



1995 ASSEMBLY BILL 863

February 7, 1996 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Welfare Reform.

1 **AN ACT to amend** 49.27 (4) (d) 2. b., 49.27 (4) (d) 2. b., 49.493 (1) (b), 49.498 (16m),
2 49.65 (2), 49.65 (3), 49.65 (7) (c), 49.65 (8) (a), 49.65 (8) (b), 49.89 (2), 49.89 (3),
3 49.89 (7) (c), 49.89 (8), 253.06, 619.12 (3) (b), 632.72 (1g) (b) and 632.755 (2); and
4 **to repeal and recreate** 619.12 (3) (b) of the statutes; **relating to:** including
5 a learnfare sanction as a significant change in circumstances for a
6 work-not-welfare group for the purpose of adjustment of benefits; eligibility for
7 coverage under the health insurance risk-sharing plan; assignment and
8 subrogation of certain rights and clarifying that payment for services under
9 disability insurance and uninsured health plans is primary to payment for
10 services under the maternal and child health program; appealing findings or
11 certifications of noncompliance by nursing homes and intermediate care
12 facilities for the mentally retarded to the division of hearings and appeals in the
13 department of administration; and the administration of the state
14 supplemental food program for women, infants and children (suggested as
15 remedial legislation by the department of health and social services).

Analysis by the Legislative Reference Bureau

Under current law, persons are ineligible for coverage under the health insurance risk-sharing plan (commonly known as HIRSP) if their premium,

deductible or coinsurance amounts are paid or reimbursed by a federal, state, county or municipal government or agency. Exceptions exist for persons whose deductible or coinsurance amounts are paid or reimbursed for certain vocational rehabilitation or as state aids for renal disease, hemophilia or cystic fibrosis. Also, the commissioner of insurance is authorized to promulgate exceptions as rules. Under 1993 Wisconsin Act 27, effective on January 1, 1994, a further exception, which referred to payment for special education under the maternal and child health program, was deleted.

This bill restores the exception, which was deleted under 1993 Wisconsin Act 27, that permits persons who receive certain payments for deductible or coinsurance amounts to also be eligible for HIRSP. The bill corrects the reference under the exception so that the exception refers to funding received for maternal and child health services, rather than for special education.

Under current law as affected by 1995 Wisconsin Act 27 (the budget act), the department of health and social services (DHSS), a county or an elected tribal governing body or, beginning July 1, 1996, the department of industry, labor and job development (DILJD) that provides public assistance (such as medical assistance and the relief block grant) to a recipient is subrogated to (substituted for) the rights of the recipient against a 3rd party, including an insurer, if a court makes an award in favor of the recipient against the 3rd party. Also, DHSS, a county, a tribal governing body or, beginning July 1, 1996, DILJD may make a claim or maintain an action against the 3rd party and is authorized to require an assignment of certain rights from the recipient. If the recipient has a tort claim or a cause of action in contract against a 3rd party, the recipient is not permitted to release the liable 3rd party from liability to DHSS, the county, the tribal governing body or, after July 1, 1996, DILJD, at least to the extent of the payments of public assistance made for the recipient. If DHSS, a county or a health maintenance organization that has contracted with DHSS provides a recipient with payment under medical assistance or medical relief under the relief block grant, that payment of benefits by DHSS, the county or the health maintenance organization is an assignment for any benefits to which the recipient is entitled under a policy of health and disability insurance or under an uninsured (self-insured) health plan that he or she may have. Lastly, benefits that are provided to a person under a disability insurance policy or under an uninsured (self-insured) health plan must be made in payment of any claim before any payment is made on behalf of that person under the medical assistance and other state-funded medical programs.

This bill adds maternal and child health services (funded under federal maternal and child health block grant moneys and state general purpose revenues) to the types of medical benefits or assistance that, if provided to a recipient, entitle DHSS, the county or the elected tribal governing body that provides the assistance or, after July 1, 1996, DILJD to be subrogated to the rights of the recipient against a 3rd party; entitle DHSS, the county or the health maintenance organization to require an assignment of certain rights from the recipient or beneficiary; and entitle DHSS, DILJD (after July 1, 1996), the county or the tribal governing body to be paid by a 3rd party that is liable in a tort claim or a cause of action in contract to the

recipient. The bill also adds maternal and child health services to the types of public assistance that, if provided to a recipient, constitute an assignment for any benefits to which the recipient is entitled under a health and disability insurance policy or uninsured (self-insured) health plan and that in a claim are paid secondarily to any benefits under a disability insurance policy or uninsured (self-insured) health plan that the recipient has.

Under current law, under the work-not-welfare pilot program, the benefit amount that a work-not-welfare group receives may be adjusted after the first 2 months for which benefits are paid, only at a regularly scheduled reinvestigation unless the work-not-welfare group experiences an increase or decrease in earned income or experiences a significant change in circumstances. Currently, a sanction under the work-not-welfare pilot program, the food stamp program, aid to families with dependent children or medical assistance constitutes a significant change in circumstances.

This bill provides that a sanction under the learnfare program also constitutes a significant change in circumstances. Under the bill, the amount that a work-not-welfare group receives may be adjusted at any time after the first 2 months for which benefits are paid if the group is sanctioned under the learnfare program.

Under current law, DHSS is required to supplement the provision of supplemental foods, nutrition education and other services, including nutritional counseling, to certain low-income women, infants and children under a program known as "WIC". Current law also provides that, to the extent that funding is available, every county shall provide the supplemental food, nutrition education and other services authorized by the WIC program and that the counties shall establish or designate an agency to administer the provision of those services.

This bill amends this provision to specify that DHSS, rather than every county, shall provide the WIC services and shall administer the provision of the WIC services. The bill also permits DHSS to enter into contracts for this purpose.

Under current law, the provider agreement of any owner or operator of a nursing home or intermediate care facility for the mentally retarded that is a certified provider of services to medical assistance recipients may be denied, terminated or not renewed if the facility is found by DHSS to be in noncompliance with requirements relating to the health and safety of facility residents or to physical facilities for resident health and safety. A nursing home or intermediate care facility for the mentally retarded may appeal this finding of noncompliance or a certification by DHSS of noncompliance that leads to imposition of a remedy. Under state law, as created in the budget act, procedures for these appeals must be consistent with federal law.

This bill specifies that these appeals shall be filed with the division of hearings and appeals in the department of administration.

For further information see the NOTES provided by the law revision committee of the joint legislative council.

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of health and social services and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 49.27 (4) (d) 2. b. of the statutes, as affected by 1995 Wisconsin Act
2 27, is amended to read:

3 49.27 (4) (d) 2. b. A person in the work-not-welfare group is sanctioned under
4 sub. (5) (f) or s. 49.127, 49.19 (4) (h) 2., 49.29, 49.49, 49.50 (7) or 49.95.

NOTE: This section provides that a significant change in circumstances in a work-not-welfare group includes the application of a learnfare sanction, which would allow for adjustment of aid to families with dependent children benefit amounts at times other than regularly scheduled investigations if this sanction is applied.

5 **SECTION 2.** 49.27 (4) (d) 2. b. of the statutes, as affected by 1995 Wisconsin Act
6 (this act), is amended to read:

7 49.27 (4) (d) 2. b. A person in the work-not-welfare group is sanctioned under
8 sub. (5) (f) or s. 49.127, 49.19 (4) (h) 2., 49.26 (1) (h), 49.29, 49.49, ~~49.50 (7)~~ or 49.95.

9 **SECTION 3.** 49.493 (1) (b) of the statutes, as created by 1995 Wisconsin Act 27,
10 is amended to read:

11 49.493 (1) (b) "Medical benefits or assistance" means medical benefits under
12 s. 49.02 ~~or~~, 49.046 or 253.05 or medical assistance.

13 **SECTION 4.** 49.498 (16m) of the statutes, as created by 1995 Wisconsin Act 27,
14 is amended to read:

15 49.498 (16m) APPEALS PROCEDURES. Appeals procedures under this section
16 shall be consistent with the requirements specified in 42 CFR 431.151 (a) and (b).

1 Any appeals under this section shall be filed with the division of hearings and
2 appeals created under s. 15.103 (1).

NOTE: This amendment specifies that appeals of nursing home deficiencies under s. 49.498 shall be filed with the division of hearings and appeals in the department of administration.

3 **SECTION 5.** 49.65 (2) of the statutes is amended to read:

4 49.65 (2) SUBROGATION. The department, county or elected tribal governing
5 body providing any public assistance under this chapter or under s. 253.05 as a result
6 of the occurrence of an injury, sickness or death which creates a claim or cause of
7 action, whether in tort or contract, on the part of a public assistance recipient or
8 beneficiary or the estate of a recipient or beneficiary against a 3rd party, including
9 an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may
10 make a claim or maintain an action or intervene in a claim or action by the recipient,
11 beneficiary or estate against the 3rd party.

12 **SECTION 6.** 49.65 (3) of the statutes, as affected by 1995 Wisconsin Act 27,
13 section 3155, is amended to read:

14 49.65 (3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter
15 or under s. 253.05, an applicant assigns to the department the right to make a claim
16 to recover an indemnity from a 3rd party, including an insurer, if the assistance is
17 provided as a result of the occurrence of injury, sickness or death that results in a
18 possible recovery of an indemnity from the 3rd party.

19 **SECTION 7.** 49.65 (7) (c) of the statutes, as affected by 1995 Wisconsin Act 27,
20 section 3169, is amended to read:

21 49.65 (7) (c) The incentive payment shall be an amount equal to 15% of the
22 amount recovered because of benefits paid under s. 49.19, 49.20 or 49.30 ~~or~~, as state
23 supplemental payments under s. 49.177 or as benefits paid under s. 253.05. The

1 incentive payment shall be taken from the state share of the sum recovered, except
2 that the incentive payment for an amount recovered because of benefits paid under
3 s. 49.19 shall be considered an administrative cost under s. 49.19 for the purpose of
4 claiming federal funding.

5 **SECTION 8.** 49.65 (8) (a) of the statutes is amended to read:

6 49.65 (8) (a) No person who has or may have a claim or cause of action in tort
7 or contract and who has received assistance under this chapter or under s. 253.05 as
8 a result of the occurrence that creates the claim or cause of action may release the
9 liable party or the liable party's insurer from liability to the units of government
10 specified in sub. (2). Any payment to a beneficiary or recipient of assistance under
11 this chapter or under s. 253.05 in consideration of a release from liability is evidence
12 of the payer's liability to the unit of government that granted the assistance.

13 **SECTION 9.** 49.65 (8) (b) of the statutes is amended to read:

14 49.65 (8) (b) Liability under par. (a) is to the extent of assistance payments
15 under this chapter or under s. 253.05 resulting from the occurrence creating the
16 claim or cause of action, but not in excess of any insurance policy limits, counting
17 payments made to the injured person. The unit of government administering
18 assistance shall include in its claim any assistance paid to or on behalf of dependents
19 of the injured person, to the extent that eligibility for assistance resulted from the
20 occurrence creating the claim or cause of action.

21 **SECTION 10.** 49.89 (2) of the statutes, as affected by 1995 Wisconsin Act 27, is
22 amended to read:

23 49.89 (2) SUBROGATION. The department of health and ~~social~~ family services,
24 the department of industry, labor and ~~human relations~~ job development, a county or
25 an elected tribal governing body that provides any public assistance under this

1 chapter or under s. 253.05 as a result of the occurrence of an injury, sickness or death
2 that creates a claim or cause of action, whether in tort or contract, on the part of a
3 public assistance recipient or beneficiary or the estate of a recipient or beneficiary
4 against a 3rd party, including an insurer, is subrogated to the rights of the recipient,
5 beneficiary or estate and may make a claim or maintain an action or intervene in a
6 claim or action by the recipient, beneficiary or estate against the 3rd party.

7 **SECTION 11.** 49.89 (3) of the statutes, as affected by 1995 Wisconsin Act 27, is
8 amended to read:

9 49.89 (3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter
10 or under s. 253.05, an applicant assigns to the state department, the county
11 department or the tribal governing body that provided the assistance the right to
12 make a claim to recover an indemnity from a 3rd party, including an insurer, if the
13 assistance is provided as a result of the occurrence of injury, sickness or death that
14 results in a possible recovery of an indemnity from the 3rd party.

15 **SECTION 12.** 49.89 (7) (c) of the statutes, as affected by 1995 Wisconsin Act 27,
16 is amended to read:

17 49.89 (7) (c) The incentive payment shall be an amount equal to 15% of the
18 amount recovered because of benefits paid under s. 49.19, 49.20 ~~or~~, 49.30 or 253.05.
19 The incentive payment shall be taken from the state share of the sum recovered,
20 except that the incentive payment for an amount recovered because of benefits paid
21 under s. 49.19 shall be considered an administrative cost under s. 49.19 for the
22 purpose of claiming federal funding.

23 **SECTION 13.** 49.89 (8) of the statutes, as affected by 1995 Wisconsin Act 27, is
24 amended to read:

1 49.89 (8) WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT'S RELEASE. (a) No person
2 who has or may have a claim or cause of action in tort or contract and who has
3 received assistance under this chapter or under s. 253.05 as a result of the occurrence
4 that creates the claim or cause of action may release the liable party or the liable
5 party's insurer from liability to the units of government specified in sub. (2). Any
6 payment to a beneficiary or recipient of assistance under this chapter or under s.
7 253.05 in consideration of a release from liability is evidence of the payer's liability
8 to the unit of government that granted the assistance.

9 (b) Liability under par. (a) is to the extent of assistance payments under this
10 chapter or under s. 253.05 resulting from the occurrence creating the claim or cause
11 of action, but not in excess of any insurance policy limits, counting payments made
12 to the injured person. The unit of government administering assistance shall include
13 in its claim any assistance paid to or on behalf of dependents of the injured person,
14 to the extent that eligibility for assistance resulted from the occurrence creating the
15 claim or cause of action.

16 **SECTION 14.** 253.06 of the statutes is amended to read:

17 **253.06 State supplemental food program for women, infants and**
18 **children.** From the appropriation under s. 20.435 (1) (em), the department shall
19 supplement the provision of supplemental foods, nutrition education and other
20 services, including nutritional counseling, to low-income women, infants and
21 children who meet the eligibility criteria under the federal special supplemental food
22 program for women, infants and children authorized under 42 USC 1786. To the
23 extent that funds are available under this section and to the extent that funds are
24 available under 42 USC 1786, ~~every county~~ the department shall provide the
25 supplemental food, nutrition education and other services authorized under this

1 section and shall ~~establish or designate an agency to administer that provision in~~
2 every county. The department may enter into contracts for this purpose.

NOTE: SECTION 14 amends current law relating to the administration of the special supplemental food program for women, infants and children (WIC) to provide that the department of health and social services (DHSS), not the counties, administers this program. According to DHSS, this revision reflects the actual operation of the WIC program and is consistent with federal regulations governing the program.

3 **SECTION 15.** 619.12 (3) (b) of the statutes is amended to read:

4 619.12 (3) (b) Persons for whom deductible or coinsurance amounts are paid
5 or reimbursed under ch. 47 for vocational rehabilitation, under s. 49.48 for renal
6 disease, under s. 49.485 (8) for hemophilia ~~or~~, under s. 49.483 for cystic fibrosis or
7 under s. 253.05 for maternal and child health services are not ineligible for coverage
8 under the plan by reason of such payments or reimbursements.

NOTE: Current law provides that a person whose health insurance deductible or coinsurance amounts are paid or reimbursed by vocational rehabilitation or with state aids for renal disease, hemophilia or cystic fibrosis is still eligible for coverage under the health insurance risk-sharing plan (HIRSP). The revision clarifies that persons who receive state aids for maternal and child health services as children with special health care needs would also be eligible for HIRSP. The revision restores this exception, which was deleted by 1993 Wisconsin Act 27.

9 **SECTION 16.** 619.12 (3) (b) of the statutes, as affected by 1995 Wisconsin Acts
10 27 and (this act), is repealed and recreated to read:

11 619.12 (3) (b) Persons for whom deductible or coinsurance amounts are paid
12 or reimbursed under ch. 47 for vocational rehabilitation, under s. 49.68 for renal
13 disease, under s. 49.685 (8) for hemophilia, under s. 49.683 for cystic fibrosis or under
14 s. 253.05 for maternal and child health services are not ineligible for coverage under
15 the plan by reason of such payments or reimbursements.

16 **SECTION 17.** 632.72 (1g) (b) of the statutes, as affected by 1995 Wisconsin Act
17 27, section 7045b, is amended to read:

