 months, immediately preceding application for health care coverage under this section. The department may establish exceptions to this time period restriction by rule.

3m. Each member of the family who is employed provides verification from his or her employer, in the manner specified by the department, of his or her earnings, of whether the employer provides health care coverage for which the family is eligible, and of the amount that the employer pays, if any, towards the cost of the health care coverage, excluding any deductibles or copayments required under the coverage.

4. The family meets all other requirements established by the department by rule. In establishing other eligibility criteria, the department may not include any health condition requirements.

(am) A child who does not reside with his or her parent is eligible for health care coverage under this section if the child meets all of the following requirements:

1. The child’s income does not exceed 185% of the poverty line, except as provided in par. (at) and except that a child that is already receiving health care coverage under this section may have an income that does not exceed 200% of the poverty line. The department shall use the criteria established under par. (a) 1. to determine income under this subdivision.

2. The child does not have access to employer–subsidized health care coverage.

3. The child has not had access to employer–subsidized health care coverage within the time period established by the department under par. (a) 3. The department may establish exceptions to this subdivision.

4. The child meets all other requirements established by the department by rule. In establishing other eligibility criteria, the department may not include any health condition requirements.

(ap) An unborn child whose mother is not eligible for health care coverage under par. (a) or (am) or for medical assistance under s. 49.46 or 49.47, except that she may be eligible for benefits under s. 49.45 (27), is eligible for health care coverage under this section, which shall be limited to coverage for prenatal care, if all of the following requirements are met:

1. The income of the unborn child’s mother, mother and her spouse, or mother and her family, whichever is applicable, does not exceed 185 percent of the poverty line, except as provided in par. (at) and except that, if an unborn child is already receiving health care coverage under this section, the applicable specified person or persons may have an income that does not exceed 200 percent of the poverty line. The department shall establish by rule the criteria to be used to determine income.

2. Each of the following applicable persons who is employed provides verification from his or her employer, in the manner specified by the department, of his or her earnings:

- a. The unborn child’s mother.
- b. The spouse of the unborn child’s mother.
- c. Members of the unborn child’s mother’s family.

3. The unborn child’s mother provides medical verification of her pregnancy, in the manner specified by the department.

4. The unborn child and the mother of the unborn child meet all other requirements established by the department by rule except for any of the following:

- a. The mother is not a U.S. citizen or an alien qualifying for medicaid under 8 USC 1612.
- b. The mother is an inmate of a public institution.

c. The mother does not provide a social security number, but only if subd. 4. a. applies.

(at) 1. a. Except as provided in subd. 1. b., the department shall establish a lower maximum income level for the initial eligibility determination if funding under s. 20.435 (4) (bc), (jz), (p), and (x) is insufficient to accommodate the projected enrollment levels for the health care program under this section. The adjustment may not be greater than necessary to ensure sufficient funding.

b. The department may not lower the maximum income level for initial eligibility unless the department first submits to the joint committee on finance a plan for lowering the maximum income level. If, within 14 days after the date on which the plan is submitted to the joint committee on finance, the cochairpersons of the committee do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the plan, the department shall implement the plan as proposed. If, within 14 days after the date on which the plan is submitted to the committee, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting to review the plan, the department may implement the plan only as approved by the committee.

cm. Notwithstanding s. 20.001 (3) (b), if, after reviewing the plan submitted under subd. 1. b., the joint committee on finance determines that the amounts appropriated under s. 20.435 (4) (bc), (jz), (p), and (x) are insufficient to accommodate the projected enrollment levels, the committee may transfer appropriated moneys from the general purpose revenue appropriation account of any state agency, as defined in s. 20.001 (1), other than a sum sufficient appropriation account, to the appropriation account under s. 20.435 (4) (bc) to supplement the health care program under this section if the committee finds that the transfer will eliminate unnecessary duplication of functions, result in more efficient and effective methods for performing programs, or more effectively carry out legislative intent, and that legislative intent will not be changed by the transfer.

2. If, after the department has established a lower maximum income level under subd. 1., projections indicate that funding under s. 20.435 (4) (bc), (jz), (p), and (x) is sufficient to raise the level, the department shall, by state plan amendment, raise the maximum income level for initial eligibility, but not to exceed 185% of the poverty line.

3. The department may not adjust the maximum income level of 200% of the poverty line for persons already receiving health care coverage under this section or for applicable persons specified in par. (ap) 1. with respect to an unborn child already receiving health care coverage under this section.

(b) Notwithstanding fulfillment of the eligibility requirements under this subsection, no person is entitled to health care coverage under this section.

(c) No person may be denied health care coverage under this section solely because of a health condition of that person, of any family member of that person, or of the mother of an unborn child.

(d) An unborn child’s eligibility for coverage under par. (ap) shall not begin before the first day of the month in which the unborn child’s mother provides the medical verification required under par. (ap) 3.

**(5) LIABILITY FOR COST.** (ac) In this subsection, “cost” means total cost–sharing charges, including premiums, copayments, coinsurance, deductibles, enrollment fees, and any other cost–sharing charges.

(ag) Except as provided in pars. (am), (b), and (bm), a family, a child who does not reside with his or her parent, or the mother of an unborn child, who receives health care coverage under this section shall pay a percentage of the cost of that coverage in accordance with a schedule established by the department by rule. The department may not establish or implement a schedule that requires a contribution, including the amounts required under par. (am), of more than 5% of the income of the family, child, or appli-

cable persons specified in sub. (4) (ap) 1. towards the cost of the health care coverage provided under this section.

(am) Except as provided in pars. (b) and (bm), a child, a family member, or the mother of an unborn child, who receives health care coverage under this section shall pay the following cost-sharing amounts:

1. A copayment of \$1 for each prescription of a drug that bears only a generic name, as defined in s. 450.12 (1) (b).

2. A copayment of \$3 for each prescription of a drug that bears a brand name, as defined in s. 450.12 (1) (a).

(b) The department may not require a family, child who does not reside with his or her parent, or applicable persons specified in sub. (4) (ap) 1., with an income below 150% of the poverty line, to contribute to the cost of health care coverage provided under this section.

(bm) If the federal department of health and human services notifies the department of health and family services that Native Americans may not be required to contribute to the cost of the health care coverage provided under this section, the department of health and family services may not require Native Americans to contribute to the cost of health care coverage under this section.

(c) The department may establish by rule requirements for wage withholding as a means of collecting a family's or an unborn child's mother's share of the cost of the health care coverage under this section.

**(5m) INFORMATION ABOUT BADGER CARE RECIPIENTS.** (a) In this subsection:

1. "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

2. "Insurer" has the meaning given in s. 600.03 (27).

(b) An insurer that issues or delivers a disability insurance policy that provides coverage to a resident of this state shall provide to the department, upon the department's request, information contained in the insurer's records regarding all of the following:

1. Information that the department needs to identify recipients of badger care who satisfy any of the following:

a. Are eligible for benefits under a disability insurance policy.

b. Would be eligible for benefits under a disability insurance policy if the recipient were enrolled as a dependent of a person insured under the disability insurance policy.

2. Information required for submittal of claims under the insurer's disability insurance policy.

3. The types of benefits provided by the disability insurance policy.

(c) Upon requesting an insurer to provide the information under par. (b), the department shall enter into a written agreement with the insurer that satisfies all of the following:

1. Identifies in detail the information to be disclosed.

2. Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.

(d) 1. An insurer shall provide the information requested under par. (b) within 180 days after receiving the department's request if it is the first time that the department has requested the insurer to disclose information under this subsection.

2. An insurer shall provide the information requested under par. (b) within 30 days after receiving the department's request if the department has previously requested the insurer to disclose information under this subsection.

3. If an insurer fails to comply with subd. 1. or 2., the department may notify the commissioner of insurance, and the commissioner of insurance may initiate enforcement proceedings against the insurer under s. 601.41 (4) (a).

**(6) ANNUAL REPORT.** Not later than October 1 of each year, the department shall submit a report to the legislature under s. 13.172 (2) that summarizes enrollment in and cost of the health care pro-

gram under this section and any other information that the department determines is pertinent information regarding the program under this section.

**(7) EMPLOYER VERIFICATION FORMS; FORFEITURE AND PENALTY ASSESSMENT.** (a) 1. Notwithstanding sub. (4) (a) 3m. and (ap) 2., the department shall mail information verification forms to the employers of the individuals required to provide the verifications under sub. (4) (a) 3m. and (ap) 2. to obtain the information specified.

2. An employer that receives a verification form shall complete the form and return it to the department, by mail, with a postmark that is not more than 30 working days after the date on which the department mailed the form to the employer.

3. As an alternative to the method under subd. 2., an employer may, within 30 working days after the date on which the department mailed the form to the employer, return the completed form to the department by any electronic means approved by the department. The department must be able to determine, or the employer must be able to verify, the date on which the form was sent to the department electronically.

(b) 1. Subject to subd. 3., an employer that does not comply with the requirements under par. (a) 2. or 3. shall be required to pay a forfeiture of \$50 for each verification form not returned in compliance with par. (a) 2. or 3.

2. Subject to subd. 3., whenever the department imposes a forfeiture under subd. 1., the department shall also levy a penalty assessment of \$50.

3. An employer with fewer than 250 employees may not be required to pay more than \$1,000 in forfeitures and penalty assessments under this paragraph in any 6-month period. An employer with 250 or more employees may not be required to pay more than \$15,000 in forfeitures and penalty assessments under this paragraph in any 6-month period.

4. All penalty assessments collected under subd. 2. shall be credited to the appropriation account under s. 20.435 (4) (jz) and all forfeitures collected under subd. 1. shall be credited to the common school fund.

(c) An employer may contest an assessment of forfeiture or penalty assessment under par. (b) by sending a written request for hearing to the division of hearings and appeals in the department of administration. Proceedings before the division are governed by ch. 227.

**History:** 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25.

**Cross Reference:** See also chs. HFS 101, 102, 103, 104, 105, 106, 107, and 108 and s. HFS 103.085 Wis. adm. code.

**49.68 Aid for treatment of kidney disease.** (1) **DECLARATION OF POLICY.** The legislature finds that effective means of treating kidney failure are available, including dialysis or artificial kidney treatment or transplants. It further finds that kidney disease treatment is prohibitively expensive for the overwhelming portion of the state's citizens. It further finds that public and private insurance coverage is inadequate in many cases to cover the cost of adequate treatment at the proper time in modern facilities. The legislature finds, in addition, that the incidence of the disease in the state is not so great that public aid may not be provided to alleviate this serious problem for a relatively modest investment. Therefore, it is declared to be the policy of this state to assure that all persons are protected from the destructive cost of kidney disease treatment by one means or another.

**(1m)** In this section, "recombinant human erythropoietin" means a bioengineered glycoprotein that has the same biological effects in stimulating red blood cell production as does the glycoprotein erythropoietin that is produced by the human body.

**(2) DUTIES OF DEPARTMENT.** The department shall:

(a) Promulgate rules setting standards for operation and certification of dialysis and renal transplantation centers and home dialysis equipment and suppliers.

(b) Promulgate rules setting standards for acceptance and certification of patients into the treatment phase of the program.

(c) Promulgate rules concerning reasonable cost and length of treatment programs.

(d) Aid in preparing educational programs and materials informing the public as to chronic renal disease and the prevention and treatment thereof.

**(3) AID TO KIDNEY DISEASE PATIENTS.** (a) Subject to s. 49.687 (1m), any permanent resident of this state who suffers from chronic renal disease may be accepted into the dialysis treatment phase of the renal disease control program if the resident meets standards set by rule under sub. (2) and s. 49.687.

(b) From the appropriation accounts under ss. 20.435 (4) (e) and (je), the state shall pay the cost of medical treatment required as a direct result of chronic renal disease of certified patients from the date of certification, including the cost of administering recombinant human erythropoietin to appropriate patients, whether the treatment is rendered in an approved facility in the state or in a dialysis or transplantation center which is approved as such by a contiguous state, subject to the conditions specified under par. (d). Approved facilities may include a hospital in-center dialysis unit or a nonhospital dialysis center which is closely affiliated with a home dialysis program supervised by an approved facility. Aid shall also be provided for all reasonable expenses incurred by a potential living-related donor, including evaluation, hospitalization, surgical costs and postoperative follow-up to the extent that these costs are not reimbursable under the federal medicare program or other insurance. In addition, all expenses incurred in the procurement, transportation and preservation of cadaveric donor kidneys shall be covered to the extent that these costs are not otherwise reimbursable. All donor-related costs are chargeable to the recipient and reimbursable under this subsection.

(c) Disbursement and collection of all funds under this subsection shall be by the department or by a fiscal intermediary, in accordance with a contract with a fiscal intermediary. The costs of the fiscal intermediary under this paragraph shall be paid from the appropriation under s. 20.435 (1) (a).

(d) 1. No aid may be granted under this subsection unless the recipient has no other form of aid available from the federal medicare program, from private health, accident, sickness, medical, and hospital insurance coverage, or from other health care coverage specified by rule under s. 49.687 (1m). If insufficient aid is available from other sources and if the recipient has paid an amount equal to the annual medicare deductible amount specified in subd. 2., the state shall pay the difference in cost to a qualified recipient. If at any time sufficient federal or private insurance aid or other health care coverage becomes available during the treatment period, state aid under this subsection shall be terminated or appropriately reduced. Any patient who is eligible for the federal medicare program shall register and pay the premium for medicare medical insurance coverage where permitted, and shall pay an amount equal to the annual medicare deductible amounts required under 42 USC 1395e and 1395L (b), prior to becoming eligible for state aid under this subsection.

2. Aid under this subsection is only available after the patient pays an annual amount equal to the annual deductible amount required under the federal medicare program. This subdivision requires an inpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 1395e and requires an outpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 1395L (b).

3. No payment shall be made under this subsection for any portion of medical treatment costs or other expenses that are payable under any state, federal, or other health care coverage program, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

(e) State aids for services provided under this section shall be equal to the allowable charges under the federal Medicare program. In no case shall state rates for individual service elements exceed the federally defined allowable costs. The rate of charges for services not covered by public and private insurance shall not exceed the reasonable charges as established by medicare fee determination procedures. A person that provides to a patient a service for which aid is provided under this section shall accept the amount paid under this section for the service as payment in full and may not bill the patient for any amount by which the charge for the service exceeds the amount paid for the service under this section. The state may not pay for the cost of travel, lodging, or meals for persons who must travel to receive inpatient and outpatient dialysis treatment for kidney disease. This paragraph shall not apply to donor related costs as defined in par. (b).

**History:** 1973 c. 308; 1975 c. 39; 1977 c. 29; 1981 c. 314; 1983 a. 27; 1985 a. 332 s. 251 (1); 1989 a. 311; 1991 a. 316; 1993 a. 16, 449, 491; 1995 a. 27 ss. 3035 to 3044; Stats. 1995 s. 49.68; 2001 a. 16; 2003 a. 33.

**Cross Reference:** See also ch. HFS 152, Wis. adm. code.

#### 49.682 Recovery from estates. (1) In this section:

(a) “Client” means a person who receives or received aid under s. 49.68, 49.683 or 49.685.

(b) “Disabled” has the meaning given in s. 49.468 (1) (a) 1.

(c) “Home” means property in which a person has an ownership interest consisting of the person’s dwelling and the land used and operated in connection with the dwelling.

(2) (a) Except as provided in par. (d), the department shall file a claim against the estate of a client or against the estate of the surviving spouse of a client for the amount of aid under s. 49.68, 49.683 or 49.685 paid to or on behalf of the client.

(b) The affidavit of a person designated by the secretary to administer this subsection is evidence of the amount of the claim.

(c) The court shall reduce the amount of a claim under par. (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the client’s heirs or the beneficiaries of the client’s will to retain the following personal property:

1. The decedent’s wearing apparel and jewelry held for personal use.

2. Household furniture, furnishings and appliances.

3. Other tangible personal property not used in trade, agriculture or other business, not to exceed in value the amount specified in s. 861.33 (1) (a) 4.

(d) A claim under par. (a) is not allowable if the decedent has a surviving child who is under age 21 or disabled or a surviving spouse.

(e) 1. If the department’s claim is not allowable because of par. (d) and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the home subject to a lien in favor of the department for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

2. If the department’s claim is not allowable because of par. (d), the estate includes an interest in a home and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the home is assigned subject to a lien in favor of the department for the amount described in par. (a). The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgment.

(f) The department may not enforce the lien under par. (e) as long as any of the following survive the decedent:

1. A spouse.

2. A child who is under age 21 or disabled.

(g) The department may enforce a lien under par. (e) by foreclosure in the same manner as a mortgage on real property.

(3) The department shall administer the program under this section and may contract with an entity to administer all or a portion of the program, including gathering and providing the department with information needed to recover payment of aid provided under s. 49.68, 49.683 or 49.685. All funds received under this subsection, net of any amount claimed under s. 867.035 (3), shall be remitted for deposit in the general fund.

(4) (a) The department may recover amounts under this section for the provision of aid provided under s. 49.68, 49.683 or 49.685 paid on and after September 1, 1995.

(b) The department may file a claim under sub. (2) only with respect to a client who dies after September 1, 1995.

(5) The department shall promulgate rules establishing standards for determining whether the application of this section would work an undue hardship in individual cases. If the department determines that the application of this section would work an undue hardship in a particular case, the department shall waive application of this section in that case.

(6) The department may contract with or employ an attorney to probate estates to recover under this section the costs of care.

**History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128; 1999 a. 9.

**49.683 Cystic fibrosis aids.** (1) Subject to s. 49.687 (1m), the department may provide financial assistance for costs of medical care of persons over the age of 18 years with the diagnosis of cystic fibrosis who meet financial requirements established by the department by rule under s. 49.687 (1).

(2) Approved costs for medical care under sub. (1) shall be paid from the appropriation accounts under s. 20.435 (4) (e) and (je).

(3) No payment shall be made under this section for any portion of medical care costs that are payable under any state, federal, or other health care coverage program, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

**History:** 1973 c. 300; Stats. 1973 s. 146.35; 1973 c. 336 s. 55; Stats. 1973 s. 146.36; 1975 c. 39; 1979 c. 34 s. 2102 (43) (a); 1983 a. 27 s. 1562; Stats. 1983 s. 49.483; 1993 a. 16, 449; 1995 a. 27 ss. 3045, 3046, 3047; Stats. 1995 s. 49.683; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33.

**Cross Reference:** See also ch. HFS 154, Wis. adm. code.

**49.685 Hemophilia treatment services.** (1) DEFINITIONS. In this section:

(a) “Comprehensive hemophilia treatment center” means a center, and its satellite facilities, approved by the department, which provide services, including development of the maintenance program, to persons with hemophilia and other related congenital bleeding disorders.

(c) “Hemophilia” means a bleeding disorder resulting from a genetically determined clotting factor abnormality or deficiency.

(d) “Home care” means the self–infusion of a clotting factor on an outpatient basis by the patient or the infusion of a clotting factor to a patient on an outpatient basis by a person trained in such procedures.

(e) “Maintenance program” means the individual’s therapeutic and treatment regimen, including medical, dental, social and vocational rehabilitation including home health care.

(f) “Net worth” means the sum of the value of liquid assets, real property, after excluding the first \$10,000 of the full value of the home derived by dividing the assessed value by the assessment ratio of the taxation district.

(g) “Physician director” means the medical director of the comprehensive hemophilia treatment center which is directly responsible for an individual’s maintenance program.

(2) ASSISTANCE PROGRAM. From the appropriation accounts under s. 20.435 (4) (e) and (je), the department shall establish a program of financial assistance to persons suffering from hemophilia and other related congenital bleeding disorders. The program shall assist such persons to purchase the blood derivatives

and supplies necessary for home care. The program shall be administered through the comprehensive hemophilia treatment centers.

(4) ELIGIBILITY. Any permanent resident of this state who suffers from hemophilia or other related congenital bleeding disorder may participate in the program if that person meets the requirements of this section and s. 49.687 and the standards set by rule under this section and s. 49.687. The person shall enter into an agreement with the comprehensive hemophilia treatment center for a maintenance program to be followed by that person as a condition for continued eligibility. The physician director or a designee shall, at least once in each 6–month period, review the maintenance program and verify that the person is complying with the program.

(5) RECOVERY FROM OTHER SOURCES. The department is responsible for payments for blood products and supplies used in home care by persons participating in the program. The department may enter into agreements with comprehensive hemophilia treatment centers under which the treatment center assumes the responsibility for recovery of the payments from a 3rd party, including any insurer.

(6) PAYMENTS. (a) The department shall, by rule, establish a reasonable cost for blood products and supplies used in home care as a basis of reimbursement under this section.

(b) Reimbursement shall not be made under this section for any blood products or supplies that are not purchased from or provided by a comprehensive hemophilia treatment center, or a source approved by the treatment center. Reimbursement shall not be made under this section for any portion of the costs of blood products or supplies that are payable under any other state, federal, or other health care coverage program under which the person is covered, including a health care coverage program specified by rule under s. 49.687 (1m), or under any grant, contract, or other contractual arrangement.

(c) The reasonable cost, determined under par. (a), of blood products and supplies used in home care for which reimbursement is not prohibited under par. (b), shall be reimbursed under this section after deduction of the patient’s liability, determined under sub. (7).

(7) PATIENT’S LIABILITY. (a) 1. The percentage of the patient’s liability for the reasonable costs for blood products and supplies which are determined to be eligible for reimbursement under sub. (6) shall be based upon the income and the size of the person’s family unit, according to standards to be established by the department under s. 49.687.

2. In determining income, only the income of the patient and persons responsible for the patient’s support under s. 49.90 may be considered.

4. In determining family size, only persons who are related to the patient as parent, spouse, legal dependent or, if under the age of 18, as brother or sister may be considered.

5. In determining net worth, only the net worth of the patient and persons responsible for the patient’s support under s. 49.90 will be considered.

(b) Individual liability shall be determined at the time of initial treatment and shall be redetermined annually or upon the patient’s notification to the department of a change in family size or financial condition.

(8) DEPARTMENT’S DUTIES. The department shall:

(a) Extend financial assistance under this section to eligible persons suffering from hemophilia or other related congenital bleeding disorders.

(b) Employ administrative personnel to implement this section.

(c) Promulgate all rules necessary to implement this section.

**History:** 1977 c. 213; 1979 c. 32; 1983 a. 27; 1983 a. 189 s. 329 (10); 1983 a. 544 s. 47 (1); 1985 a. 29 s. 3202 (23), (46); 1987 a. 27; 1987 a. 312 s. 17; 1993 a. 16, 449; 1995 a. 27 ss. 3048 to 3060; Stats. 1995 s. 49.685; 2001 a. 16; 2003 a. 33, 198.

**Cross Reference:** See also ch. HFS 153, Wis. adm. code.

**49.686 AZT and pentamidine reimbursement program. (1) DEFINITIONS.** In this section:

- (a) “AIDS” means acquired immunodeficiency syndrome.
- (am) “AZT” means the drug azidothymidine.
- (b) “Gross income” means all income, from whatever source derived and in whatever form realized, whether in money, property or services.
- (c) “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.
- (d) “HIV infection” means the pathological state produced by a human body in response to the presence of HIV.
- (e) “Physician” has the meaning specified in s. 448.01 (5).
- (f) “Residence” means the concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.
- (g) “Validated test result” means a result of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV that meets the validation requirements determined to be necessary by the state epidemiologist.

**(2) REIMBURSEMENT.** From the appropriations under s. 20.435 (1) (m) and (5) (am) and (i), the department may reimburse or supplement the reimbursement of the cost of AZT, the drug pentamidine, and any drug approved for reimbursement under sub. (4) (c) for an individual who is eligible under sub. (3).

**(3) ELIGIBILITY.** An individual is eligible to receive the reimbursement specified under sub. (2) if he or she meets all of the following criteria:

- (a) Has residence in this state.
- (b) Has an infection that is certified by a physician to be an HIV infection.
- (c) Has a prescription issued by a physician for AZT, for pentamidine or for a drug approved for reimbursement under sub. (4) (c).
- (d) Has applied for coverage under and has been denied eligibility for medical assistance within 12 months prior to application for reimbursement under sub. (2).
- (e) Has no insurance coverage for AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c) or, if he or she has insurance coverage, the coverage is inadequate to pay the full cost of the individual’s prescribed dosage of AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c).
- (f) Is an individual whose annual gross household income is at or below 200% of the poverty line and, if funding is available under s. 20.435 (1) (m) or (5) (i), is an individual whose annual gross household income is above 200% and at or below 300% of the poverty line.

**(4) DEPARTMENTAL DUTIES.** The department shall do all of the following:

- (a) Determine the eligibility of individuals applying for reimbursement, or a supplement to the reimbursement, of the costs of AZT or the drug pentamidine.
- (b) Within the limits of sub. (5) and of the funds specified under sub. (2) and under a schedule that the department shall establish based on the ability of individuals to pay, reimburse or supplement the reimbursement of the eligible individuals.
- (c) After consulting with individuals, including those not employed by the department, with expertise in issues relative to drugs for the treatment of HIV infection and AIDS, determine which, if any, drugs that are cost-effective alternatives to AZT and pentamidine may also have costs reimbursed under this section.

**(5) REIMBURSEMENT LIMITATION.** Reimbursement may not be made under this section for any portion of the costs of AZT, the drug pentamidine or any drug approved for reimbursement under sub. (4) (c) which are payable by an insurer, as defined in s. 600.03 (27).

**History:** 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3061 to 3062d; Stats. 1995 s. 49.686; 1997 a. 27; 2001 a. 81.

**49.687 Disease aids; patient requirements; rebate agreements; cost containment. (1)** The department shall promulgate rules that require a person who is eligible for benefits under s. 49.68, 49.683, or 49.685 and whose estimated total family income for the current year is at or above 200% of the poverty line to obligate or expend specified portions of the income for medical care for treatment of kidney disease, cystic fibrosis, or hemophilia before receiving benefits under s. 49.68, 49.683, or 49.685. The rules shall require a person to pay 0.50% of his or her total family income for the cost of medical treatment covered under s. 49.68, 49.683, or 49.685 if that income is from 200% to 250% of the federal poverty line, 0.75% if that income is more than 250% but not more than 275% of the federal poverty line, 1% if that income is more than 275% but not more than 300% of the federal poverty line, 1.25% if that income is more than 300% but not more than 325% of the federal poverty line, 2% if that income is more than 325% but not more than 350% of the federal poverty line, 2.75% if that income is more than 350% but not more than 375% of the federal poverty line, 3.5% if that income is more than 375% but not more than 400% of the federal poverty line, and 4.5% if that income is more than 400% of the federal poverty line.

**(1m)** (a) A person is not eligible to receive benefits under s. 49.68 or 49.683 unless before the person applies for benefits under s. 49.68 or 49.683, the person first applies for benefits under all other health care coverage programs specified by the department by rule for which the person reasonably may be eligible.

(b) The department shall promulgate rules that specify other health care coverage programs for which a person must apply before applying for benefits under s. 49.685. The department may waive the requirement under this paragraph for an applicant who requests a waiver for religious reasons.

(c) Using the procedure under s. 227.24, the department may promulgate rules under par. (b) for the period before the effective date of any permanent rules promulgated under par. (b), but not to exceed the period authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that promulgating a rule under par. (b) as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for promulgating a rule under par. (b) as an emergency rule.

**(2)** The department shall develop and implement a sliding scale of patient liability for kidney disease aid under s. 49.68, cystic fibrosis aid under s. 49.683, and hemophilia treatment under s. 49.685, based on the patient’s ability to pay for treatment. The department shall continuously review the sliding scale for patient liability and revise it as needed to ensure that the amounts budgeted under s. 20.435 (4) (e) and (je) are sufficient to cover treatment costs.

**(2m)** If a pharmacy directly bills the department or an entity with which the department contracts for a drug supplied to a person receiving benefits under s. 49.68, 49.683, or 49.685 and prescribed for treatment covered under s. 49.68, 49.683, or 49.685, the person shall pay a \$7.50 copayment amount for each such generic drug and a \$15 copayment amount for each such brand name drug.

**(3)** The department or an entity with which the department contracts shall provide to a drug manufacturer that sells drugs for prescribed use in this state documents designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r–8. The department or entity may enter into a rebate agreement under this subsection that shall include all of the following as requirements:

- (a) That, as a condition of coverage for prescription drugs of a manufacturer under s. 49.68, 49.683, or 49.685, the manufacturer shall make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by persons who meet eligibility criteria under s. 49.68, 49.683, or 49.685, to the secretary of administration to be credited to the appropriation

under s. 20.435 (4) (je), each calendar quarter or according to a schedule established by the department.

(b) That the amount of the rebate payment shall be determined by a method specified in 42 USC 1396r–8 (c).

(4) The department may adopt managed care methods of cost containment for the programs under ss. 49.68, 49.683, and 49.685.

**History:** 1983 a. 27; 1989 a. 56; 1991 a. 39; 1993 a. 16, 449; 1995 a. 27 ss. 3063 to 3065; Stats. 1995 s. 49.687; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 198.

**Cross Reference:** See also ch. HFS 154, Wis. adm. code.

#### 49.688 Prescription drug assistance for elderly persons. (1) In this section:

(a) “Generic name” has the meaning given in s. 450.12 (1) (b).

(b) “Poverty line” means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(c) “Prescription drug” means a prescription drug, as defined in s. 450.01 (20), that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is manufactured by a drug manufacturer that enters into a rebate agreement in force under sub. (6).

(d) “Prescription order” has the meaning given in s. 450.01 (21).

(e) “Program payment rate” means the rate of payment made for the identical drug specified under s. 49.46 (2) (b) 6. h., plus 5%, plus a dispensing fee that is equal to the dispensing fee permitted to be charged for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

(2) (a) A person to whom all of the following applies is eligible to purchase a prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

2. The person is at least 65 years of age.

3. The person is not a recipient of medical assistance or, as a recipient, does not receive prescription drug coverage.

4. The person’s annual household income, as determined by the department, does not exceed 240% of the federal poverty line for a family the size of the person’s eligible family.

5. The person pays the program enrollment fee specified in sub. (3) (a).

(b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household income, as determined by the department, exceeds 240% of the federal poverty line for a family the size of the persons’ eligible family, is eligible to purchase a prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining amount of any 12–month period in which the person has first paid the annual deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

(3) Program participants shall pay all of the following:

(a) For each 12–month benefit period, a program enrollment fee of \$30.

(b) 1. For each 12–month benefit period, for a person specified in sub. (2) (a), a deductible for prescription drugs that is based on the percentage that a person’s annual household income, as determined by the department, is of the federal poverty line for a family the size of the person’s eligible family, as follows:

a. One hundred sixty percent or less, no deductible.

b. More than 160%, but not more than 200%, \$500.

c. More than 200%, but not more than 240%, \$850.

2. For each 12–month benefit period, for a person specified in sub. (2) (b), a deductible for prescription drugs that equals all of the following:

a. The difference between the person’s annual household income and 240% of the federal poverty line for a family the size of the person’s eligible family.

b. Eight hundred fifty dollars.

(c) After payment of any applicable deductible under par. (b), all of the following:

1. A copayment of \$5 for each prescription drug that bears only a generic name.

2. A copayment of \$15 for each prescription drug that does not bear only a generic name.

(d) Notwithstanding s. 49.002, if a person who is eligible under this section has other available coverage for payment of a prescription drug, this section applies only to costs for prescription drugs for the person that are not covered under the person’s other available coverage.

(4) The department shall devise and distribute a form for application for the program under sub. (2), shall determine eligibility for each 12–month benefit period of applicants and shall issue to eligible persons a prescription drug card for use in purchasing prescription drugs, as specified in sub. (5). The department shall promulgate rules that specify the criteria to be used to determine household income under sub. (2) (a) 4. and (b) and (3) (b) 1.

(5) (a) Beginning on September 1, 2002, except as provided in sub. (7) (b), as a condition of participation by a pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the pharmacy or pharmacist may not charge a person who presents a valid prescription order and a card indicating that he or she meets eligibility requirements under sub. (2) an amount for a prescription drug under the order that exceeds the following:

1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment rate.

2. After any applicable deductible under subd. 1. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged to a person under this subdivision.

3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

4. After the deductible under subd. 3. is charged, the copayment, as applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged to a person under this subdivision.

(b) The department shall calculate and transmit to pharmacies and pharmacists that are certified providers of medical assistance amounts that may be used in calculating charges under par. (a). The department shall periodically update this information and transmit the updated amounts to pharmacies and pharmacists.

(6) The department, or an entity with which the department contracts, shall provide to a drug manufacturer that sells drugs for prescribed use in this state documents designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r–8. A rebate agreement under this subsection shall include all of the following as requirements:

(a) That, except as provided in sub. (7) (b), the manufacturer shall make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by persons who meet criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have paid the deductible under sub. (3) (b) 2. a., to the secretary of administration to be credited to the appropriation account under s. 20.435 (4) (j), each calendar quarter or according to a schedule established by the department.

(b) That, except as provided in sub. (7) (b), the amount of the rebate payment shall be determined by a method specified in 42 USC 1396r–8 (c).

(7) (a) Except as provided in par. (b), from the appropriation accounts under s. 20.435 (4) (bv), (j), and (pg), beginning on September 1, 2002, the department shall, under a schedule that is identical to that used by the department for payment of pharmacy provider claims under medical assistance, provide to pharmacies and pharmacists payments for prescription drugs sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1., are not required to pay a deductible. The pay-



ment for each prescription drug under this paragraph shall be at the program payment rate, minus any copayment paid by the person under sub. (5) (a) 2. or 4., and plus, if applicable, incentive payments that are similar to those provided under s. 49.45 (8v). The department shall devise and distribute a claim form for use by pharmacies and pharmacists under this paragraph and may limit payment under this paragraph to those prescription drugs for which payment claims are submitted by pharmacists or pharmacies directly to the department. The department may apply to the program under this section the same utilization and cost control procedures that apply under rules promulgated by the department to medical assistance under subch. IV of ch. 49.

(b) During any period in which funding under s. 20.435 (4) (bv) and (pg) is completely expended for the payments specified in par. (a), the requirements of par. (a) and subs. (3) (c), (5), and (6) (a) and (b) do not apply to drugs purchased during that period, but the department shall continue to accept applications and determine eligibility under sub. (4) and shall indicate to applicants that the eligibility of program participants to purchase prescription drugs as specified in sub. (3), under the requirements of sub. (5), is conditioned on the availability of funding under s. 20.435 (4) (bv) and (pg).

(8) The department shall, under methods promulgated by the department by rule, monitor compliance by pharmacies and pharmacists that are certified providers of medical assistance with the requirements of sub. (5) and shall annually report to the legislature under s. 13.172 (2) concerning the compliance. The report shall include information on any pharmacies or pharmacists that discontinue participation as certified providers of medical assistance and the reasons given for the discontinuance.

(8m) (a) In this subsection:

1. “Disability insurance policy” has the meaning given in s. 632.895 (1) (a).

2. “Insurer” has the meaning given in s. 600.03 (27).

(b) An insurer that issues or delivers a disability insurance policy that provides coverage to a resident of this state shall provide to the department, upon the department’s request, information contained in the insurer’s records regarding all of the following:

1. Information that the department needs to identify eligible persons under this section who satisfy any of the following:

a. Are eligible for benefits under a disability insurance policy.  
b. Would be eligible for benefits under a disability insurance policy if the eligible person were enrolled as a dependent of a person insured under the disability insurance policy.

2. Information required for submittal of claims under the insurer’s disability insurance policy.

3. The types of benefits provided by the disability insurance policy.

(c) Upon requesting an insurer to provide the information under par. (b), the department shall enter into a written agreement with the insurer that satisfies all of the following:

1. Identifies in detail the information to be disclosed.  
2. Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.

(d) 1. An insurer shall provide the information requested under par. (b) within 180 days after receiving the department’s request if it is the first time that the department has requested the insurer to disclose information under this subsection.

2. An insurer shall provide the information requested under par. (b) within 30 days after receiving the department’s request if the department has previously requested the insurer to disclose information under this subsection.

3. If an insurer fails to comply with subd. 1. or 2., the department may notify the commissioner of insurance, and the commissioner of insurance may initiate enforcement proceedings against the insurer under s. 601.41 (4) (a).

(9) (a) The department shall promulgate rules relating to prohibitions on fraud that are substantially similar to applicable provisions under s. 49.49 (1) (a).

(b) A person who is convicted of violating a rule promulgated by the department under par. (a) in connection with that person’s furnishing of prescription drugs under this section is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

(c) A person other than a person specified in par. (b) who is convicted of violating a rule promulgated by the department under par. (a) may be fined not more than \$10,000, or imprisoned in the county jail for not more than one year, or both.

(10) If federal law is amended to provide coverage for prescription drugs for outpatient care as a benefit under medicare or to provide similar coverage under another program, the department shall submit to appropriate standing committees of the legislature under s. 13.172 (3) a report that contains an analysis of the differences between such a federal program and the program under this section and that provides recommendations concerning alignment, if any, of the differences.

(11) The department shall request from the federal secretary of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid laws necessary to permit the department of health and family services to conduct a project, under all of the requirements of this section, to expand eligibility for medical assistance, for purposes of receipt of prescription drugs as a benefit, to include individuals who are eligible under sub. (2). The department may implement a waiver requested under this subsection only if the conditions of the waiver are consistent with the requirements of this section. The department shall implement the program under this section regardless of whether a waiver, as specified in this subsection, is received.

(12) Except as provided in subs. (8) to (11) and except for the department’s rule-making requirements and authority, the department may enter into a contract with an entity to perform the duties and exercise the powers of the department under this section.

**History:** 2001 a. 16, 109; 2003 a. 33.

**Cross Reference:** See also ch. HFS 109, Wis. adm. code.

**49.70 County home; establishment.** (1) Each county may establish a county home for the relief and support of dependent persons pursuant to s. 46.17.

(2) In all counties whose population is less than 250,000 such county home shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) No county in which a county home is established shall contract to conduct the same or to support and maintain the inmates thereof; and all agreements in violation of this subsection are void.

(4) The trustees or any person employed by the county board pursuant to subs. (1) and (2), may administer oaths concerning any matter submitted to the trustees or person employed by the county board, in connection with their functions.

(5) The uniform accounting system established by s. 50.03 (10) shall be used by each county home and shall be subject to the conditions enumerated therein.

**History:** 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1991 a. 316; 1995 a. 27 ss. 2810 to 2815; Stats. 1995 s. 49.70.

A county did not violate sub. (3) by terminating county home operations, conveying the home’s assets, and leasing the physical plant to a private operator. *Local Union 2490 v. Waukesha County*, 143 Wis. 2d 438, 422 N.W.2d 117 (Ct. App. 1988).

**49.703 County homes; commitments; admissions.**

(1) Any person upon his or her application to the board of trustees may be admitted to the county home upon such terms as may be prescribed by the board. If the person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the county of his or her residence.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent

persons committed or admitted to the county home, and may repeal any resolution adopted under this subsection.

**History:** 1977 c. 428, 1985 a. 29; 1995 a. 27 ss. 2816, 2817, 2819; Stats. 1995 s. 49.703.

**49.71 County hospitals; establishment.** (1) Each county may establish a county hospital for the treatment of dependent persons, under s. 46.17, and other persons authorized under s. 46.21 (4m).

(2) In counties with a population of 500,000 or more, an institution established under sub. (1) shall be governed under s. 46.21 or 59.79 (10), but in all other counties it shall be governed under ss. 46.18, 46.19 and 46.20.

(3) The uniform accounting system established by s. 50.03 (10) shall be used by each county hospital and shall be subject to the conditions enumerated therein.

**History:** 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1985 a. 176; 1993 a. 186; 1995 a. 27 ss. 2820 to 2823; Stats. 1995 s. 49.71; 1995 a. 201.

**49.713 County hospitals; admissions.** (1) Any person upon application to the board of trustees may be admitted to the county hospital upon such terms as may be prescribed by the board. If the person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the county of his or her residence.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons admitted to the county hospital, and may repeal any resolution adopted under this subsection.

**History:** 1985 a. 29; 1995 a. 27 ss. 2824, 2825, 2827; Stats. 1995 s. 49.713.

**49.72 County infirmaries; establishment.** (1) Each county, or any 2 or more counties jointly, may establish, pursuant to s. 46.17 or 46.20 a county infirmary for the treatment, care and maintenance of the aged infirm.

(2) In counties with a population of 500,000 or more, such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) As used in ss. 49.72 to 49.726:

(a) An aged infirm person is a person over the age of 65 years so incapacitated mentally by the degenerative processes of old age, or so incapacitated physically, as to require continuing infirmary care.

(b) A county infirmary is a county institution created pursuant to sub. (1) or (2) under the general supervision and inspection of the department pursuant to ss. 46.16 and 46.17 as to adequacy of equipment and staff to treat, care for and maintain the physical and mental needs of aged infirm persons.

(4) The uniform accounting system established by s. 50.03 (10) shall be used by each county infirmary and shall be subject to the conditions enumerated therein.

**History:** 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75; 1995 a. 27 ss. 2828 to 2834; Stats. 1995 s. 49.72.

**49.723 County infirmaries, admissions; standards.** (1) The following standards shall apply to admissions to a county infirmary:

(a) The primary standard shall be need of infirmary care, rather than ability to pay for care, and no person shall be excluded from an infirmary solely because of ability or inability to pay for care.

(b) The person admitted must be an aged infirm individual, and it must be reasonably apparent that unless admitted the person will be without adequate care.

(cm) Except as provided in par. (d), any person who meets the standards for admission is eligible for admission.

(d) An applicant who has removed residence to Wisconsin from a state which requires that one who has removed residence from Wisconsin to that state reside in the latter more than one year before being eligible for a similar type of care shall be required to

reside in this state for a like period before becoming eligible for admission.

(2) The board of trustees of a county infirmary, subject to regulations approved by the county board, shall establish rules and regulations governing the admission and discharge of voluntary patients.

(3) If it appears to the satisfaction of the circuit court for the county in which an infirmary is located, upon petition for commitment, that a person meets the standards under sub. (1), it may, after affording the person an opportunity to be heard in person or by someone on his or her behalf, commit the person to a county infirmary. The power to commit includes persons who entered an infirmary voluntarily. The court may also, on petition and after a hearing, order the discharge of any patient, upon a showing that the patient is no longer in need of infirmary care, or that the patient can be adequately cared for elsewhere.

(4) The board of trustees on receipt of an application for voluntary admission, or the circuit court on the filing of a petition for commitment, shall appoint a person licensed to practice medicine and surgery in this state to examine personally the applicant or the subject of the petition and to advise the board or court whether such person meets the standard prescribed by sub. (1) (a).

(5) The department shall prescribe and prepare the forms to be used for the voluntary admission or commitment of patients.

(6) The circuit court in the case of a commitment, and the board of trustees in the case of a voluntary admission, shall pass on the economic status of the patient at the time of commitment or admission, and in all cases in which the patient has residence in another county shall notify the county of residence of the fact of such commitment or admission.

**History:** 1977 c. 449 ss. 130, 497; 1985 a. 29; 1989 a. 359; 1995 a. 27 s. 2835; Stats. 1995 s. 49.723; 1995 a. 225.

**49.726 County infirmaries; cost of treatment, care and maintenance of patients.** (1) In the first instance the county or counties operating an infirmary shall defray the actual per capita cost of treatment, care and maintenance. To the extent that a patient is a public charge, such county or counties shall be reimbursed for such expenditures, as determined from annual infirmary reports filed with the department under s. 46.18 (8), (9) and (10), by the county of residence.

(2) To the extent that a patient is not a public charge, such cost shall be charged and paid in advance for each calendar month, and payment may be enforced by the board of trustees.

(4) The records and accounts of each county infirmary may be audited by the department. In addition to other findings, such audits shall ascertain compliance with the mandatory uniform cost record-keeping system requirements of s. 46.18 (8), (9) and (10), and verify the actual per person cost of maintenance, care and treatment of patients.

**History:** 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1985 a. 29; 1995 a. 27 s. 2836; Stats. 1995 s. 49.726.

**49.729 County infirmaries; fees and expenses of proceedings.** The fees of examining physicians, witnesses and guardians ad litem and other expenses of proceedings under ss. 49.72 to 49.726 shall be governed by s. 51.20 (18).

**History:** 1975 c. 430 s. 80; 1977 c. 428 s. 115; 1995 a. 27 s. 2837; Stats. 1995 s. 49.729.

**49.73 Residential care institutions; establishment.** (1) Any county or combination of counties may establish and staff a county residential care institution for the reception and care of dependent persons which shall be governed by the county board. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent person.

(2) Residential care institutions may be established and staffed by private vendors for the reception and care of dependent persons. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent persons.

(3) Any county operated or private residential care facility not certifiable as a Title XIX facility shall be licensed and governed under s. 50.03 by the department before receiving or caring for any dependent persons.

(4) The cost of care of such patients shall be determined by multiplying the per day patient rate for such facility as determined by applying the formula under s. 49.45 (6m) (ag), except that interest on capital expenditures which are reimbursable under s. 51.91 shall be excluded, times the number of days of care of such patients in the time period being considered. Any amounts received by the facility from the patient or resident shall be deducted from the costs determined under this subsection. This section shall not be construed to require that as a condition of reimbursement any facility must meet any skilled or intermediate care standards established by the department.

(6) The care, services and supplies provided under this section shall be a liability against the patient's county of residence.

**History:** 1971 c. 216; 1973 c. 90, 333; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1977 c. 418 s. 929 (55); 1985 a. 29; 1987 a. 27; 1995 a. 27 ss. 2838 to 2843; Stats. 1995 s. 49.73.

**49.74 Institutions subject to chapter 150.** Any institution created under the authority of s. 49.70, 49.71, 49.72 or 49.73 is subject to ch. 150.

**History:** 1977 c. 29; 1995 a. 27 s. 2850; Stats. 1995 s. 49.74.

**49.77 State supplemental payments. (1) DEFINITION.** In this section "secretary" means the secretary of the U.S. department of health and human services or the secretary of any other federal agency subsequently charged with the administration of federal Title XVI.

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s. 49.18, 1971 stats., s. 49.20, 1971 stats., or s. 49.61, 1971 stats., as affected by chapter 90, laws of 1973.

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section, if at least one of the following requirements are met:

a. The person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.

4. Any essential person.

(2m) SUPPLEMENTAL PAYMENT LEVELS. The department may submit a proposal to change the amount of supplemental payments under this section to the secretary of administration. If the secretary of administration approves the proposal, he or she shall submit it to the joint committee on finance for approval, modification or disapproval. Joint committee on finance approval of a change in the amount of supplemental payments will be considered to be given, if within 14 calendar days after the secretary of administration files a proposal with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposal. Payment changes approved by the joint committee on finance are subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this subsection.

(3) MINIMUM SUPPLEMENTAL PAYMENT IN CERTAIN CASES. The total monthly benefits received under this section and federal Title XVI by a person or couple described in sub. (2) (a) 1. shall not be less than the total state cash assistance payment amount plus gross earned and unearned income, received by such person or couple for December of 1973.

(3g) FEDERAL PAYMENTS. If federal supplemental security income payments increase, the department may, with approval as provided under sub. (2m), reduce payments under this section by all or part of the amount of the increase, subject to 42 USC 1382g.

(3s) INCREASED SUPPLEMENTAL PAYMENT IN CERTAIN CASES. (a) The department shall authorize the payment of an increased state supplement to a person receiving payments under this section who resides in a residential setting if the person needs at least 40 hours per month of supportive home care, daily living skills training or community support services.

(b) 1. If a person receiving payments under this section is a minor child residing with a parent, only services needed when the parent is away from the residence for purposes of employment count toward the 40-hour requirement in par. (a).

2. If a person receiving payments under this section resides with a spouse, only services needed either because the spouse is away from the residence for purposes of employment or because the spouse is physically or mentally unable to provide the care count toward the 40-hour requirement in par. (a).

(c) The department shall establish a uniform assessment process for determining eligibility under this subsection.

(d) The amount payable under this subsection equals the amount of the state supplement under sub. (2) (a) paid to persons living in nonmedical group homes.

(4) OPTIONAL FEDERAL ADMINISTRATION. (a) The department may enter into an agreement with the secretary under which the secretary will provide supplemental payments to all eligible persons on behalf of the state or any of its subdivisions. Under the agreement the department shall pay to the secretary an amount specified in accordance with agreed procedures. The department may make advance payments to the secretary if the agreement so provides.

(b) The department may enter into an agreement with the secretary under which the secretary may determine eligibility for medical assistance in the case of aged, blind or disabled individuals under the state plan approved under Title XIX of the social security act.

(c) Agreements made under this subsection or modifications to such agreements require prior approval or amendment by the joint committee on finance. Prior approval will be deemed to be given if within 21 calendar days following the department filing a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Agreements or modifications to such agreements approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this paragraph.

(5) INCOME DETERMINATION. In determining the amount of aid to be granted a person applying for supplemental payments under this section, income shall be disregarded to the extent allowed by federal regulations.

(6) AUTHORITY TO ADMINISTER; RULES. The department shall administer this section and s. 49.775, and may promulgate rules to guide the administration of eligibility determinations and benefits payments.

**History:** 1973 c. 90, 147; 1975 c. 39, 199, 224; 1977 c. 29; 1979 c. 34; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 27; 1985 a. 29, 120, 176; 1987 a. 27; 1987 a. 403 s.

256; 1989 a. 31, 56; 1993 a. 16; 1995 a. 27 ss. 2844 to 2849, 3151; Stats. 1995 s. 49.77; 2005 a. 25.

**Cross Reference:** See also ch. HFS 2, Wis. adm. code.

Because there is no statutory authority and DHFS had not properly promulgated a rule under ch. 227, administrative recovery of overpayments of benefits under this section was unauthorized. *Mack v. DHFS*, 231 Wis. 2d 644, 605 N.W.2d 651 (Ct. App. 1999), 99–0627.

**49.775 Payments for the support of children of supplemental security income recipients. (1) DEFINITIONS.** In this section:

(a) “Custodial parent” has the meaning given in s. 49.141 (1) (b).

(b) “Dependent child” has the meaning given in s. 49.141 (1) (c).

(2) SUPPLEMENTAL PAYMENTS. Subject to sub. (3), the department shall make a monthly payment in the amount specified in sub. (4) to a custodial parent for the support of each dependent child of the custodial parent if all of the following conditions are met:

(a) The custodial parent is a recipient of supplemental security income under 42 USC 1381 to 1383c or of state supplemental payments under s. 49.77, or both.

(b) If the dependent child has 2 custodial parents, each custodial parent receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, or both.

(bm) The custodial parent assigns to the state any right of the custodial parent or of the dependent child to support from any other person. No amount of support that begins to accrue after the individual ceases to receive payments under this section may be considered assigned to the state. Any money that is received by the department of workforce development under an assignment to the state under this paragraph and that is not the federal share of support shall be paid to the custodial parent. The department of workforce development shall pay the federal share of support assigned under this paragraph as required under federal law or waiver.

(c) The dependent child of the custodian parent meets the eligibility criteria under the aid to families with dependent children program under s. 49.19 (1) to (19) or would meet the eligibility criteria under s. 49.19 but for the application of s. 49.19 (20).

(d) The dependent child does not receive supplemental security income under 42 USC 1381 to 1383d.

(e) The custodial parent meets any of the following conditions:

1. The custodial parent is ineligible for aid under s. 49.19 solely because he or she receives supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

2. The custodial parent is ineligible for a Wisconsin works employment position, as defined under s. 49.141 (1) (r), solely because of the application of s. 49.145 (2) (i).

(3) TWO-PARENT FAMILIES. In the case of a dependent child who has 2 custodial parents, the department may not make more than one payment under sub. (2) per month for the support of that dependent child.

(4) PAYMENT AMOUNT. (a) The payment under sub. (2) is \$250 per month for one dependent child and \$150 per month for each additional dependent child.

**History:** 1997 a. 27, 237; 1999 a. 9; 2005 a. 25.

**Cross Reference:** See also ch. HFS 2, Wis. adm. code.

**49.78 Income maintenance administration. (1) DEFINITIONS.** In this section:

(b) “Income maintenance program” means the Medical Assistance program under subch. IV of ch. 49, the Badger Care health care program under s. 49.665, the food stamp program under 7 USC 2011 to 2036, or the cemetery, funeral, and burial expenses program under s. 49.785.

(cr) “Tribal governing body” means an elected governing body of a federally recognized American Indian tribe.

(2) CONTRACTS. Annually, the department shall contract with county departments under ss. 46.215, 46.22, and 46.23, and may contract with tribal governing bodies, to reimburse the county departments and tribal governing bodies for the reasonable cost of administering income maintenance programs.

(3) RULES. The department shall promulgate rules establishing standards of competency, including training requirements, for income maintenance workers.

(4) RULES; MERIT SYSTEM. The department of workforce development shall promulgate rules for the efficient administration of aid to families with dependent children in agreement with the requirement for federal aid, including the establishment and maintenance of personnel standards on a merit basis. The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provisions of any law relating to county personnel. This subsection shall not be construed to invalidate the provisions of s. 46.22 (1) (d).

(5) PERSONNEL EXAMINATIONS. Statewide examinations to ascertain qualifications of applicants in any county department administering aid to families with dependent children shall be given by the administrator of the division of merit recruitment and selection in the office of state employment relations. The office of state employment relations shall be reimbursed for actual expenditures incurred in the performance of its functions under this section from the appropriations available to the department of health and family services for administrative expenditures.

(6) PERSONNEL LISTS. All persons who are qualified as a result of examinations shall be certified to the counties in which they reside at the time of examination; if there are no resident qualified persons for any class of positions on the list certified to the county, appointments shall be made from available lists without regard to residence within the county.

(7) COUNTY PERSONNEL SYSTEMS. Pursuant to rules promulgated under sub. (4), the department of workforce development where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the department of workforce development’s authority under sub. (4) to establish and maintain personnel standards including salary levels.

(8) REIMBURSEMENT FOR INCOME MAINTENANCE ADMINISTRATION. (a) From the appropriation accounts under s. 20.435 (4) (bn) and (nm) and subject to par. (b), the department shall reimburse each county and tribal governing body that contracts with the department under sub. (2) for reasonable costs of administering the income maintenance programs. The amount of each reimbursement paid under this paragraph shall be calculated using a formula based on workload within the limits of available state and federal funds under s. 20.435 (4) (bn) and (nm) by contract under sub. (2). The amount of reimbursement calculated under this paragraph and par. (b) is in addition to any reimbursement provided to a county or tribal governing body for fraud and error reduction under s. 49.197 or 49.845.

**NOTE:** Par. (a) is shown as amended eff. 6–30–07 by 2005 Wis. Act 25. Prior to 6–30–07 it reads:

(a) From the appropriation accounts under s. 20.435 (4) (bn), (nm), and (y) and subject to par. (b), the department shall reimburse each county and tribal governing body that contracts with the department under sub. (2) for reasonable costs of administering the income maintenance programs. The amount of each reimbursement paid under this paragraph shall be calculated using a formula based on workload within the limits of available state and federal funds under s. 20.435 (4) (bn), (nm), and (y) by contract under sub. (2). The amount of reimbursement calculated under this paragraph and par. (b) is in addition to any reimbursement provided to a county or tribal governing body for fraud and error reduction under s. 49.197 or 49.845.

(b) The department may adjust the amounts determined under par. (a) for workload changes and computer network activities performed by a county or tribal governing body and may reduce the amount of any reimbursement if federal reimbursement is withheld due to audits, quality control samples, or program reviews.

(10) COUNTY CERTIFICATION. (a) Each county treasurer and director of a county department under s. 46.215, 46.22, or 46.23

and each tribal governing body shall certify monthly under oath to the department in such manner as the department prescribes the claim of the county for state reimbursement under sub. (8) (a). The department shall review each claim of reimbursement and, if the department approves the claim, the department shall certify to the department of administration for reimbursement to the county for amounts due under sub. (8) (a) and payment claimed to be made to the counties monthly. The department may make advance payments prior to the beginning of each month equal to one-twelfth of the contracted amount.

(b) To facilitate prompt reimbursement the certificate of the department may be based on the certified statements of the county officers or tribal governing body executives filed under par. (a). Funds recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By September 30 annually, the department shall submit a report to the appropriate standing committees under s. 13.172 (3) on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

**(11) REQUIREMENT TO PROVIDE INFORMATION.** (a) 1. The department, a county department under s. 46.215, 46.22, or 46.23, or a tribal governing body may request from any person in this state information it determines appropriate and necessary for determining or verifying eligibility or benefits for a recipient under any income maintenance program. Unless access to the information is prohibited or restricted by law, or unless the person has good cause, as determined by the department in accordance with federal law and regulations, for refusing to cooperate, the person shall make a good faith effort to provide the information within 7 days after receiving a request under this paragraph. The department, county department, or tribal governing body, or employees of any of them, may not disclose information obtained under this subdivision for any purpose not connected with the administration of the income maintenance program for which the information was requested.

2. In conjunction with any request for information under subd. 1., including a request made by subpoena under par. (b), the department, county department, or tribal governing body shall advise the person of the time by which the information must be provided.

(b) The department, a county department, or a tribal governing body may issue a subpoena, in substantially the form authorized under s. 885.02, to compel the production of financial information or other documentary evidence for determining or verifying eligibility or benefits for a recipient under any income maintenance program.

(c) A person is not liable to any person for any of the following:

1. Allowing access to financial or other records by the department, a county department, or a tribal governing body in response to a request under par. (a) or a subpoena described in par. (b).

2. Disclosing information from financial or other records to the department, a county department, or a tribal governing body in response to a request under par. (a) or a subpoena described in par. (b).

3. Any other action taken in good faith to comply with this subsection or a subpoena described in par. (b) or to comply with a request for information or access to records from the department, a county department, or a tribal governing body for determining or verifying eligibility or benefits for a recipient under any income maintenance program.

**History:** 1995 a. 27 ss. 2041 to 2049, 2933 to 2936, 3084 to 3087, 3130; 1995 a. 289, 417; 1997 a. 27; 2001 a. 16; 2003 a. 33 ss. 1308, 1448, 9160; Stats. 2003 s. 49.78; 2005 a. 25.

**Cross Reference:** See also ch. HFS 254, Wis. adm. code.

**49.785 Funeral expenses. (1)** Except as provided in sub. (1m), if any recipient of benefits under s. 49.148, 49.46 or 49.77, or under 42 USC 1381 to 1385 in effect on May 8, 1980, dies and the estate of the deceased recipient is insufficient to pay the funeral, burial and cemetery expenses of the deceased recipient,

the county or applicable tribal governing body or organization responsible for burial of the recipient shall pay, to the person designated by the county department under s. 46.215, 46.22 or 46.23 or applicable tribal governing body or organization responsible for the burial of the recipient, all of the following:

(a) The lesser of \$1,000 or the cemetery expenses that are not paid by the estate of the deceased and other persons.

(b) The lesser of \$1,500 or the funeral and burial expenses not paid by the estate of the deceased and other persons.

**(1m)** (a) If the total cemetery expenses for the recipient exceed \$3,500, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required to make a payment for the cemetery expenses under sub. (1) (a).

(b) If the total funeral and burial expenses for the recipient exceed \$3,500, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required to make a payment for funeral and burial expenses under sub. (1) (b).

(c) If a request for payment under sub. (1) is made more than 12 months after the death of the recipient, the county or applicable tribal governing body or organization responsible for burial of the recipient is not required to make a payment for cemetery, funeral or burial expenses.

**(2)** From the appropriation under s. 20.435 (4) (bn), the department shall reimburse a county or applicable tribal governing body or organization for any amount that the county or applicable tribal governing body or organization is required to pay under sub. (1) if the county or applicable tribal governing body or organization complies with sub. (3). From the appropriation under s. 20.435 (4) (bn), the department shall reimburse a county or applicable tribal governing body or organization for cemetery expenses or for funeral and burial expenses for a person described under sub. (1) that the county or applicable tribal governing body or organization is not required to pay under subs. (1) and (1m) only if the department approves the reimbursement due to unusual circumstances and if the county or applicable tribal governing body or organization complies with sub. (3).

**(3)** As a condition for reimbursement under sub. (2) for amounts paid on behalf of a deceased recipient, a county or applicable tribal governing body or organization shall provide to the department all of the following information with respect to the deceased recipient:

(a) The total cemetery expenses.

(b) The total funeral and burial expenses.

(c) The total amount of each of the expenses under pars. (a) and (b) that the county or tribal governing body or organization paid on behalf of the deceased recipient.

**History:** 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 206; 1981 c. 20; 1985 a. 29, 176, 332; 1989 a. 31, 239; 1995 a. 27, 289; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 s. 1302; Stats. 2003 s. 49.785; 2005 a. 25.

A cement grave liner will be considered a funeral and burial expense or a cemetery expense depending on who provides the liner; a liner provided by a funeral home constitutes a funeral and burial expense subject to the statutory payment limit. 79 Atty. Gen. 164.

**49.79 Food stamp administration. (1) DEFINITIONS.** In this section:

(a) “Controlled substance” has the meaning given in 21 USC 802 (6).

(b) “Custodial parent” has the meaning given in s. 49.141 (1) (b).

(c) “Food stamp program” means the federal food stamp program under 7 USC 2011 to 2036.

(d) “Noncustodial parent” has the meaning given in s. 49.141 (1) (h).

(e) “Parent” has the meaning given in s. 49.141 (1) (j).

(f) “Qualified alien” has the meaning given in 8 USC 1641 (b).

**(2) DENIAL OF ELIGIBILITY.** (a) An individual is ineligible to participate in the food stamp program in a month that any of the following is true:

1. The individual is a custodial parent of a child who is under the age of 18 and who has an absent parent, or the individual lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent, and the individual does not fully cooperate in good faith with efforts directed at establishing the paternity of the child, if necessary, establishing or enforcing a support order, if appropriate, or obtaining other payments or property, if any, to which that individual or the child may have rights. This subdivision does not apply if the individual has good cause for refusing to cooperate, as determined by the department in accordance with federal law and regulations.

2. The individual is a man who is alleged to be the father under s. 767.80 of a child under the age of 18 and the individual refuses to cooperate, as determined by the department in accordance with federal law and regulations, in efforts directed at establishing the paternity of the child.

3. If the individual is a noncustodial mother of a child under the age of 18 and the paternity of the father has not been established, the individual refuses to cooperate, as determined by the department in accordance with federal law and regulations, in efforts directed at establishing the paternity of the child.

4. The individual is a noncustodial parent of a child under the age of 18 and the individual refuses to cooperate, as determined by the department in accordance with federal law and regulations, in providing or obtaining support for the child.

5. The individual is obligated by court order to provide child support payments and is delinquent in making those court-ordered payments. This subdivision does not apply if any of the following applies:

a. The delinquency equals less than 3 months of the court-ordered support payments.

b. A court or county child support agency under s. 59.53 (5) is allowing the individual to delay the child support payments.

c. The individual is complying with a payment plan approved by a county child support agency under s. 59.53 (5) to provide support for the child of the individual.

(b) An individual who fails to comply with the work requirements of the employment and training program under s. 49.13 (2) (a) is ineligible to participate in the food stamp program as specified under s. 49.13 (3).

**Cross Reference:** See also ch. HFS 252, Wis. adm. code.

**(3) LIABILITY FOR LOST FOOD COUPONS.** (a) A county or federally recognized American Indian tribe is liable for all food stamp coupons lost, misappropriated, or destroyed while under the county's or tribe's direct control, except as provided in par. (b).

(b) A county or federally recognized American Indian tribe is not liable for food stamp coupons lost in natural disasters if it provides evidence acceptable to the department that the coupons were destroyed and not redeemed.

(c) A county or federally recognized American Indian tribe is liable for food stamp coupons mailed to residents of the county or members of the tribe and lost in the mail due to incorrect information submitted to the department by the county or tribe.

**(4) DEDUCTIONS FROM COUNTY INCOME MAINTENANCE PAYMENTS.** The department shall withhold the value of food stamp losses for which a county or federally recognized American Indian tribe is liable under sub. (3) from the payment to the county or tribe under income maintenance contracts under s. 49.78 and reimburse the federal government from the funds withheld.

**(5) DRUG CONVICTIONS.** (a) The department shall require an applicant for, or recipient under, the food stamp program to state in writing whether the applicant or recipient or any member of the applicant's or recipient's household has been convicted, in any state or federal court of a felony that has as an element possession, use or distribution of a controlled substance. The department shall require an applicant or recipient, or member of the applicant's or recipient's household to submit to a test for use of a controlled substance as a condition of continued eligibility if, after August 22, 1996, but not more than 5 years prior to the date the written state-

ment is made, the applicant or recipient or the member of the applicant's or recipient's household was convicted in any state or federal court of a felony that had as an element possession, use or distribution of a controlled substance. If the test results are positive with respect to any individual, the department may not consider the needs of that individual in determining the household's eligibility for the food stamp program for at least 12 months from the date of the test. The department shall, however, consider the income and resources of that individual to be available to the household.

(b) If an individual whose needs are not considered under par. (a) submits to a test for use of a controlled substance at least 12 months after the date that the department first disregarded that individual's needs under par. (a), and if the test results are negative, the department shall consider the individual's needs in determining the eligibility of the individual's household.

**(6) INELIGIBILITY FOR FUGITIVE FELONS.** No person is eligible for the food stamp program in a month in which that person is a fugitive felon under 7 USC 2015 (k) (1) or is violating a condition of probation, extended supervision or parole imposed by a state or federal court.

**(7) SIMPLIFIED FOOD STAMP PROGRAM.** The department shall develop a simplified food stamp program that meets all of the requirements under P.L. 104–193, section 854, and shall submit the plan to the secretary of the federal department of agriculture for approval. If the secretary of the federal department of agriculture approves the plan, the department shall submit the plan to the secretary of administration for approval. If the secretary of administration approves the plan, the department may implement the plan.

**(8) BENEFITS FOR QUALIFIED ALIENS.** The department shall provide benefits under this section to a qualified alien who is ineligible for benefits under this section solely because of the application of 9 USC 1612 or 1613 according to a plan approved by the federal department of agriculture. This subsection does not apply to the extent that federal food stamp benefits for qualified aliens are restored by the federal government.

**(10) CONTRACT FOR EMPLOYMENT AND TRAINING PROGRAM.** The department shall contract with the department of workforce development to administer the employment and training program under s. 49.13.

**History:** 2001 a. 16 ss. 1656sy to 1656tj, 1656tr, 1656ts to 1656tx, 1838sb to 1838td.; Stats 2001 s. 49.79; 2003 a. 33; 2005 a. 25; 2005 a. 443 s. 265.

**49.793 Recovery of food stamps. (1)** The department or a county or an elected governing body of a federally recognized American Indian tribe or band acting on behalf of the department, may recover overpayments that arise from an overissuance of food coupons under the food stamp program administered under s. 46.215 (1) (k) or 46.22 (1) (b) 2. d. Recovery shall be made in accordance with 7 USC 2022.

**(2)** A county or governing body of a federally recognized American Indian tribe may retain a portion of the amount of an overpayment the state is authorized to retain under 7 USC 2025 which is recovered under sub. (1) due to the efforts of an employee or officer of the county or tribe. The department shall promulgate a rule establishing the portion of the amount of the overpayment that the county or governing body may retain. This subsection does not apply to recovery of an overpayment that was made as a result of state, county or tribal governing body error.

**History:** 2001 a. 16 ss. 1656ty, 1656tym; Stats. 2001 s. 49.793.

**49.795 Food stamp offenses. (1)** In this section:

(a) "Eligible person" means a member of a household certified as eligible for the food stamp program or a person authorized to represent a certified household under 7 USC 2020 (e) (7).

(b) "Food" means items which may be purchased using food coupons under 7 USC 2012 (g) and 2016 (b).

(c) "Food stamp program" means the federal food stamp program under 7 USC 2011 to 2029.

(d) “Supplier” means a retail grocery store or other person authorized by the federal department of agriculture to accept food coupons in exchange for food under the food stamp program.

(e) “Unauthorized person” means a person who is not one of the following:

1. An employee or officer of the federal government, the state, a county or a federally recognized American Indian tribe acting in the course of official duties in connection with the food stamp program.

2. A person acting in the course of duties under a contract with the federal government, the state, a county or a federally recognized American Indian tribe in connection with the food stamp program.

3. An eligible person.

4. A supplier.

5. A person authorized to redeem food coupons under [7 USC 2019](#).

(2) No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp program benefits.

(2m) No person may knowingly fail to report changes in income, assets or other facts as required under [7 USC 2015 \(c\) \(1\)](#) or regulations issued under that provision.

(3) No person may knowingly issue food coupons to a person who is not an eligible person or knowingly issue food coupons to an eligible person in excess of the amount for which the person’s household is eligible.

(4) No eligible person may knowingly transfer food coupons except to purchase food from a supplier or knowingly obtain or use food coupons for which the person’s household is not eligible.

(5) No supplier may knowingly obtain food coupons except as payment for food or knowingly obtain food coupons from a person who is not an eligible person.

(6) No unauthorized person may knowingly obtain, possess, transfer or use food coupons.

(7) No person may knowingly alter food coupons.

(8) (a) For a first offense under this section:

1. If the value of the food coupons does not exceed \$100, a person who violates this section may be fined not more than \$1,000 or imprisoned not more than one year in the county jail or both.

2. If the value of the food coupons exceeds \$100, but is less than \$5,000, a person who violates this section is guilty of a Class I felony.

(b) For a 2nd or subsequent offense under this section:

1. If the value of the food coupons does not exceed \$100, a person who violates this section may be fined not more than \$1,000 or imprisoned not more than one year in the county jail or both.

2. If the value of the food coupons exceeds \$100, but is less than \$5,000, a person who violates this section is guilty of a Class H felony.

(c) For any offense under this section, if the value of the food coupons is \$5,000 or more, a person who violates this section is guilty of a Class G felony.

(d) 1. In addition to the penalties applicable under par. (a), (b) or (c), the court shall suspend a person who violates this section from participation in the food stamp program as follows:

a. For a first offense under this section, one year. The court may extend the suspension by not more than 18 months.

b. For a 2nd offense under this section, 2 years. The court may extend the suspension by not more than 18 months.

c. For a 3rd offense under this section, permanently.

1m. In addition to the penalties applicable under par. (a), (b) or (c), a court shall permanently suspend from the food stamp pro-

gram a person who has been convicted of an offense under [7 USC 2024 \(b\)](#) or (c) involving an item covered by [7 USC 2024 \(b\)](#) or (c) having a value of \$500 or more.

2. The person may apply to the county department under s. [46.215](#), [46.22](#) or [46.23](#) or the federally recognized American Indian tribal governing body or, if the person is a supplier, to the federal department of agriculture for reinstatement following the period of suspension, if the suspension is not permanent.

(e) 1. If a court finds that a person traded a controlled substance, as defined in s. [961.01 \(4\)](#), for food coupons, the court shall suspend the person from participation in the food stamp program as follows:

a. Upon the first such finding, for 2 years.

b. Upon the 2nd such finding, permanently.

2. If a court finds that a person traded firearms, ammunition or explosives for food coupons, the court shall suspend the person permanently from participation in the food stamp program.

(f) Notwithstanding par. (d), in addition to the penalties applicable under par. (a), (b) or (c), the court shall suspend from the food stamp program for a period of 10 years a person who fraudulently misstates or misrepresents his or her identity or place of residence for the purpose of receiving multiple benefits simultaneously under the food stamp program.

History: 2001 a. 16 s. 1656tz; Stats. 2001 s. 49.795; 2001 a. 109.

**49.797 Electronic benefit transfer. (1) DEFINITION.** In this section, “food stamp program” means the federal food stamp program under [7 USC 2011 to 2029](#) or, if the department determines that the food stamp program no longer exists, a nutrition program that the department determines is a successor to the food stamp program.

(2) DELIVERY OF FOOD STAMPS. (a) Except as provided in par. (b) and sub. (8), the department shall administer a statewide program to deliver food stamp benefits to recipients of food stamp benefits by an electronic benefit transfer system. All suppliers, as defined in s. [49.795 \(1\) \(d\)](#), may participate in the delivery of food stamp benefits under the electronic benefit transfer system. The department shall explore methods by which nontraditional retailers, such as farmers’ markets, may participate in the delivery of food stamp benefits under the electronic benefit transfer system.

(b) The department need not implement a program to deliver food stamp benefits by an electronic benefit transfer system if any of the following applies:

1. The department determines that the cost of the electronic benefit transfer system would be greater than the cost of another food stamp delivery system.

2. The department determines that the state may be liable under [12 CFR 205](#) for lost or stolen benefits.

(4) DUTIES. In administering a program to deliver benefits by an electronic benefit transfer system, the department shall do all of the following:

(a) Consult with members of the following groups:

1. Benefit recipients.

2. Advocates for benefit recipients.

3. Financial institution personnel.

4. Appropriate county, state and tribal governing body employees.

5. Persons who sell goods or services to recipients for which payment may be made by use of an electronic benefit transfer system, including, as appropriate, retailers, landlords and public utilities.

(b) Hold informational meetings at a variety of locations around the state.

(c) To the extent possible, maximize the use of existing automated teller machines and point-of-sale terminals.

(d) Authorize the use of cards that physically resemble financial transaction cards, as defined in s. [943.41 \(1\) \(em\)](#).

(5) STATE AGENCIES. The department may enter into an agreement with any state agency to deliver benefits paid by that agency with an electronic benefit transfer system.

(6) ADMINISTRATION; CONTRACTS. The department may enter into a contract with any financial institution, as defined in s. 705.01 (3), or other fiscal intermediary to administer a program to deliver benefits to recipients by an electronic benefit transfer system. The contract shall require the contractor to do all of the following:

(a) Provide training on the use of the electronic benefit transfer system to the persons enumerated in sub. (4) (a).

(b) Provide ongoing assistance, on a 24-hour basis, on the use of the electronic benefit transfer system.

(7) RULES. The department shall promulgate rules for the administration of the electronic benefit transfer system under this section. The rules shall include all of the following:

(a) The liability, and limits on the liability, of a recipient for lost benefits after the loss or theft of a card issued to the recipient under sub. (4) (d).

(b) The suspension from a program of recipients, retailers or other participants for fraudulent activity, as defined by the department.

(c) A provision for confidentiality.

(d) Measures to be taken by the department or the person with whom the department contracts under sub. (6) to ensure the security of card issuance and electronic transfer of benefits.

(8) COUNTY PARTICIPATION; EXCEPTION. The department may not require a county or tribal governing body to participate in an electronic benefit transfer system under this section if the costs to the county or tribal governing body would be greater than the costs that the county or tribal governing body would incur in delivering the benefits through a system that is not an electronic benefit transfer system.

**History:** 2001 a. 16 ss. 1656u to 1656ue, 1656uj to 1656ut; Stats. 2001 s. 49.797.

**Cross Reference:** See also ch. HFS 252, Wis. adm. code.

## SUBCHAPTER VI

### GENERAL PROVISIONS

**49.81 Public assistance recipients' bill of rights.** The department of health and family services, the department of workforce development and all public assistance and relief-granting agencies shall respect rights for recipients of public assistance. The rights shall include all rights guaranteed by the U.S. constitution and the constitution of this state, and in addition shall include:

(1) The right to be treated with respect by state agents.

(2) The right to confidentiality of agency records and files on the recipient. Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes or, to the extent permitted under federal law, for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax-related prosecutions.

(3) The right to access to agency records and files relating to the recipient, except that the agency may withhold information obtained under a promise of confidentiality.

(4) The right to a speedy determination of the recipient's status or eligibility for public assistance, to notice of any proposed change in such status or eligibility, and, in the case of assistance granted under s. 49.19, 49.46, 49.468 or 49.47, to a speedy appeals process for resolving contested determinations.

**History:** 1977 c. 29; 1989 a. 31; 1995 a. 27 ss. 2638, 2640 to 2643, 9126 (19), 9130 (4); 1997 a. 3, 237.

### 49.82 Administration of public assistance programs.

(1) DEPARTMENTS TO ADVISE COUNTIES. The department of health

and family services and the department of workforce development shall advise all county officers charged with the administration of requirements relating to public assistance programs under this chapter and shall render all possible assistance in securing compliance therewith, including the preparation of necessary forms and reports. The department of health and family services and the department of workforce development shall also publish any information that those departments consider advisable to acquaint persons entitled to public assistance, and the public generally, with the laws governing public assistance under this chapter.

(2) ELIGIBILITY VERIFICATION. Proof shall be provided for each person included in an application for public assistance under this chapter, except for a child who is eligible for medical assistance under s. 49.46 or 49.47 because of 42 USC 1396a (e) (4) or an unborn child who is eligible for coverage under the Badger Care health care program under s. 49.665 (4) (ap), of his or her social security number or that an application for a social security number has been made.

**History:** 1995 a. 27 ss. 3088, 3125, 3209, 9126 (19), 9130 (4); 1997 a. 3; 2001 a. 107; 2005 a. 25.

**49.83 Limitation on giving information.** Except as provided under s. 49.32 (9), (10), and (10m), no person may use or disclose information concerning applicants and recipients of relief funded by a relief block grant, aid to families with dependent children, Wisconsin Works under ss. 49.141 to 49.161, social services, child and spousal support and establishment of paternity and medical support liability services under s. 49.22, or supplemental payments under s. 49.77 for any purpose not connected with the administration of the programs, except that the department of workforce development may disclose such information to the department of revenue for the sole purpose of administering state taxes. Any person violating this section may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

**History:** 1995 a. 27 ss. 3142, 3144; Stats. 1995 s. 49.83; 1995 a. 289, 361, 404; 1997 a. 35; 2005 a. 25.

### 49.84 Verification of public assistance applications.

(1) Any person who applies for any public assistance shall execute the application or self-declaration in the presence of the welfare worker or other person processing the application. This subsection does not apply to any superintendent of a mental health institute, director of a center for the developmentally disabled, superintendent of a state treatment facility or superintendent of a state correctional facility who applies for public assistance on behalf of a patient.

(2) At the time of application, the agency administering the public assistance program shall apply to the department of health and family services for a certified copy of a birth certificate for the applicant if the applicant is required to provide a birth certificate or social security number as part of the application and for any person in the applicant's household who is required to provide a birth certificate or social security number. The department of health and family services shall provide without charge any copy for which application is made under this subsection.

(3) Notwithstanding subs. (1) and (2), personal identification documentation requirements may be waived for 10 days for an applicant for relief funded by a relief block grant, if the applicant agrees to cooperate with the relief agency by providing information necessary to obtain proper identification.

(4) Notwithstanding sub. (2), the relief agency receiving an application under sub. (3) shall pay on behalf of any applicant under sub. (3) fees required for the applicant to obtain proper identification.

(5) A person applying for Wisconsin works under ss. 49.141 to 49.161, aid to families with dependent children under s. 49.19, medical assistance under subch. IV or food stamp program benefits under 7 USC 2011 to 2029 shall, as a condition of eligibility,



provide a declaration and other verification of citizenship or satisfactory immigration status as required by the department by rule or as required in 42 USC 1320b–7 (d).

**History:** 1971 c. 334; 1979 c. 221; 1985 a. 29 ss. 1005m, 3200 (23); 1985 a. 315; 1989 a. 31; 1995 a. 27 ss. 2798 to 2801b, 2803, 2804, 3210, 3211, 9126 (19); Stats. 1995 s. 49.84; 1995 a. 289.

#### 49.845 Fraud investigation and error reduction.

**(1) FRAUD INVESTIGATION.** From the appropriations under s. 20.435 (4) (bn), (kz), (L), and (nn), the department of health and family services shall establish a program to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, food stamp benefits under the food stamp program under 7 USC 2011 to 2036, supplemental security income payments under s. 49.77, payments for the support of children of supplemental security income recipients under s. 49.775, and health care benefits under the Badger Care health care program under s. 49.665 and, if the department of workforce development contracts with the department of health and family services under sub. (4), on the part of recipients of aid to families with dependent children under s. 49.19 and participants in the Wisconsin Works program under ss. 49.141 to 49.161. The activities of the department of health and family services under this subsection may include comparisons of information provided to the department by an applicant and information provided by the applicant to other federal, state, and local agencies, development of an advisory welfare investigation prosecution standard, and provision of funds to county departments under ss. 46.215, 46.22, and 46.23 and to Wisconsin Works agencies to encourage activities to detect fraud. The department of health and family services shall cooperate with district attorneys regarding fraud prosecutions.

**(2) STATE ERROR REDUCTION ACTIVITIES.** The department of health and family services shall conduct activities to reduce payment errors in the Medical Assistance program under subch. IV, the food stamp program under 7 USC 2011 to 2036, the supplemental security income payments program under s. 49.77, the program providing payments for the support of children of supplemental security income recipients under s. 49.775, and the Badger Care health care program under s. 49.665 and, if the department of workforce development contracts with the department of health and family services under sub. (4), in Wisconsin Works under ss. 49.141 to 49.161.

**(3) WISCONSIN WORKS AGENCY ERROR REDUCTION.** If the department of workforce development contracts with the department of health and family services under sub. (4), the department of health and family services shall provide funds from the appropriation under s. 20.435 (4) (kz) to Wisconsin Works agencies to offset the administrative costs of reducing payment errors in Wisconsin Works under ss. 49.141 to 49.161.

**(4) CONTRACT FOR WISCONSIN WORKS.** Notwithstanding s. 49.197 (1m) and (3), the department of workforce development may contract with the department of health and family services to investigate suspected fraudulent activity on the part of recipients of aid to families with dependent children under s. 49.19 and participants in Wisconsin Works under ss. 49.141 to 49.161 and to conduct activities to reduce payment errors in Wisconsin Works under ss. 49.141 to 49.161, as provided in this section.

**History:** 2005 a. 25.

**49.847 Recovery of incorrect payments under certain public assistance programs.** **(1)** Subject to ss. 49.497 (1) and 49.793 (1), the department of health and family services, or a county or elected governing body of a federally recognized American Indian tribe or band acting on behalf of the department, may recover benefits incorrectly paid under any of the programs administered by the department under this chapter.

**(2)** The department, county, or elected governing body may recover an overpayment from a family or individual who continues to receive benefits under any program administered by the department under this chapter by reducing the family's or individ-

ual's benefit amount. Subject to s. 49.793 (1), the department may by rule specify other methods for recovering incorrectly paid benefits.

**(3)** Subject to ss. 49.497 (2) and 49.793 (2), a county or elected governing body may retain a portion of an amount recovered under this section due to the efforts of an employee or officer of the county, tribe, or band, as provided by the department by rule.

**History:** 2005 a. 25.

**Cross Reference:** See also ch. HFS 2, Wis. adm. code.

#### 49.85 Certification of certain public assistance overpayments and delinquent loan repayments.

**(1) DEPARTMENT NOTIFICATION REQUIREMENT.** If a county department under s. 46.215, 46.22, or 46.23 or a governing body of a federally recognized American Indian tribe or band determines that the department of health and family services may recover an amount under s. 49.497, 49.793, or 49.847, or that the department of workforce development may recover an amount under s. 49.161 or 49.195 (3) or collect an amount under s. 49.147 (6) (cm), the county department or governing body shall notify the affected department of the determination. If a Wisconsin Works agency determines that the department of workforce development may recover an amount under s. 49.161 or 49.195 (3), or collect an amount under s. 49.147 (6) (cm), the Wisconsin Works agency shall notify the department of workforce development of the determination.

**(2) DEPARTMENT CERTIFICATION.** (a) At least annually, the department of health and family services shall certify to the department of revenue the amounts that, based on the notifications received under sub. (1) and on other information received by the department of health and family services, the department of health and family services has determined that it may recover under s. 49.45 (2) (a) 10., 49.497, 49.793, or 49.847, except that the department of health and family services may not certify an amount under this subsection unless all of the following apply:

1. The department has met the notice requirements under sub. (3).
2. The department's determination has either not been appealed or is no longer under appeal.
3. If the determination relates to recovery of an amount under s. 49.497, the determination was rendered to a judgment under s. 49.497 (1m) (b).

(b) At least annually, the department of workforce development shall certify to the department of revenue the amounts that, based on the notifications received under sub. (1) and on other information received by the department of workforce development, the department of workforce development has determined that it may recover under ss. 49.161 and 49.195 (3) and collect under s. 49.147 (6) (cm), except that the department of workforce development may not certify an amount under this subsection unless it has met the notice requirements under sub. (3) and unless its determination has either not been appealed or is no longer under appeal.

**(3) NOTICE REQUIREMENTS.** (a) At least 30 days before certification of an amount, the department of health and family services shall send a notice to the last-known address of the person from whom that department intends to recover the amount. The notice shall do all of the following:

1. Inform the person that the department of health and family services intends to certify to the department of revenue an amount that the department of health and family services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793, or 49.847, for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of health and family services to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

3. Inform the person that, if the determination of the department of health and family services is appealed, that department

will not certify the amount to the department of revenue while the determination of the department of health and family services is under appeal.

4. Inform the person that, unless a contested case hearing is requested to appeal the determination of the department of health and family services, the person may be precluded from challenging any subsequent setoff of the certified amount by the department of revenue, except on the grounds that the certified amount has been partially or fully paid or otherwise discharged, since the date of the notice.

5. Request that the person inform the department of health and family services if a bankruptcy stay is in effect with respect to the person or if the claim has been discharged in bankruptcy.

6. Inform the person that the person may need to contact the department of revenue in order to protect the refunds of spouses who are not liable for the claim.

(b) At least 30 days before certification of an amount, the department of workforce development shall send a notice to the last-known address of the person from whom that department intends to recover or collect the amount. The notice shall do all of the following:

1. Inform the person that the department of workforce development intends to certify to the department of revenue an amount that the department of workforce development has determined to be due under s. 49.161 or 49.195 (3) or to be delinquent under a repayment agreement for a loan under s. 49.147 (6), for setoff from any state tax refund that may be due the person.

2. Inform the person that he or she may appeal the determination of the department of workforce development to certify the amount by requesting a hearing under sub. (4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

3. Inform the person that, if the determination of the department of workforce development is appealed, that department will not certify the amount to the department of revenue while the determination of the department of workforce development is under appeal.

4. Inform the person that, unless a contested case hearing is requested to appeal the determination of the department of workforce development, the person may be precluded from challenging any subsequent setoff of the certified amount by the department of revenue, except on the grounds that the certified amount has been partially or fully paid or otherwise discharged, since the date of the notice.

5. Request that the person inform the department of workforce development if a bankruptcy stay is in effect with respect to the person or if the claim has been discharged in bankruptcy.

6. Inform the person that the person may need to contact the department of revenue in order to protect the refunds of spouses who are not liable for the claim.

(4) **HEARINGS.** (a) If a person has requested a hearing under this subsection, the department of health and family services shall hold a contested case hearing under s. 227.44, except that the department of health and family services may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

(b) If a person has requested a hearing under this subsection, the department of workforce development shall hold a contested case hearing under s. 227.44, except that the department of workforce development may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

(5) **EFFECT OF CERTIFICATION.** Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a set-off under s. 71.93. Certification of an amount under this section does not prohibit the department of health and family services or

the department of workforce development from attempting to recover or collect the amount through other legal means. The department of health and family services or the department of workforce development shall promptly notify the department of revenue upon recovery or collection of any amount previously certified under this section.

**History:** 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25.

**Cross Reference:** See also ch. HFS 2, Wis. adm. code.

#### 49.852 Delinquent support payments; pension plans.

(1) The department of workforce development may direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment from a pension plan that may be paid a delinquent support obligor, except that the department of workforce development may not direct that an amount be withheld under this subsection unless it has met the notice requirements under sub. (2) and unless the amount specified has either not been appealed or is no longer under appeal under s. 49.854.

(2) The department of workforce development shall send a notice to the last-known address of the person from whom the department intends to recover the amount specified in the statewide support lien docket under s. 49.854 (2) (b). The notice shall do all of the following:

(a) Inform the person that the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, shall withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment from a pension plan that may be paid the person.

(b) Inform the person that he or she may, within 20 business days after the date of the notice, request a court hearing on the issue of whether the person owes the amount specified in the statewide support lien docket under s. 49.854 (2) (b). The request shall be in writing and the person shall mail or deliver a copy of the request to the county child support agency under s. 59.53 (5).

(c) Request that the person inform the department of workforce development or the appropriate county child support agency under s. 59.53 (5) if a bankruptcy stay is in effect with respect to the person.

(3) If a person has requested a hearing pursuant to sub. (2) (b), the hearing shall be conducted before the circuit court that rendered the initial order to pay support. The court shall schedule a hearing within 10 business days after receiving a request for a hearing. A circuit court commissioner may conduct the hearing. If the court determines that the person owes the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department of workforce development may direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, to withhold the amount from any lump sum payment from a pension plan that may be paid the person. If the court determines that the person does not owe the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department of workforce development may not direct the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan, whichever is appropriate, to withhold the amount from any lump sum payment from a pension plan that may be paid the person.

(4) (a) If the department of workforce development directs the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien

docket under s. 49.854 (2) (b), this directive shall constitute a lien, equal to the amount specified in the statewide support lien docket, on any lump sum payment from a pension plan that may be paid the person.

(b) If the department of workforce development directs the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b), the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan shall deduct from any lump sum payment that may be paid the person the amount specified in the statewide support lien docket, less any amount specified under par. (d). If the amount specified in the statewide support lien docket under s. 49.854 (2) (b), less any amount specified under par. (d), exceeds the lump sum payment, the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan shall deduct the entire lump sum payment, less any withholdings otherwise required by law. The amount deducted under this paragraph shall be remitted to the department of workforce development.

(c) A directive to the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan to withhold the amount specified in the statewide support lien docket under s. 49.854 (2) (b) under this section does not prohibit the department of workforce development from attempting to recover the amount through other legal means.

(d) The department of workforce development shall promptly notify the department of employee trust funds, the retirement system of any 1st class city, any retirement system established under chapter 201, laws of 1937, or the administrator of any other pension plan upon recovery of any amount previously specified in the statewide support lien docket under s. 49.854 (2) (b).

History: 1997 a. 191; 2001 a. 61.

**49.853 Financial record matching program. (1) DEFINITIONS.** In this section:

(a) “Account” means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account.

(am) “County child support agency” means the county child support agency under s. 59.53 (5).

(b) “Department” means the department of workforce development.

(c) “Financial institution” means any of the following:

1. A depository institution, as defined in 12 USC 1813 (c).
2. An institution–affiliated party, as defined in 12 USC 1813 (u), of a depository institution under subd. 1.
3. A federal credit union or state credit union, as defined in 12 USC 1752.

4. An institution–affiliated party, as defined in 12 USC 1786 (r), of a credit union under subd. 3.

5. A benefit association, insurance company, safe deposit company, money market mutual fund or similar entity authorized to do business in this state.

6. A broker–dealer, as defined in s. 551.02 (3).

(d) “Obligor” has the meaning given in s. 49.854 (1) (d).

(dm) “Ownership interest” has the meaning specified by the department by rule.

(e) “Support” has the meaning given in s. 49.854 (1) (f).

**(2) FINANCIAL RECORD MATCHING PROGRAM AND AGREEMENTS.** The department shall operate a financial record matching program under this section. The department shall promulgate rules speci-

fying procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this section. The agreement shall require the financial institution to participate in the financial record matching program under this section by electing either the financial institution matching option under sub. (3) or the state matching option under sub. (4). The department shall reimburse a financial institution up to \$125 per quarter for participating in the financial record matching program under this section.

**(3) FINANCIAL INSTITUTION MATCHING OPTION.** (a) If a financial institution with which the department has an agreement under sub. (2) elects to use the financial institution matching option under this subsection, the department shall provide a financial institution with information regarding delinquent obligors. The information shall be provided at least once each calendar quarter and shall include the obligor’s name and social security number. The information shall be provided to the financial institution in the manner specified by rule or by agreement. To the extent feasible, the information required under this paragraph shall be provided to the financial institution by an automated data exchange.

(b) Each financial institution receiving information under par. (a) shall take actions necessary to determine whether any obligor has an ownership interest in an account maintained at the financial institution. If the financial institution determines that an obligor has an ownership interest in an account at the financial institution, the financial institution shall provide the department with a notice containing the obligor’s name, address of record, social security number or other taxpayer identification number, and account information. The information regarding the obligor’s account shall include the account number, the account type, the nature of the obligor’s ownership interest in the account, and the balance of the account at the time that the record match is made. The notice under this paragraph shall be provided in the manner specified by rule or agreement. To the extent feasible, the notice required under this paragraph shall be provided to the department by an automated data exchange.

(c) The financial institution participating in the financial institution matching option under this subsection, and the employees, agents, officers and directors of the financial institution, may use the information provided by the department under par. (a) only for the purpose of matching records under par. (b). Neither the financial institution nor any employee, agent, officer or director of the financial institution may disclose or retain information provided under par. (a) concerning obligors who do not have an interest in an account maintained at the financial institution. Any person who violates this paragraph may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail for not less than 10 days nor more than one year or both.

**(4) STATE MATCHING OPTION.** (a) If a financial institution with which the department has an agreement under sub. (2) elects to use the state matching option under this subsection, the financial institution shall provide the department with information concerning all accounts maintained at the financial institution at least once each calendar quarter. For each account maintained at the financial institution, the financial institution shall notify the department of the name and social security number or other tax identification number of each person having an ownership interest in the account, together with a description of each person’s interest. The information required under this paragraph shall be provided in the manner specified by rule or agreement. To the extent feasible, the notice required under this paragraph shall be provided to the department by an automated data exchange.

(b) The department shall take actions necessary to determine whether any obligor has an ownership interest in an account maintained at a financial institution providing information under par. (a). Upon the request of the department, the financial institution shall provide the department, for each obligor who matches information provided by the financial institution under par. (a), the

obligor's address of record, the obligor's account number and account type and the balance of the account.

(c) The department may use the information provided by a financial institution under pars. (a) and (b) only for the purpose of matching records under par. (b). The department may not disclose or retain information received under pars. (a) and (b) concerning account holders who are not delinquent obligors.

(d) A financial institution participating in the state matching option under this subsection, and the employees, agents, officers and directors of the financial institution, may use any information that is provided by the department in requesting additional information under par. (b) only for the purpose of administering s. 49.22 or for the purpose of providing the additional information. Any person who violates this paragraph may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail for not less than 10 days nor more than one year or both.

(5) DELEGATION. The department may delegate any powers and duties given to the department under this section to county child support agencies. The department may require financial institutions to provide county child support agencies with any notices that are required under this section to be provided to the department.

**History:** 1997 a. 191; 2001 a. 16.

**Cross Reference:** See also ch. DWD 43, Wis. adm. code.

#### 49.854 Liens against property for delinquent support payments. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "County child support agency" means the county child support agency under s. 59.53 (5).

(c) "Levy" means all powers of distraint and seizure.

(d) "Obligor" means a person who is obligated to pay court-ordered support.

(e) "Property" includes accounts at financial institutions, personal property and real property, tangible and intangible property and rights to property, but is limited to property and rights of the obligor to property existing at the time of levy.

(f) "Support" means any of the following:

1. Child or family support.
2. Maintenance.
3. Medical expenses of a child.
4. Birth expenses.
5. Any accrued interest on delinquent amounts under subds. 1. to 4.

(2) CREATION OF LIEN; SATISFACTION. (a) *Creation.* If a person obligated to pay support fails to pay any court-ordered amount of support, that amount becomes a lien in favor of the department upon all property of the person. The lien becomes effective when the information is entered in the statewide support lien docket under par. (b) and that docket is delivered to the register of deeds in the county where the property is located. A lien created under this paragraph is not effective against a good-faith purchaser of titled personal property, unless the lien is recorded on that title.

(b) *Statewide support lien docket.* The department shall maintain a statewide support lien docket. The department shall provide a copy of the statewide support lien docket to the register of deeds and the county child support agency of each county in this state, and to each state agency that titles personal property. Each entry in the statewide support lien docket shall contain the name and the social security number of the obligor and the date that the lien is entered in the docket, as well as the amount of the lien as of the time that the entry is made.

(c) *Updating the statewide support lien docket.* The department shall update the statewide support lien docket in response to orders issued by a court or circuit court commissioner. The department shall periodically update the statewide support lien docket to reflect changes in the amounts of the liens contained in the docket.

(d) *Amount of lien; satisfaction.* The amount of any support obligation that is a lien under this subsection may be determined by requesting that information from the county child support agency or the register of deeds, as specified by the department. Payment of the full amount that is delinquent at the time of payment to that county child support agency extinguishes that lien. Upon request, the county child support agency shall furnish to the payer of the delinquent amount a satisfaction of lien showing that the amount of support owed has been paid in full and that the person no longer owes the delinquent amount. The satisfaction of lien may be recorded in the office of the register of deeds for any county in which real or personal property of the person who owed the support is located.

(3) NOTIFICATION AND APPEAL OF LIEN. (a) *Notice.* When a delinquent support obligation is included in the statewide support lien docket, the department shall provide notice to the obligor that a lien exists with respect to the delinquent support obligation. The notice shall include the amount of the delinquent child support obligation and shall inform the obligor that the lien is in effect. The notice shall inform the obligor of the obligor's right to request a financial records and court order review under par. (ag) and the obligor's right to request a court hearing under par. (ar). The notice under this paragraph shall also inform the obligor that the department will not take actions to enforce the lien if the obligor pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department or a county child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

(ag) *Financial records and court order review.* 1. Within 10 business days of the date of the notice under par. (a), the obligor may file a written request for a financial records and court order review with the county child support agency. If the obligor makes a timely request for a financial records and court order review under this paragraph, the department shall hold the review as soon as practicable, but in no event to exceed 60 days after the date of the request. The department shall conduct the financial records and court order review at no charge to the obligor. As soon as practicable after conducting the financial records and court order review, the department shall make a determination regarding whether the amount of the delinquency contained in the notice is correct and shall provide a copy of the determination to the obligor. If the department determines that the amount of the delinquency is incorrect, the department shall take appropriate actions to correct the inaccuracy. The notice of the determination shall include information regarding the obligor's right to request a review of the determination under subd. 2.

2. If the obligor disagrees with the determination of the department, the obligor may request a hearing with the court or a circuit court commissioner to review the department's determination. To request a hearing under this subdivision, the obligor shall make the request within 5 business days of the date of the department's determination under subd. 1. The obligor shall make the request in writing and shall mail or deliver a copy of the request to the county child support agency. If a timely request for a hearing is made under this subdivision, the court or circuit court commissioner shall hold the hearing within 15 business days of the request. If, at the hearing, the obligor establishes that the lien is not proper because of a mistake of fact, the court or circuit court commissioner shall order the department to remove the lien from the statewide support lien docket or adjust the amount of the delinquent obligation.

(ar) *Direct appeal.* If the obligor has not requested a financial records and court order review under par. (ag), the obligor may request a hearing under this paragraph within 20 business days of the date of the notice under par. (a). The obligor shall make the request in writing and shall mail or deliver a copy of the request to the county child support agency. If a timely request for a hearing is made under this paragraph, the court or circuit court commissioner shall schedule a hearing within 10 days after the date of

the request. If, at the hearing, the obligor establishes that the lien is not proper because of a mistake of fact, the court or circuit court commissioner shall order the department to remove the lien from the statewide support lien docket or adjust the amount of the delinquent obligation.

(b) *Appeal.* If a circuit court commissioner conducts a hearing under par. (ag) or (ar), the department or the obligor may, within 15 business days after the date of the decision by the circuit court commissioner, request review of the decision by the court having jurisdiction over the action. The court conducting the review may order that the lien be withdrawn from the statewide support lien dockets or may order an adjustment of the amount of the delinquent obligation. If no appeal is sought or if the court does not order the withdrawal of the lien, the department may take appropriate actions to enforce the lien.

(4) **POWERS OF LEVY AND DISTRRAINT; GENERALLY.** If any obligor neglects or refuses to pay the support owed by the obligor after the department has made demand for payment, the department may collect that support and the levy fees and costs under sub. (11) by levy upon any property belonging to the obligor as provided in subs. (5) to (7). Whenever the value of any property that has been levied upon under this subsection is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the obligor until the support owed and levy costs are fully paid.

(5) **LEVYING AGAINST FINANCIAL ACCOUNTS.** (a) *Definitions.* In this subsection:

1. “Account” has the meaning given in s. 49.853 (1) (a).
2. “Financial institution” has the meaning given in s. 49.853 (1) (c).

(b) *Notice to the financial institution.* To enforce a lien under this section by levying against an account at a financial institution, the department shall send a notice of levy to the financial institution instructing the financial institution to prohibit the closing of or withdrawals from one or more accounts that the obligor owns in whole or in part, up to a total amount that is sufficient to pay the support owed, financial institution fees under par. (e) and estimated levy fees and costs under sub. (11), until further notice from the department or a court. The financial institution shall comply with the notice of levy and shall hold the amount specified in the notice until the financial institution receives further instructions from the department or a court.

(d) *Notice to the obligor and certain others.* No later than the next business day after the department sends notice of levy to the financial institution under par. (b), the department shall send a copy of the notice of levy to the obligor. The department shall also send a copy of the notice of levy to any other person who has an ownership interest in the account. The notices required under this paragraph shall be in the form determined by the department, however the notice shall include language stating all of the following:

1. That the obligor has been certified as delinquent in paying support.
2. The amount of the support owed.
3. The financial institution to which the department sent the notice under par. (b).
4. That one or more accounts owned in whole or in part by the obligor at the financial institution have been frozen, up to a total amount that is sufficient pay the support owed, the department’s levy costs and financial institution fees.
6. That the obligor may request a hearing within 20 business days after the date of the notice, by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

6m. That a person, other than the obligor, who holds the account jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of

the jointly held account that is attributable to his or her net contributions to the jointly held account.

7. The address to which the request for hearing must be mailed or delivered in order to schedule a hearing.

(e) *Financial institution fees.* A financial institution may continue to collect fees, under the terms of the account agreement, on accounts frozen under this subsection. In addition to the levy fee authorized under sub. (11) (a), a financial institution may collect any early withdrawal penalty incurred under the terms of an account as a result of the levy. Financial institution fees authorized under this paragraph may be charged to the account immediately prior to the remittance of the amount to the department and may be charged even if the amounts in the obligor’s accounts are insufficient to pay the total amount of support owed and the department’s levy costs under sub. (11) (b).

(f) *Hearings.* A hearing requested under par. (d) 6. shall be conducted before the circuit court rendering the order to pay support. Within 45 business days after receiving a request for hearing under par. (d) 6., the court shall conduct the hearing. A circuit court commissioner may conduct the hearing. The hearing shall be limited to a review of whether the account holder owes the amount of support certified and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit court commissioner shall order the department to release all or a portion of the funds. If the court or circuit court commissioner determines that the account holder does not owe support or owes less than the amount claimed by the department, the court shall order the department to return the seized funds or the excess of the seized funds over the amount of the delinquency to the account holder. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action.

(6) **LEVYING AGAINST OTHER PERSONAL PROPERTY.** (a) *When notice of seizure required.* If the department has enforced a lien under this section by levying against personal property, the department shall immediately notify the obligor that the property has been seized. The department shall provide the notice of seizure under this paragraph to any person having an ownership interest in the property or any other person with an interest of record in the property. If the property is titled, the department shall also send a copy of the notice of seizure to the state agency that titles the property. A state agency receiving a notice under this paragraph may not transfer title to the personal property described in the notice, except on the instructions of a court or the department.

(b) *Content of notice of seizure.* The notice provided under par. (a) shall include all of the following:

1. The name of the obligor and the amount of the support owed.
2. A description of the personal property seized.
3. A statement that the obligor may, within 20 business days after the date of the notice, request a hearing on the questions of whether past–due support is owed and whether the property was wrongfully seized.

3m. A statement that a person, other than the obligor, who holds the personal property jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of the jointly held personal property that is

attributable to his or her net contributions to the jointly held personal property.

4. A statement that the hearing may be requested by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

(c) *Hearing.* If a hearing is requested under par. (b) 4., the court or circuit court commissioner shall schedule a hearing within 10 business days after receiving the request under par. (b) 4. The hearing shall be limited to a review of whether the obligor owes the amount of support owed that is stated in the notice of seizure and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit court commissioner shall order the department to return the seized property within 15 business days. If the court or circuit court commissioner determines that the obligor does not owe support or owes less than the amount claimed by the department, the court shall order the department to return the seized property within 15 business days or specify the amount which may be retained by the department after the sale of the seized property. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action. The court reviewing the decision may order the department to return the seized property or may authorize the sale of the property by the department. If the department is ordered to return seized property under this paragraph, the court shall instruct any state agency responsible for titling the property that it may transfer title to the property without receiving instructions from a court or the department under par. (a).

(d) *Notice of sale.* As soon as practicable after seizing the personal property and after any requested hearings are conducted under par. (c), the department shall send a notice to the obligor stating that the department intends to issue an execution requiring the sheriff to sell the property within 90 days of the date of the execution. The final notice shall include a notice of the obligor's right to redeem the property under par. (e) 8.

(e) *Execution and sale.* After the department has sent the notice under par. (d), the department may issue an execution on any personal property identified in the notice to enforce a lien contained in the statewide support lien docket. The department shall provide a copy of an execution under this paragraph to the obligor and to any other person having an interest in the property. The provisions of ch. 815 apply to the executions issued by the department, except as follows:

1. References to judgments shall be read as references to liens entered in the statewide support lien docket, references to debtors shall be read as references to obligors and references to the court or a judge shall be read as references to the department.

2. Sections 815.01 to 815.04 do not apply. The department may not issue an execution more than 5 years after the date on which the lien was entered in the statewide support lien docket.

3. Section 815.05 does not apply. If the department has delegated under sub. (17) its authority under this subsection, the execution shall be signed by the director of the child support agency that is initiating the property seizure on behalf of the department. The execution shall include all of the following information:

- a. The date that a lien against the obligor was first entered on the child support lien docket.
- b. The amount of past due child support that is owed at the time the execution is issued.
- c. A description of the personal property.

d. A directive to the officer to whom the execution is addressed to sell the property within 90 days of the date of the execution.

4. The execution shall be made returnable under s. 815.06 to the department within 90 days, rather than 60 days, after its receipt by the officer.

5. Sections 815.07, 815.09 to 815.12, 815.14, 815.15, 815.18 to 815.21, 815.25 and 815.26 do not apply.

6. Notwithstanding s. 815.29, the officer may not sell the personal property without 20 days advance notice. In addition to the notice required under s. 815.29, the officer to whom the execution is issued shall notify the obligor of the time and place of the sale of the personal property.

7. If, prior to the sale of the personal property, the department or child support agency notifies the officer that the obligor has paid the amount owed together with any levy fees and costs under sub. (11) or that the custodial parent to whom the support is owed has died, the officer shall discontinue the execution.

8. Sections 815.52 to 815.55 do not apply. The obligor may redeem the property prior to the date of the sale by payment of the full amount of support owed together with any levy fees and costs under sub. (11). The property may not be redeemed after it is sold. If the property is redeemed, the county child support agency shall issue a certificate upon redemption that includes the date of redemption, the amount of money paid and a description of the property redeemed. The certificate of redemption may be recorded in the office of the register of deeds. If titled property is redeemed, the department shall instruct the titling agency that the agency may transfer title to the property without receiving instructions from a court or the department under par. (a). Upon the sale of personal property on execution, the officer shall issue a certificate of sale to the purchaser within 10 days of the sale. If titled property is sold, the department shall instruct the titling agency to transfer title of the sold property to the purchaser.

(f) *Updating the lien docket.* The department shall update the statewide support lien docket to remove a lien that is satisfied by an execution or sale under this subsection.

(7) **LEVYING AGAINST REAL PROPERTY.** (a) *When notice of intent to levy required.* To enforce a lien under this section by levying against real property, the department shall provide the obligor and all owners of the real property with a notice of intent to levy under par. (b) 1. A copy of the notice under par. (b) 1. shall be provided to the register of deeds in the county where the real property is located. A register of deeds receiving a notice of intent to levy under this paragraph shall file the notice of intent to levy. The department shall provide a notice of intent to levy under par. (b) 2. to any person having an interest of record in the real property.

(b) *Content of notice of intent.* 1. The notice provided under par. (a) to the obligor, to owners of the property and to the register of deeds shall include all of the following:

- a. The name of the obligor and the amount of the support owed.
- b. A description of the real property against which the department intends to levy.
- c. A statement that the obligor may, within 20 business days after the date of the notice, request a hearing on the question of whether past-due support is owed.

d. A statement that a person, other than the obligor, who holds the real property jointly with the obligor may request a hearing within 20 business days after the date of the notice, to protect the portion of the jointly held real property that is attributable to his or her net contributions to the jointly held real property.

e. A statement that the hearing may be requested by submitting the request in writing and by mailing or delivering a copy of the request to the county child support agency.

2. In addition to the information included under subd. 1. a. to c., the notice provided under par. (a) to a person having an interest

of record in the real property shall include a request that the interest holder notify the department, within 10 business days after receiving the notice, of the amount and nature of the person's interest in the property.

(c) *Hearing.* If a hearing is requested under par. (b) 1. c., the court or circuit court commissioner shall schedule a hearing within 10 business days after receiving the request under par. (b) 1. c. The hearing shall be limited to a review of whether the obligor owes the amount of support owed that is stated in the notice of intent under par. (b) and whether any alternative payment arrangement offered by the department or the county child support agency is reasonable. If the court or circuit court commissioner makes a written determination that an alternative payment arrangement offered by the department or county child support agency is not reasonable, the court or circuit court commissioner may order an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the court or circuit court commissioner shall order the department not to proceed with the levy. If the court or circuit court commissioner determines that the obligor does not owe support or owes less than the amount claimed by the department, the court shall order the department not to proceed with the levy or specify the amount that may be retained by the department after the sale of the seized property. If a circuit court commissioner conducts the hearing under this paragraph, the department or the obligor may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action. The court reviewing the decision may order the department not to proceed with the levy of the property or may authorize the sale of the property by the department.

(d) *Final notice.* Unless the department has been directed not to proceed with the levy in a hearing under par. (c) or unless the support owed and any levy fees and costs under sub. (11) have been paid, the department may send to the obligor a final notice of intent to seize and sell the property. The final notice may not be sent until 20 business days after the date of the notice of intent to levy under par. (a) or after any requested hearings under par. (c) have been completed. The final notice shall state that the department intends to issue an execution requiring the sheriff to seize and sell the property within 90 days of the date of the execution and that the obligor must vacate the property by the time of sale. The final notice shall include a notice of the obligor's right to redeem the property under par. (e) 8. The department shall provide a copy of any final notice under this paragraph to the register of deeds in the county where the real property is located. A register of deeds receiving a final notice under this paragraph shall file the final notice.

(e) *Execution and sale.* After the department has sent the final notice under par. (d), the department may issue an execution on any real property identified in the notice to enforce a lien contained in the statewide support lien docket. The department shall provide a copy of an execution under this paragraph to the obligor and to any other person having an interest in the property. The provisions of ch. 815 apply to the executions issued by the department, except as follows:

1. References to judgments shall be read as references to liens entered in the statewide support lien docket, references to debtors shall be read as references to obligors and references to the court or a judge shall be read as references to the department.

2. Sections 815.01 to 815.04 do not apply. The department may not issue an execution more than 5 years after the date on which the lien was entered in the statewide support lien docket.

3. Section 815.05 does not apply. If the department has delegated under sub. (17) its authority under this subsection, the execution shall be signed by the director of the child support agency that is initiating the real property seizure on behalf of the department. The execution shall include all of the following information:

a. The date that a lien against the obligor was first entered on the child support lien docket.

b. The amount of past due child support that is owed at the time the execution is issued.

c. A legal description of the property against which the lien is to be executed. Including the location, of the property against which the lien is to be executed.

d. The street address or location of the property against which the lien is to be executed.

e. A directive to the officer to whom the execution is addressed to seize and sell the property within 90 days of the date of the execution.

4. The execution shall be made returnable under s. 815.06 to the department within 90 days, rather than 60 days, after its receipt by the officer.

5. Sections 815.07, 815.09 to 815.12, 815.14, 815.15, 815.18 to 815.21, 815.25 and 815.26 do not apply.

6. In addition to the notice required under s. 815.31, the officer to whom the execution is issued shall notify the obligor of the time and place of the sale of the real property.

7. If, prior to the sale of the real property, the department or child support agency notifies the officer that the obligor has paid the amount owed together with any levy fees and costs under sub. (11) or that the custodial parent to whom the support is owed has died, the officer shall discontinue the execution.

8. Sections 815.38 to 815.55 do not apply. The obligor may redeem the property prior to the date of the sale by payment of the full amount of support owed together with any levy fees and costs under sub. (11). The property may not be redeemed after it is sold. If the property is redeemed, the county child support agency shall issue a certificate upon redemption that includes the date of redemption, the amount of money paid and a description of the property redeemed. The certificate of redemption may be recorded in the office of the register of deeds. Upon the sale of the real estate on execution, the officer shall issue a deed and a certificate of sale to the purchaser within 10 days of the sale.

9. The department may issue an administrative order directing a local law official to remove the obligor from the property if property is not vacated before the time of sale. A person occupying the property under claim of ownership, lease or month-to-month tenancy may not be removed except by proceedings under ch. 799 or 843.

10. Sections 815.59 to 815.64 do not apply.

(f) *Updating the lien docket.* The department shall update the statewide support lien docket to remove a lien that is satisfied by an execution or sale under this subsection.

**(7m) JOINTLY HELD PROPERTY.** A person, other than the obligor, who holds a joint interest in property levied against under this section may request a hearing, as provided in subs. (5) (d) 6m., (6) (b) 3m. or (7) (b) 1. d., to determine the proportion of the value of the property that is attributable to his or her net contribution to the property. If a hearing is requested under this subsection, the court or circuit court commissioner shall schedule a hearing within 10 days after receiving the request. The hearing shall be limited to determining the proportion of the value of the property that is attributable to the person's net contribution to the property. If more than one person requests a hearing under this subsection, or if the obligor requests a hearing under sub. (5) (f), (6) (c) or (7) (c), with respect to the same property, the court or circuit court commissioner may schedule the hearings together. The person requesting the hearing shall have the burden of proving his or her net contribution by clear and convincing evidence. If the court determines that a portion of the jointly held property is attributable to the contributions of the person, the court shall direct the department or the county child support agency to pay the person, from the net balance of the jointly held account or the net proceeds of the sale of the jointly held real or personal property, the proportion of the gross value of the account or real or personal property that

is attributable to that person. If a circuit court commissioner conducts the hearing under this subsection, the person may, within 15 business days after the date that the circuit court commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the action.

**(8) DUTIES TO SURRENDER; GENERALLY.** Any person in possession of or obligated with respect to property or rights to property that is subject to levy under this section and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights that is, at the time of the demand, subject to any prior attachment, execution under any judicial process, claim of ownership, lease or month-to-month tenancy.

**(9) NOTICE.** Any notice required to be provided under this section may be provided by sending the notice by regular mail to the last-known address of the person to whom notice is to be sent.

**(11) LEVY FEES AND COSTS.** (a) *Third parties.* Any 3rd party is entitled to a levy fee of \$5 for each levy in any case where property is secured through the levy. The 3rd party shall deduct the fee from the proceeds of the levy.

(b) *The department.* The department may assess a collection fee to recover the department's costs incurred in levying against property under this section. The department shall determine its costs to be paid in all cases of levy. The obligor is liable to the department for the amount of the collection fee authorized under this paragraph. Fees collected under this paragraph shall be credited to the appropriation account under s. 20.445 (3) (ja).

**(12) PRIORITIES AND USE OF PROCEEDS.** (a) *Priorities.* A lien under this section has the same priority, from the date that the lien is effective, as a judgment docketed under s. 806.15. The lien is effective for a period of 5 years from the date the lien becomes effective.

(b) *Use of proceeds.* After paying any liens on a property that have priority over a lien under this section, the department shall apply all proceeds from a sale of that property under this section first against the support in respect to which the levy was made and then against levy fees and costs under sub. (11).

(c) *Refunds or credits.* The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim therefor and satisfactory proof of the claim, to the person entitled to that amount.

**(13) RELEASE OF LEVY; SUSPENSION OF PROCEEDINGS TO ENFORCE LIEN.** (a) *Release.* The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(b) *Settlement.* If the obligor enters in to an alternative payment arrangement in accordance with guidelines established under s. 49.858 (2) (a), the department shall suspend all actions to enforce a lien under this section as long as the obligor remains in compliance with the alternative payment arrangement.

**(14) WRONGFUL LEVY.** If the department determines that property has been wrongfully levied upon, the department shall return the property or, if the property has been sold, shall return an amount of money equal to the amount of money, or value of the property, levied upon. This subsection does not prevent a person whose property has been wrongfully levied upon from seeking relief, under other provisions of the statutes, against the state for damages that have not been compensated for under this subsection.

**(15) ACTIONS AGAINST THIS STATE.** (a) *Commencement of actions.* If the department has levied upon property, any person, other than the obligor who is liable to pay the support out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. If the county child support agency has levied upon property pursuant to delegated authority under sub. (17), any person,

other than the obligor who is liable to pay the support out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the county child support agency in the circuit court for the county where the court order for the payment of support, upon which the seizure is based, was first entered or last modified. That action may be brought whether or not that property has been surrendered to the department or the county child support agency. The court may grant only the relief under par. (b). No other action to question the validity of or restrain or enjoin a levy by the department or a county child support agency may be maintained.

(b) *Remedies.* In an action under par. (a), prior to the sale of the property, if the court determines that property has been improperly levied upon, the court may enjoin the enforcement of the levy and order the return of the property, or may grant a judgment for the amount of money obtained by levy. The court may also order relief necessary to protect the interests of owners of the property, other than the obligor, including, when appropriate, partition of the property. After the sale of the property, if the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) *Validity of determination.* For purposes of an adjudication under this subsection, there is a rebuttable presumption that the support obligation upon which the lien is based is valid.

**(17) DELEGATION AND POWER TO CONTRACT.** The department may delegate any duties or powers given to the department under this section to county child support agencies, except that the department must approve the initiation of any levy proceedings under sub. (7). The department shall promulgate rules prohibiting a county child support agency from using the powers delegated under this subsection to enforce a child support lien, if the value of the property that is subject to the lien is below the dollar amount specified in the rules.

**(18) PRESERVATION OF REMEDIES.** The availability of the remedies under this section does not abridge the right of the department to pursue other remedies.

**History:** 1997 a. 191; 1999 a. 9; 2001 a. 61; 2003 a. 33.

**Cross Reference:** See also ch. DWD 43, Wis. adm. code.

The Child Support Lien Docket. Chesnik & Petersen. Wis. Law. June 2001.

**49.855 Certification of delinquent payments.** (1) If a person obligated to pay child support, family support, maintenance, or the receiving and disbursing fee under s. 767.57 (1e) (a) is delinquent in making any of those payments, or owes an outstanding amount that has been ordered by the court for past support, medical expenses, or birth expenses, upon application under s. 59.53 (5) the department of workforce development shall certify the delinquent payment or outstanding amount to the department of revenue and, at least annually, shall provide to the department of revenue any certifications of delinquencies or outstanding amounts that it receives from another state because the obligor resides in this state.

**(2m)** At least annually, the department of health and family services shall certify to the department of revenue any obligation owed to the department of health and family services under s. 46.10 if the obligation is rendered to a judgment.

**(2p)** At least annually, the department of corrections shall certify to the department of revenue any obligation owed to the department of corrections under s. 301.12 if the obligation is rendered to a judgment.

**(3)** Receipt of a certification by the department of revenue shall constitute a lien, equal to the amount certified, on any state tax refunds or credits owed to the obligor. The lien shall be foreclosed by the department of revenue as a setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the obligor that the state intends to reduce any state tax refund or credit due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past sup-



port, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4) or 301.12 (4). The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. Within 10 days after receiving a request for hearing under this subsection, the court shall set the matter for hearing. Pending further order by the court or a circuit court commissioner, the department of workforce development or its designee, whichever is appropriate, is prohibited from disbursing the obligor's state tax refund or credit. A circuit court commissioner may conduct the hearing. The sole issues at that hearing shall be whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld from a tax refund or credit shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay shall also be an issue at the hearing if the obligation relates to an order under s. 767.51 (3) (e) 1. or 767.62 (4) (d) 1. [s. 767.89 (3) (e) 1. or 767.805 (4) (d) 1.] and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

**NOTE:** The correct cross-reference is shown in brackets. Corrective legislation is pending.

(4) (a) The department of revenue shall send the portion of any state tax refunds or credits withheld for delinquent child or family support or maintenance or past support, medical expenses, or birth expenses to the department of workforce development or its designee for deposit in the support collections trust fund under s. 25.68 and shall send the portion of any state tax refunds or credits withheld for delinquent receiving and disbursing fees to the department of workforce development or its designee for deposit in the appropriation account under s. 20.445 (3) (ja). The department of workforce development shall make a settlement at least annually with the department of revenue. The settlement shall state the amounts certified, the amounts deducted from tax refunds and credits, and the administrative costs incurred by the department of revenue.

(b) The department of administration shall send the portion of any federal tax refunds or credits received from the internal revenue service that was withheld for delinquent child or family support or maintenance or past support, medical expenses, or birth expenses to the department of workforce development or its designee for deposit in the support collections trust fund under s. 25.68 and shall send the portion of any federal tax refunds or credits received from the internal revenue service that was withheld for delinquent receiving and disbursing fees to the department of workforce development or its designee for deposit in the appropriation account under s. 20.445 (3) (ja).

(4m) (a) In this subsection, "vendor" means a person providing goods or services to this state under subch. IV or V of ch. 16 or under ch. 84 or any medical assistance provider, as defined under s. 49.43 (10).

(b) The department of revenue may provide a certification that it receives under sub. (1), (2m), or (2p) to the department of administration. Upon receipt of the certification, the department of administration shall determine whether the obligor is a vendor or is receiving any other payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1), this chapter, or ch. 46, 108, or 301. If the department of administration determines that the obligor is a vendor or is receiving payments from this state, except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s. 45.40 (1), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount certified from those payments and shall notify the obligor that the state intends to reduce any payments due the obligor by the amount the obligor is delinquent under the support, maintenance, or receiving and disbursing fee order or obligation, by the outstanding amount for past support, medical expenses, or birth expenses under the court order, or by the amount due under s. 46.10 (4) or 301.12 (4). The notice shall provide that within 20 days after receipt of the notice the obligor may request a hearing

before the circuit court rendering the order under which the obligation arose. An obligor may, within 20 days after receiving notice, request a hearing under this paragraph. Within 10 days after receiving a request for hearing under this paragraph, the court shall set the matter for hearing. A circuit court commissioner may conduct the hearing. Pending further order by the court or circuit court commissioner, the department of workforce development or its designee, whichever is appropriate, may not disburse the payments withheld from the obligor. The sole issues at the hearing are whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay is also an issue at the hearing if the obligation relates to an order under s. 767.51 (3) (e) 1. or 767.62 (4) (d) 1. [s. 767.89 (3) (e) 1. or 767.805 (4) (d) 1.] and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

**NOTE:** The correct cross-reference is shown in brackets. Corrective legislation is pending.

(c) Except as provided by order of the court after hearing under par. (b), the department of administration shall continue withholding until the amount certified is recovered in full. The department of administration shall transfer the amounts withheld under this paragraph to the department of workforce development or its designee, the department of health and family services, or the department of corrections, whichever is appropriate. The department of workforce development or its designee shall deposit amounts withheld for delinquent child or family support, maintenance, or receiving and disbursing fees or past support, medical expenses, or birth expenses in the appropriation account under s. 20.445 (3) (kp).

(d) A setoff under s. 73.12 (3) has priority over withholding under this subsection.

(5) Certification of an obligation to the department of revenue does not deprive any party of the right to collect the obligation or to prosecute the obligor. The department of workforce development or its designee shall immediately notify the department of revenue of any collection of an obligation that has been certified to the department of revenue.

(6) If the state implements the child and spousal support and establishment of paternity and medical support liability program under ss. 49.22 and 59.53 (5), the state may act under this section in place of the county child support agency under s. 59.53 (5).

**History:** 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105; 2005 a. 22, 25, 304; 2005 a. 443 s. 265.

The state's right to certification and interception is not extinguished by a child's attainment of majority. *Marriage of Howard v. Howard*, 130 Wis. 2d 206, 387 N.W.2d 96 (Ct. App. 1986).

**49.856 Notification of delinquent payments. (1)** In this section:

(a) "Agency" means the county child support agency under s. 59.53 (5).

(b) "Department" means the department of workforce development.

(c) "Obligor" means a person who owes a delinquent child support, family support or maintenance payment or who owes an outstanding amount that has been ordered by a court for past support, medical expenses or birth expenses and that delinquent payment or outstanding amount is specified in the statewide support lien docket under s. 49.854 (2) (b).

(2) If an obligor receives a judgment against another person or has settled a lawsuit against another person that provides for the payment of money, the department or agency may send a notice to any person who is ordered to pay the judgment, who has agreed to the settlement or who holds the amount of the judgment or settlement in trust. The notice shall inform the person that the

amount of the judgment or settlement due the obligor is subject to a lien by the department for the payment of the delinquent payment or outstanding amount specified in the statewide support lien docket under s. 49.854 (2) (b). The notification shall include the name and address of the obligor and the total amount specified in the statewide support lien docket under s. 49.854 (2) (b). Upon receipt of a notification, the person receiving the notification shall withhold an amount equal to the amount specified in the statewide support lien docket under s. 49.854 (2) (b) before making any payment under the judgment or pursuant to the settlement.

(3) When the department or agency notifies a person under sub. (2), the department or agency shall send a notice to the last-known address of the obligor. The notice shall do all of the following:

(a) Inform the obligor that the department or agency notified the person who owes money to the obligor or who holds money in trust for the obligor under a judgment or pursuant to a settlement to withhold the amount that was specified in the statewide support lien docket under s. 49.854 (2) (b) from any lump sum payment that may be paid to the obligor as a result of the judgment or settlement.

(b) Inform the obligor that he or she may request a hearing before the circuit court that rendered the order to pay support, maintenance, medical expenses or birth expenses within 20 business days after receipt of this notice. The request shall be in writing and the obligor shall mail or deliver a copy of the request to the agency.

(c) Inform the obligor that if a hearing is requested under par. (b) the department or agency will not require the person withholding the amount to send the amount to that department or agency until a final decision is issued in response to the request for a hearing.

(d) Request that the obligor inform the department or agency if a bankruptcy stay is in effect with respect to the obligor.

(4) If the obligor requests a hearing under sub. (3) (b), the circuit court shall schedule a hearing within 10 business days after receiving the request. The only issue at the hearing shall be whether the person owes the delinquent payment or outstanding amount specified in the statewide support lien docket under s. 49.854 (2) (b). A circuit court commissioner may conduct the hearing.

(5) Receipt of a notification by a person under sub. (2) shall constitute a lien, equal to the amount specified in the statewide support lien docket under s. 49.854 (2) (b), on any lump sum payment resulting from a judgment or settlement that may be due the obligor. The department or agency shall notify the person who received the notification under sub. (2) that the obligor has not requested a hearing or, if he or she has requested a hearing, of the results of that hearing, and of the responsibilities of the person who received the notification under sub. (2), including the requirement to submit the amount specified in the statewide support lien docket under s. 49.854 (2) (b). Use of the procedures under this section does not prohibit the department or agency from attempting to recover the amount specified in the statewide support lien docket under s. 49.854 (2) (b) through other legal means. The department or agency shall promptly notify any person who receives notification under sub. (2) if the amount specified in the statewide support lien docket under s. 49.854 (2) (b) has been recovered by some other means and no longer must be withheld from the judgment or settlement under this section.

(6) After receipt of notification by a person under sub. (2) and before receipt of notice from the department under sub. (5) that the amount specified in the statewide support lien docket under s. 49.854 (2) (b) has been otherwise recovered, no release of any judgment, claim or demand by the obligor shall be valid as against a lien created under sub. (5), and the person making any payment to the obligor to satisfy the judgment or settlement shall remain liable to the department for the amount of the lien.

History: 1997 a. 191; 2001 a. 61.

#### 49.857 Administrative enforcement of support; denial, nonrenewal, restriction and suspension of licenses.

(1) In this section:

(a) “Child support agency” means a county child support agency under s. 59.53 (5).

(b) “Credential” means a license, permit, certificate or registration that is granted under chs. 440 to 480.

(c) “Credentialing board” means a board, examining board or affiliated credentialing board in the department of regulation and licensing that grants a credential.

(d) “License” means any of the following:

1. A license issued under s. 13.63 or a registration issued under s. 13.64.

2. An approval specified in s. 29.024 (2g) or a license issued under ch. 169.

2m. A fishing approval issued under s. 29.229.

3. A license issued under s. 48.66 (1) (a) or (b).

4. A certification, license, training permit, registration, approval or certificate issued under s. 49.45 (2) (a) 11., 146.50 (5) (a) or (b), (6g) (a) or (8) (a), 252.23 (2), 252.24 (2), 254.176 (1) or (3) (a), 254.178 (2) (a), 254.20 (2), (3) or (4), 254.47 (1), 254.64 (1) (a) or (b), 254.71 (2) or 255.08 (2).

5. A business tax registration certificate issued under s. 73.03 (50).

6. A license, registration, registration certificate or certification specified in s. 93.135 (1).

7. A license, permit or certificate of certification or registration specified in s. 101.02 (21) (a).

8. A license issued under s. 102.17 (1) (c), 104.07 or 105.05.

10. A certificate issued under s. 103.275, 103.91 or 103.92.

11. A license or permit issued under chs. 115 and 118.

12. A license or certificate of registration issued under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or subch. III of ch. 551.

13. A permit issued under s. 170.12.

14. A certification under s. 165.85.

15. A license, permit or registration issued under ss. 218.0101 to 218.0163, 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61 or 343.62.

16. A license, registration or certification specified in s. 299.08 (1) (a).

17. A license issued under ch. 343 or, with respect to restriction, limitation or suspension, an individual’s operating privilege, as defined in s. 340.01 (40).

18. A credential.

19. A license issued under s. 563.24 or ch. 562.

20. A license issued under s. 628.04, 632.68 (2) or (4) or 633.14 or a temporary license issued under s. 628.09.

21. A license to practice law.

(e) “Licensing agency” means a board, office or commissioner, department or division within a department that grants or issues a license, but does not include a credentialing board.

(em) “Licensing authority” means the supreme court or the Lac du Flambeau band of the Lake Superior Chippewa.

(f) “Subpoena or warrant” means a subpoena or warrant issued by the department of workforce development or a child support agency and relating to paternity or support proceedings.

(g) “Support” means child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

(2) (a) The department of workforce development shall establish a system, in accordance with federal law, under which a licensing authority is requested, and a licensing agency or credentialing board is required, to restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license in a timely manner upon certification by and in cooperation

tion with the department of workforce development, if the individual holding or applying for the license is delinquent in making court–ordered payments of support or fails to comply, after appropriate notice, with a subpoena or warrant.

(b) Under the system, the department of workforce development shall enter into a memorandum of understanding with a licensing authority, if the licensing authority agrees, and with a licensing agency. A memorandum of understanding under this paragraph shall address at least all of the following:

1. The circumstances under which the licensing authority or the licensing agency must restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license and guidelines for determining the appropriate action to take. The memorandum of understanding with the department of regulation and licensing shall include the circumstances under which the department of regulation and licensing shall direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential and guidelines for determining the appropriate action to take. The guidelines under this subdivision for determining the appropriate action to take shall require the consideration of whether the action is likely to have an adverse effect on public health, safety or welfare or on the environment, and of whether the action is likely to adversely affect individuals other than the individual holding or applying for the license, such as employees of that individual.

2. Procedures that the department of workforce development shall use for doing all of the following:

a. Certifying to the licensing authority or licensing agency a delinquency in support or a failure to comply with a subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to notify a credentialing board that a certification of delinquency in support or failure to comply with a subpoena or warrant has been made by the department of workforce development with respect to an individual who holds or applied for a credential granted by the credentialing board.

b. Notifying an individual who is delinquent in making court–ordered payments of support under sub. (3) (a).

bg. Notifying an individual who is delinquent in making court–ordered payments of support and who fails to request a hearing under sub. (3) (am).

br. Notifying an individual who fails to comply with a subpoena or warrant under sub. (3) (b).

c. Notifying the licensing authority or licensing agency that an individual has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to notify a credentialing board that an individual who holds or applied for a credential granted by the credentialing board has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant.

3. Procedures that the licensing authority or licensing agency shall use for doing all of the following:

a. Restricting, limiting, suspending, withholding, denying, refusing to grant or issue or refusing to renew or revalidate a license. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential.

b. Notifying an individual of action taken under sub. (3) (c) 2.

c. Issuing or reinstating a license if the department of workforce development notifies the licensing authority or licensing agency that an individual who was delinquent in making court–ordered payments of support has paid the delinquent support or made satisfactory alternative payment arrangements or that an

individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to direct a credentialing board to grant or reinstate a credential if the department of workforce development notifies the department of regulation and licensing that an individual who holds or applied for a credential granted by the credentialing board has paid the delinquent support or made satisfactory alternative payment arrangements or that an individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant.

d. Issuing or reinstating a license after the maximum time has elapsed if an individual who was delinquent in making court–ordered payments of support does not pay the delinquent support or make satisfactory alternative payment arrangements and if an individual who failed to comply with a subpoena or warrant fails to satisfy the requirements under the subpoena or warrant.

4. Procedures for the use under the system of social security numbers obtained from license applications.

5. Procedures for safeguarding the confidentiality of information about an individual, including social security numbers obtained by the department of workforce development, the licensing authority, the licensing agency or a credentialing board.

(c) 1. The system shall provide for adequate notice to an individual who is delinquent in making court–ordered payments of support, an opportunity for the individual to make alternative arrangements for paying the delinquent support, an opportunity for the individual to request and obtain a hearing before a court or circuit court commissioner as provided in sub. (3) and prompt reinstatement of the individual’s license upon payment of the delinquent support or upon making satisfactory alternative payment arrangements.

2. The system shall provide for adequate notice to an individual who fails to comply with a subpoena or warrant, an opportunity for the individual to satisfy the requirements under the subpoena or warrant and prompt reinstatement of the individual’s license upon satisfaction of the requirements under the subpoena or warrant.

(d) Notwithstanding pars. (b) 3. c. and (c), under the system a license may not be restricted, limited, suspended, withheld, denied or refused granting, issuing, renewing or revalidating for a delinquency in support for more than 5 years, or for a failure to comply with a subpoena or warrant for more than 6 months.

(3) (a) Before the department of workforce development certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual is delinquent in making court–ordered payments of support, the department of workforce development or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of delinquency in paying support will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued. The notice shall inform the individual that he or she may be eligible for an occupational license under s. 343.10 if his or her operating privilege is suspended.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department of workforce devel-

opment or a child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ac) 1. If an individual timely requests a hearing under par. (a) 5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court-ordered payments of support and whether any alternative payment arrangement offered by the department of workforce development or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (a) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department of workforce development may not place the individual's name on a certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department of workforce development or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department of workforce development may not place the individual's name on a certification list.

(am) If an individual, after receiving notice under par. (a), does not timely request a hearing or pay the delinquent amount of support or make satisfactory alternative payment arrangements, the department of workforce development shall place the individual's name on a certification list. Thereafter, the department of workforce development or a child support agency shall provide a 2nd notice to the individual by regular mail that informs the individual of all of the following:

1. That the individual's name has been placed on a certification list, which will be provided to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification will be made.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department of workforce development or a child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ar) 1. If an individual timely requests a hearing under par. (am) 5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court-ordered

payments of support and whether any alternative payment arrangement offered by the department of workforce development or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (am) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department of workforce development shall remove the individual's name from the certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department of workforce development or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department of workforce development may not place the individual's name on a certification list.

(b) Any subpoena or warrant shall include notice to the individual of the effect that a failure to comply with the subpoena or warrant may have on any license that the individual holds or for which the individual applies. If the individual fails to comply, before the department of workforce development certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual has failed to comply with a subpoena or warrant, the department of workforce development or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of the failure to comply with a subpoena or warrant will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 6 months any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That certification will not be made if the individual satisfies the requirements under the subpoena or warrant. The notice shall inform the individual of how he or she may satisfy those requirements.

(bm) If an individual, after receiving notice under par. (b), does not satisfy the requirements under the subpoena or warrant, the department of workforce development shall place the individual's name on a certification list.

(c) If the department of workforce development provides a certification list to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing, upon receipt of the list the licensing authority if the licensing authority agrees, the licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing shall do all of the following:

1. In accordance with a memorandum of understanding entered into under sub. (2) (b), restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license if the individual holding or applying for the license is included on the list.

2. Provide notice to the individual by regular mail of the action taken under subd. 1.

(d) 1. Subject to sub. (2) (d), if an individual who, on the basis of delinquent support, is denied a license or whose license, on the basis of delinquent support, is restricted, limited, suspended or

refused renewal or revalidation under a memorandum of understanding entered into under sub. (2) (b) pays the delinquent amount of support in full or makes satisfactory alternative payment arrangements, the department of workforce development shall immediately notify the licensing authority or licensing agency to issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of regulation and licensing shall, upon notice by the department of workforce development, notify the credentialing board to grant or reinstate the individual's credential.

2. Subject to sub. (2) (d), if an individual who, on the basis of a failure to comply with a subpoena or warrant, is denied a license or whose license, on the basis of a failure to comply with a subpoena or warrant, is restricted, limited, suspended or refused renewal or revalidation under a memorandum of understanding entered into under sub. (2) (b) satisfies the requirements under the subpoena or warrant, the department of workforce development shall immediately notify the licensing authority or licensing agency to issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of regulation and licensing shall, upon notice by the department of workforce development, notify the credentialing board to grant or reinstate the individual's credential.

(4) Each licensing agency shall enter into a memorandum of understanding with the department of workforce development under sub. (2) (b) and shall cooperate with the department of workforce development in its administration of s. 49.22. The department of regulation and licensing shall enter into a memorandum of understanding with the department of workforce development on behalf of a credentialing board with respect to a credential granted by the credentialing board.

(5) The restriction, limitation, suspension, withholding or denial of, or the refusal to grant, issue, renew or revalidate, a license under a memorandum of understanding entered into under sub. (2) (b) is not subject to administrative review under ch. 227.

**History:** 1997 a. 191; 1999 a. 9, 31, 32, 186; 2001 a. 56, 61; 2005 a. 25.

Administrative Enforcement: A New Tool to Collect Support Arrears. Hickey, Wis. Law. Dec. 1998.

**49.858 General provisions related to administrative support enforcement. (1) DEFINITION.** In this section, "support" has the meaning given in s. 49.857 (1) (g).

(2) RULES. For the procedures under this subchapter for the administrative enforcement of support obligations, the department of workforce development shall promulgate rules related to all of the following:

(a) Establishing guidelines for appropriate payment plans or alternative payment arrangements for the payment by obligors of delinquent support.

(b) Providing notice of administrative support enforcement proceedings to obligees of delinquent support. The department may provide that notice be given to the obligee of the delinquent support whenever an enforcement proceeding under this subchapter is initiated or that notice be provided only upon request.

(c) Specifying the level of support that is overdue before an individual is considered to be delinquent in the payment of support for purposes of the administrative support enforcement proceedings under this subchapter. The rules shall provide that, for support that is payable on a periodic basis, an amount equal to at least 100% of the amount due in one month must be in arrears before the department may initiate any administrative support enforcement proceeding under this subchapter.

(3) REVIEW OF CIRCUIT COURT COMMISSIONER DECISIONS. If a circuit court commissioner conducts a hearing in any administrative support enforcement proceeding under s. 49.852, 49.856 or 49.857, the department of workforce development or the obligor may, within 15 business days after the date that the circuit court

commissioner makes his or her decision, request review of the decision by the court with jurisdiction over the matter.

**History:** 1997 a. 191; 2001 a. 61.

**Cross Reference:** See also ch. DWD 43, Wis. adm. code.

**49.86 Disbursement of funds and facsimile signatures.** Withdrawal or disbursement of moneys deposited in a public depository, as defined in s. 34.01 (5), to the credit of the department of workforce development or any of its divisions or agencies shall be by check, share draft or other draft signed by the secretary of workforce development or by one or more persons in the department of workforce development designated by written authorization of the secretary of workforce development. Such checks, share drafts and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary of workforce development or his or her designees for affixing a facsimile signature. Any public depository shall be fully warranted and protected in making payment on any check, share draft or other draft bearing such facsimile signature notwithstanding that the facsimile may have been placed thereon without the authority of the secretary of workforce development or his or her designees.

**History:** 1995 a. 27 ss. 3213, 9130 (4); 1997 a. 3.

**49.89 Third party liability. (1) DEFINITION.** In this section, "insurer" includes a sponsor, other than an insurer, that contracts to provide health care services to members of a group.

(2) SUBROGATION. The department of health and family services, the department of workforce development, a county or an elected tribal governing body that provides any public assistance under this chapter or under s. 253.05 as a result of the occurrence of an injury, sickness or death that creates a claim or cause of action, whether in tort or contract, on the part of a public assistance recipient or beneficiary or the estate of a recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may make a claim or maintain an action or intervene in a claim or action by the recipient, beneficiary or estate against the 3rd party. Subrogation under this subsection because of the provision of medical assistance under subch. IV constitutes a lien, equal to the amount of the medical assistance provided as a result of the injury, sickness or death that gave rise to the claim. The lien is on any payment resulting from a judgment or settlement that may be due the obligor. A lien under this subsection continues until it is released and discharged by the department of health and family services.

(3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter or under s. 253.05, an applicant assigns to the state department, the county department or the tribal governing body that provided the assistance the right to make a claim to recover an indemnity from a 3rd party, including an insurer, if the assistance is provided as a result of the occurrence of injury, sickness or death that results in a possible recovery of an indemnity from the 3rd party.

(3m) NOTICE REQUIREMENTS. (a) An attorney retained to represent a current or former recipient of assistance under this chapter, or the recipient's estate, in asserting a claim that is subrogated under sub. (2) or assigned under sub. (3) shall provide notice under par. (c).

(b) If no attorney is retained to represent a current or former recipient of assistance under this chapter, or the recipient's estate, in asserting a claim that is subrogated under sub. (2) or assigned under sub. (3), the current or former recipient or his or her guardian or, if the recipient is deceased, the personal representative of the recipient's estate, shall provide notice under par. (c).

(bm) A person against whom a claim that is subrogated under sub. (2) or assigned under sub. (3) is made, or that person's attorney or insurer, shall provide notice under par. (c), if that person, attorney or insurer knows, or could reasonably determine, that the claimant is a recipient or former recipient of medical assistance under subch. IV, or is the estate of a former recipient of medical assistance under subch. IV.

(c) If a person is required to provide notice under this paragraph, the person shall provide notice by certified mail to the department that provided the assistance as soon as practicable after the occurrence of each of the following events for a claim under par. (a) or (b):

1. The filing of the action asserting the claim.
2. Intervention in the action asserting the claim.
3. Consolidation of the action asserting the claim.
4. An award or settlement of all or part of the claim.

(4) CONTROL OF ACTION. The applicant or recipient or any party having a right under this section may make a claim against the 3rd party or may commence an action and shall join the other party as provided under s. 803.03 (2). Each shall have an equal voice in the prosecution of such claim or action.

(5) RECOVERY; HOW COMPUTED. Reasonable costs of collection including attorney fees shall be deducted first. The amount of assistance granted as a result of the occurrence of the injury, sickness or death shall be deducted next and the remainder shall be paid to the public assistance recipient or other party entitled to payment.

(6) DEPARTMENTS' DUTIES AND POWERS. The department of health and family services and the department of workforce development shall enforce their rights under this section and may contract for the recovery of any claim or right of indemnity arising under this section.

(7) PAYMENTS TO LOCAL UNITS OF GOVERNMENT. (a) Any county or elected tribal governing body that has made a recovery under this section shall receive an incentive payment from the sum recovered as provided under this subsection.

(b) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid under s. 49.46, 49.465, 49.468 or 49.47. The incentive payment shall be taken from the federal share of the sum recovered as provided under 42 CFR 433.153 and 433.154.

(bm) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid as state supplemental payments under s. 49.77. The incentive payment shall be taken from the state share of the sum recovered.

(c) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid under s. 49.20, 1997 stats., s. 49.19, and 49.30 [s. 49.785] or s. 253.05. The incentive payment shall be taken from the state share of the sum recovered, except that the incentive payment for an amount recovered because of benefits paid under s. 49.19 shall be considered an administrative cost under s. 49.19 for the purpose of claiming federal funding.

**NOTE:** The correct cross-reference is shown in brackets. The order of cross-references is reversed to allow electronic tagging. Corrective legislation is pending.

(d) 1. Any county or elected tribal governing body that has made a recovery under this section for which it is eligible to receive an incentive payment under par. (b) or (bm) shall report such recovery to the department of health and family services within 30 days after the end of the month in which the recovery is made in a manner specified by the department of health and family services.

2. Any county or elected tribal governing body that has made a recovery under this section for which it is eligible to receive an incentive payment under par. (c) shall report such recovery to the department of workforce development within 30 days after the end of the month in which the recovery is made in a manner specified by the department of workforce development.

(e) The amount of the recovery remaining after payments are made under pars. (b) to (c) shall be deposited in the state treasury and credited to the appropriation from which the assistance was originally paid.

(8) WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT'S RELEASE.

(a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter

or under s. 253.05 as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party's insurer from liability to the units of government specified in sub. (2). Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance.

(b) Liability under par. (a) is to the extent of assistance payments under this chapter or under s. 253.05 resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

(9) POWERS OF HEALTH MAINTENANCE ORGANIZATIONS. A health maintenance organization or other prepaid health care plan has the powers of the department of health and family services under subs. (2) to (5) to recover the costs which the organization or plan incurs in treating an individual if all of the following circumstances are present:

(a) The costs result from an occurrence of an injury or sickness of an individual who is a recipient of medical assistance.

(b) The occurrence of the injury or sickness creates a claim or cause of action on the part of the recipient or the estate of the recipient.

(c) The medical costs are incurred during a period for which the department of health and family services pays a capitation or enrollment fee for the recipient.

**History:** 1977 c. 29; 1979 c. 221; 1981 c. 20; 1983 a. 27, 465; 1985 a. 29 ss. 1051, 1052, 3200 (23); 1987 a. 27 s. 3202 (24); 1989 a. 31; 1995 a. 27 ss. 3152 to 3177, 3214, 3215, 9126 (19), 9130 (4); Stats. 1995 s. 49.89; 1995 a. 407; 1997 a. 3; 1999 a. 9.

Counties were entitled to be reimbursed for medical assistance from insurance settlements obtained by accident victims despite the fact that neither victim had been fully compensated. *Waukesha County v. Johnson*, 107 Wis. 2d 155, 320 N.W.2d 1 (Ct. App. 1982).

A county could recoup medical assistance payments from a recipient who was minor. *Perkins v. Utneher*, 122 Wis. 2d 497, 361 N.W.2d 739 (Ct. App. 1984).

This section, not s. 49.45 (19) (a) 2., specifically addresses the assignment of actions and subrogation of rights by a public assistance recipient who is injured and has a tort claim against a 3rd party. *Ellsworth v. Schelbrock*, 2000 WI 63, 235 Wis. 2d 678, 611 N.W.2d 764, 98-0294.

An Arkansas law that automatically imposed a lien on tort settlements in an amount equal to the state's Medicaid's costs incurred on behalf of the settlement recipient, including settlement proceeds meant to compensate the recipient for damages distinct from medical costs like pain and suffering, lost wages, and loss of future earnings contravened federal law and was therefore unenforceable. A state cannot lay claim to more than the portion of the settlement that represents medical expenses. *Arkansas Dept. of Health and Human Services v. Ahlborn*, 547 U.S. \_\_\_, 164 L. Ed. 2d 459, 126 S. Ct. 1752 (2006).

Attorney's fees are not chargeable against public assistance recovered in an action under this section. 70 Atty. Gen. 61.

**49.90 Liability of relatives; enforcement. (1)** (a) 1. The parent and spouse of any dependent person who is unable to maintain himself or herself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no parent shall be required to support a child 18 years of age or older.

2. Except as provided under subs. (11) and (13) (a), the parent of a dependent person under the age of 18 shall maintain a child of the dependent person so far as the parent is able and to the extent that the dependent person is unable to do so. The requirement under this subdivision does not supplant any requirement under subd. 1. and applies regardless of whether a court has ordered maintenance by the parent of the dependent person or established a level of maintenance by the parent of the dependent person.

(b) For purposes of this section those persons receiving benefits under federal Title XVI or under s. 49.77 shall not be deemed dependent persons.

(c) For the purpose of determining the ability of a parent or spouse to maintain a dependent person or the ability of a parent to

support the child of his or her dependent child under the age of 18, credit granted under subch. VIII of ch. 71 shall not be considered.

**(1m)** Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and chs. 48 and 938. Each parent of a dependent person under the age of 18 has an equal obligation to support the child of the dependent person as provided under sub. (1) (a) 2.

**(2)** Upon failure of these relatives to provide maintenance the authorities or board shall submit to the corporation counsel a report of its findings. Upon receipt of the report the corporation counsel shall, within 60 days, apply to the circuit court for the county in which the dependent person under sub. (1) (a) 1. or the child of a dependent person under sub. (1) (a) 2. resides for an order to compel the maintenance. Upon such an application the corporation counsel shall make a written report to the county department under s. 46.215, 46.22 or 46.23, with a copy to the chairperson of the county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department, and to the department of health and family services or the department of workforce development, whichever is appropriate.

**(2g)** In addition to the remedy specified in sub. (2), upon failure of a grandparent to provide maintenance under sub. (1) (a) 2., another grandparent who is or may be required to provide maintenance under sub. (1) (a) 2., a child of a dependent minor or the child's parent may apply to the circuit court for the county in which the child resides for an order to compel the provision of maintenance. A county department under s. 46.215, 46.22 or 46.23, a county child support agency under s. 59.53 (5) or the department of workforce development may initiate an action to obtain maintenance of the child by the child's grandparent under sub. (1) (a) 2., regardless of whether the child receives public assistance.

**(2r)** An action under sub. (2) or (2g) for maintenance of a grandchild by a grandparent may be joined with an action to determine paternity under s. 767.80 (1) or an action for child support under s. 767.001 (1) (f) or (j) or 767.501, or both.

**(3)** At least 10 days prior to the hearing on the application under sub. (2) or (2g), notice of the hearing shall be served upon the grandparent or other relative who is alleged not to have provided maintenance, in the manner provided for the service of summons in courts of record.

**(4)** The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability, considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age, in the following order: First the husband or wife; then the father and the mother; and then the grandparents in the instances in which sub. (1) (a) 2. applies. The order shall specify a sum which will be sufficient for the support of the dependent person under sub. (1) (a) 1. or the maintenance of a child of a dependent person under sub. (1) (a) 2., to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person or the child, but is able to contribute to the person's support or the child's maintenance, the court may direct 2 or more of the relatives to maintain the person or the child and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person or the child, but are able to contribute to the person's support or the child's maintenance, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and family services and distributed as required by state and federal law. An order under this subsection that relates to maintenance required under sub. (1) (a) 2. shall specifically assign responsibility for and direct the

manner of payment of the child's health care expenses, subject to the limitations under subs. (1) (a) 2. and (11). Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

**(5)** Any party aggrieved by such order may appeal therefrom but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

**(6)** If any relative who has been ordered to maintain an institutionalized dependent person or an institutionalized child of a dependent person under 18 years of age neglects to do as ordered, the authorities in charge of the dependent or child or in charge of the institution may recover in an action on behalf of the relief agency or institution for relief or support accorded the dependent person or child against such relative while the order was disobeyed and up to the time of judgment, with costs.

**(7)** When the income of a responsible relative is such that the relative would be expected to make a contribution to the support of the recipient and such recipient lives in the relative's home and requires care, a reasonable amount may be deducted from the expected contribution in exchange for the care provided.

**(9)** In any action under this section the court may impose any sum ordered paid by a party as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment or order.

**(10)** If an action under this section relates to support or maintenance of a child, to the extent appropriate the court shall determine maintenance or support in the manner in which support is determined under s. 767.511.

**(11)** Except as provided in sub. (13) (b), the parent of a dependent person who is under the age of 18 and is alleged to be the father of a child is responsible for maintenance of that child only if the paternity of the child has been determined to be that of the dependent person as provided in subch. VIII of ch. 48 or under subch. IX of ch. 767. Subject to the limitations under sub. (1) (a), if a parent of a dependent person is liable for the health care expenses of the dependent person's child under sub. (4), this liability extends to all expenses of the child's medical care and treatment, including those associated with the childbirth, regardless of whether they were incurred prior to the determination of paternity and regardless of whether the determination of paternity is made after the child's father attains 18 years of age, except that the period for which maintenance payment is ordered for the parent of a dependent person may not extend beyond the date on which the dependent person attains 18 years of age. The court may limit the liability of the dependent person's parent for the child's medical expenses if the expenses exceed 5% of the parent's federal adjusted gross income for the previous taxable year, if the parent files separately, or 5% of the sum of the parents' federal adjusted gross income for the previous taxable year, if the parents file jointly.

**(12)** The parent of a dependent person who maintains a child of the dependent person under sub. (1) (a) 2. may, after the dependent person attains the age of 18, apply to the circuit court for the county in which the child resides for an order to compel restitution by the dependent person of the amount of maintenance provided to the dependent person's child by that parent. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and the future ability of the dependent person to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the parties, the court may modify the order. The parent of the dependent person may file a restitution order with the clerk of circuit court. Upon payment of the fee under s. 814.61 (5) (a), the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent of the dependent person may

enforce the order against the dependent person in the same manner as for a judgment in a civil action.

**(13)** (a) The parent of a dependent person who is the victim of a sexual assault under s. 940.225 (1) (a) for which a conviction is obtained and which results in the birth of a child before the dependent person attains the age of 18 is not responsible under sub. (1) (a) 2. for the maintenance of that child of the dependent person.

(b) If a dependent person is convicted at any time of causing a pregnancy under s. 940.225 (1) (a) which results in the birth of a child before the dependent person attains the age of 18, the parent of that dependent person is solely liable under the requirements of sub. (1) (a) 2. for the maintenance of the dependent person's child.

(c) If the parent of the dependent person specified in par. (a) provides maintenance to the dependent person's child and if par. (b) applies, the parent may apply to the circuit court for the county in which the child resides for an order to compel restitution by the parent specified in par. (b) of the amount of maintenance provided. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and future ability of the parent of the dependent person specified in par. (b) to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the parties, the court may modify the order. The parent specified in par. (a) may file a restitution order with the clerk of circuit court. Upon payment of a fee under s. 814.61 (5) (a), the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent specified in par. (a) may enforce the order against the parent specified in par. (b) in the same manner as for a judgment in a civil action.

**History:** 1973 c. 90 ss. 296e, 560 (2); 1973 c. 147, 336; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 82, 199; 1977 c. 271, 449; 1979 c. 221, 352; 1981 c. 317; 1983 a. 186; 1985 a. 29 ss. 1055m, 1108 to 1114, 3200 (23); 1985 a. 56, 176, 311, 332; Stats. 1985 s. 49.90; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 316; 1995 a. 27 ss. 3216 to 3219b, 9126 (19); 1995 a. 77, 224, 404; 1997 a. 3, 27; 2005 a. 443 s. 265.

Sub. (1) (a) 2. is a substantive provision and legislative intent indicates it is to have prospective effect only. In re Paternity of C.J.H., 149 Wis. 2d 624, 439 N.W.2d 615 (Ct. App. 1989).

**49.95 Penalties; evidence.** (1) Any person who, with intent to secure public assistance under this chapter, whether for himself or herself or for some other person, willfully makes any false representations is subject to the following penalties:

(a) If the value of the assistance so secured does not exceed \$300, the person may be required to forfeit not more than \$1,000.

(b) If the value of the assistance exceeds \$300 but does not exceed \$1,000, the person may be fined not more than \$250 or imprisoned for not more than 6 months or both.

(c) If the value of the assistance exceeds \$1,000 but does not exceed \$2,000, the person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(d) If the value of the assistance exceeds \$2,000 but does not exceed \$5,000, the person is guilty of a Class I felony.

(e) If the value of the assistance exceeds \$5,000 but does not exceed \$10,000, the person is guilty of a Class H felony.

(f) If the value of the assistance exceeds \$10,000, the person is guilty of a Class G felony.

(2) Any person who willfully does any act designed to interfere with the proper administration of public assistance shall be fined not less than \$10 nor more than \$100 or be punished by imprisonment for not less than 10 nor more than 60 days.

(3) Any dependent person who sells or exchanges supplies or articles furnished the person as assistance or who disposes of such supplies or articles in any other way than as directed, with intent thereby to defraud the county or municipality furnishing the

assistance, and any person who purchases any article knowing it to have been furnished to another person as assistance shall be punished as provided in sub. (2).

(4m) Any person who does all of the following shall be fined not more than \$500 or imprisoned for not more than 30 days or both:

(a) Without legal authority, sends or brings a person to a county, tribal governing body or municipality or advises a person to go to a county, tribal governing body or municipality for the purpose of obtaining relief funded by a relief block grant, benefits under the Wisconsin works program under ss. 49.141 to 49.161, aid to families with dependent children under s. 49.19, medical assistance under subch. IV or food stamps under 7 USC 2011 to 2029.

(b) Obtains a pecuniary advantage because the person is brought or sent or goes to the county, tribal governing body or municipality.

(5) Any person in charge of public assistance or any of the person's assistants who receives or solicits any commission or derives or seeks to obtain any personal financial gain through any purchase, sale, disbursement or contract for supplies or other property used in the administration of public assistance shall be punished as provided in s. 946.13.

(6) Where a person is originally eligible for assistance and receives any income or assets or both thereafter and fails to notify the officer or agency granting such assistance of the receipt of such assets within 10 days after such receipt and continues to receive aid, such failure to so notify the proper officer or agency of receipt of such assets or income or both shall be considered a fraud and the penalties in sub. (1) shall apply.

(8) Any person who makes any statement in a written application for aid under this chapter shall be considered to have made an admission as to the existence, correctness or validity of any fact stated, which shall be taken as prima facie evidence against the party making it in any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter.

(9) If any person obtains for himself or herself, or for any other person or dependents or both, assistance under this chapter on the basis of facts stated to the authorities charged with the responsibility of furnishing assistance and fails to notify said authorities within 10 days of any change in the facts as originally stated and continues to receive assistance based on the originally stated facts such failure to notify shall be considered a fraud and the penalties in sub. (1) shall apply. The negotiation of a check, share draft or other draft received in payment of such assistance by the recipient or the withdrawal of any funds credited to the recipient's account through the use of any other money transfer technique after any change in such facts which would render the person ineligible for such assistance shall be prima facie evidence of fraud in any such case.

(10) Any person who accepts a relief voucher granted as relief and fails to tender the commodities authorized by the relief authorities to the relief recipient but in lieu thereof refunds to the relief recipient cash or substitutes any alcohol beverages or cigarettes not authorized by the relief voucher shall be considered to have committed a fraud and the penalties provided in sub. (1) shall apply to said person.

(11) "Public assistance" as used in this section includes relief funded by a relief block grant and benefits under ss. 49.141 to 49.161.

**History:** 1971 c. 182; 1977 c. 303; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 390 s. 252; 1983 a. 368; 1985 a. 29 ss. 1002 to 1004, 3200 (23); 1987 a. 27, 403; 1991 a. 39, 316, 322; 1995 a. 27 ss. 2771 to 2779, 2781 to 2784, 3220; Stats. 1995 s. 49.95; 1995 a. 289; 1997 a. 283; 2001 a. 109.

Sub. (9) is not unconstitutionally vague. Weber v. State, 59 Wis. 2d 371, 208 N.W.2d 396 (1973).

Welfare fraud under sub. (9) is a continuing offense. John v. State, 96 Wis. 2d 183, 291 N.W.2d 502 (1980).

An insurance payment compensating for the loss of personal and household property, which are exempt assets under AFDC regulations, was not an exempt asset and



was required to be reported under sub. (6). *State v. Salzer*, 133 Wis. 2d 54, 393 N.W.2d 121 (Ct. App. 1986).

Welfare fraud is chargeable as a continuing offense. *State v. Schumacher*, 144 Wis. 2d 388, 424 N.W.2d 672 (1988).

Sub. (6) requires recipients to report all assets or income, regardless of whether they were illegally obtained. *State v. Baeza*, 156 Wis. 2d 651, 457 N.W.2d 522 (Ct. App. 1990).

If the defendant's AFDC eligibility was based on the absence of the child's father, the failure to report the return to the household of the father constituted fraud regardless of whether the family might have still qualified for assistance under different criteria. *State v. Kaufman*, 188 Wis. 2d 485, 525 N.W.2d 138 (Ct. App. 1994).

**49.96 Assistance grants exempt from levy.** All grants of aid to families with dependent children, payments made under ss. 48.57 (3m) or (3n), 49.148 (1) (b) 1. or (c) or (1m) or 49.149 to

49.159, payments made for social services, cash benefits paid by counties under s. 59.53 (21), and benefits under s. 49.77 or federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and shall be inalienable.

**History:** 1973 c. 147; 1987 a. 27, 399; 1989 a. 278; 1995 a. 27 s. 2940; Stats. 1995 s. 49.96; 1995 a. 201, 289; 1997 a. 27, 35, 105.

AFDC money did not lose its exemption from garnishment when it was deposited in a checking account. *Northwest Engineering Credit Union v. Jahn*, 120 Wis. 2d 185, 353 N.W.2d 67 (Ct. App. 1984).

A support order against actual AFDC grants is prohibited, but an order against earned income of one who also receives AFDC is not. In *Support of B., L., T. & K.* 171 Wis. 2d 617, 492 N.W.2d 350 (Ct. App. 1992).