

## CHAPTER 49

### PUBLIC ASSISTANCE

	SUBCHAPTER I				
	DEFINITIONS		49.32	Department; powers and duties.	
49.001	Definitions.		49.325	County department budgets and contracts.	
	SUBCHAPTER II		49.33	Income maintenance administration.	
	RELIEF BLOCK GRANTS		49.34	Purchase of care and services.	
49.002	Legislative declaration.		49.35	Public assistance; supervisory functions of department.	
49.01	Definitions.		49.36	Work experience program for noncustodial parents.	
49.015	Relief eligibility.		49.37	New hope project.	
49.02	Relief block grant administration.		49.38	Menominee Enterprises, Inc., bonds, acquisition.	
49.025	Relief block grants to counties with a population of 500,000 or more; medical relief.		49.385	No action against members of the Menominee Indian tribe in certain cases.	
49.027	Relief block grants to counties having a population of less than 500,000; medical and nonmedical relief.			SUBCHAPTER IV	
49.029	Block grants to tribal governing bodies; medical relief.			MEDICAL ASSISTANCE	
49.031	Payment of relief block grants to counties.		49.43	Definitions.	
49.08	Recovery of relief and other assistance.		49.45	Medical assistance; administration.	
	SUBCHAPTER III		49.453	Divestment of assets.	
	ECONOMIC SUPPORT AND WORK PROGRAMS		49.454	Treatment of trust amounts.	
49.11	Definitions.		49.455	Protection of income and resources of couple for maintenance of community spouse.	
49.124	Food stamp administration.		49.46	Medical assistance; recipients of social security aids.	
49.125	Recovery of food stamps.		49.465	Presumptive medical assistance eligibility.	
49.127	Food stamp offenses.		49.468	Expanded medicare buy-in.	
49.129	Electronic benefit transfer.		49.47	Medical assistance; medically indigent.	
49.13	At-risk and low-income child care.		49.475	Information about medical assistance beneficiaries.	
49.131	Expenditure of federal child care and development block grant funds.		49.49	Medical assistance offenses.	
49.132	Child care program.		49.493	Benefits under uninsured health plans.	
49.133	Refusal to pay child care providers.		49.495	Jurisdiction of the department of justice.	
49.134	Child care resource and referral service grants.		49.496	Recovery of correct medical assistance payments.	
49.136	Child care start-up and expansion.		49.497	Recovery of incorrect medical assistance payments.	
49.137	Child care quality improvement.		49.498	Requirements for skilled nursing facilities.	
49.138	Emergency assistance for families with needy children.		49.499	Nursing facility resident protection.	
49.141	Wisconsin works; general provisions.			SUBCHAPTER V	
49.143	Wisconsin works; agency contracts.			OTHER MEDICALLY RELATED SERVICES AND SUPPORT PROGRAMS	
49.145	Wisconsin works; eligibility for employment positions.		49.66	Definitions.	
49.146	Employer criteria.		49.68	Aid for treatment of kidney disease.	
49.147	Wisconsin works; work programs and job access loans.		49.682	Recovery from estates.	
49.148	Wisconsin works; wages and benefits.		49.683	Cystic fibrosis aids.	
49.149	Wisconsin works; education and training.		49.685	Hemophilia treatment services.	
49.151	Wisconsin works; sanctions.		49.686	AZT and pentamidine reimbursement program.	
49.152	Review of agency decisions.		49.687	Disease aids; patient financial and liability requirements.	
49.153	Wisconsin works health plan.		49.70	County home; establishment.	
49.155	Wisconsin works; child care subsidy.		49.703	County homes; commitments; admissions.	
49.157	Wisconsin works; transportation assistance.		49.71	County hospitals; establishment.	
49.159	Wisconsin works; noncustodial and minor and other custodial parents.		49.713	County hospitals; admissions.	
49.161	Wisconsin works; overpayments.		49.72	County infirmaries; establishment.	
49.185	Employment skills advancement program.		49.723	County infirmaries, admissions; standards.	
49.19	Aid to families with dependent children.		49.726	County infirmaries; cost of treatment, care and maintenance of patients.	
49.191	Aid to families with dependent children child care funding.		49.729	County infirmaries; fees and expenses of proceedings.	
49.193	Job opportunities and basic skills program.		49.73	Residential care institutions; establishment.	
49.195	Recovery of aid to families with dependent children and Wisconsin works benefits.		49.74	Institutions subject to chapter 150.	
49.197	Fraud investigation and reduction and error reduction.		49.77	State supplemental payments.	
49.20	Aid to 18-year-old students.			SUBCHAPTER VI	
49.21	Aid to families with dependent children hearings.			GENERAL PROVISIONS	
49.22	Child and spousal support; establishment of paternity; medical liability.		49.81	Public assistance recipients' bill of rights.	
49.23	Revision of child support orders and collection incentive programs.		49.82	Administration of public assistance programs.	
49.25	Parental responsibility pilot program.		49.83	Limitation on giving information.	
49.26	Learnfare program.		49.84	Verification of public assistance applications.	
49.27	Work-not-welfare pilot program.		49.85	Certification of certain public assistance overpayments.	
49.275	Cooperation with federal government.		49.855	Certification of delinquent payments.	
49.29	Loss of eligibility.		49.86	Disbursement of funds and facsimile signatures.	
49.30	Funeral expenses.		49.89	Third party liability.	
			49.90	Liability of relatives; enforcement.	
			49.95	Penalties; evidence.	
			49.96	Assistance grants exempt from levy.	

#### 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 (1) (b) or 55.06

(11) (a) 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 a person’s free choice, if competent, or by choice of a guardian if incompetent.

(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 industry, labor and job development.

**History:** 1995 a. 27 ss. 2639, 2644, 2654 to 2666, 3083; 1995 a. 289.

## 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.

Administrative rule under which applicants for general relief benefits were, in effect, deemed unwilling to work if they had lost 2 jobs without justification within past 12 months created impermissible, irrebuttable presumption that otherwise eligible applicants were presently unwilling to comply with this section. *Garcia v. Silverman*, 393 F Supp. 590.

**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).

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

A man who quits a job for personal reasons may not be denied welfare if he is otherwise “dependent”. Section 49.002 establishes a condition for continued eligibility, not a bar to initial eligibility. *State ex rel. Artega v. Silverman*, 56 W (2d) 110, 201 NW (2d) 538.

AFDC recipient may qualify as “dependent”. *State ex rel. Tiner v. Milwaukee County*, 81 W (2d) 277, 260 NW (2d) 393.

“Dependent person” defined. *St. Michael Hosp. v. County of Milwaukee*, 98 W (2d) 1, 295 NW (2d) 189 (Ct. App. 1980).

Indigent veteran’s right to apply for veteran’s emergency relief grant did not disqualify veteran as “dependent”. *Luther Hospital v. Eau Claire County*, 115 W (2d) 100, 339 NW (2d) 798 (Ct. App. 1983).

A county’s discretion as to times and amounts for relief payments under s. 49.01 (5m) does not preempt the mandate under s. 49.02 (1m) requiring written standards of need to determine the amount necessary to secure adequate housing. The county must provide housing whether in the form of money or actual shelter which is adequate for health and decency. *Clark v. Milwaukee County*, 188 W (2d) 171, 524 NW (2d) 382 (1994).

“Relief” is not broad enough to include attorneys’ fees incurred by eligible dependent person to prosecute or defend divorce action. 61 Atty. Gen. 330.

See note to Art. I, s. 1, citing *Lavine v. Milne*, 424 US 577.

Constitutional law: residency requirements. 53 MLR 439.

**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.

(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.

Sixty day waiting period under (1) (b) does not unconstitutionally penalize an individual's right to travel. *Jones v. Milwaukee County*, 168 W (2d) 892, 485 NW (2d) 21 (1992).

**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.

A county is liable under (5) for emergency services given a person who would be eligible for general relief even though that person refuses to apply therefor. *Mercy Medical Center v. Winnebago County*, 58 W (2d) 260, 206 NW (2d) 198.

Prerequisites for municipal liability under (5) discussed. *Clintonville Community Hosp. v. Clintonville*, 87 W (2d) 635, 275 NW (2d) 655 (1979).

Hospital has no duty to undertake credit investigation of apparently dependent patient prior to rendering medical services; county should investigate after receiving notice under (5). *Trinity Memorial Hosp. v. Milwaukee*, 98 W (2d) 220, 295 NW (2d) 814 (Ct. App. 1980).

County's income guidelines under sub. (9) upheld; there is no requirement that the county consider the applicant's level of need. *Hiller v. Adams County*, 166 W (2d) 1038, 480 NW (2d) 563 (Ct. App. 1992).

Sub. (5) (c) does not require the notice of emergency treatment to be signed by physician or require the form relating to a patient's residence to be notarized and does not deny coverage to an otherwise eligible person due to a provider's inability to submit a statement concerning the probable duration of treatment. *Koller v. Pierce County DHSS*, 187 W (2d) 1, 522 NW (2d) 240 (Ct. App. 1994).

A county's discretion as to times and amounts for relief payments under s. 49.01 (5m) does not preempt the mandate under s. 49.02 (1m) requiring written standards of need to determine the amount necessary to secure adequate housing. The county must provide housing whether in the form of money or actual shelter which is ade-

quate for health and decency. *Clark v. Milwaukee County*, 188 W (2d) 171, 524 NW (2d) 382 (1994).

Counties may not require relief recipient to surrender auto title and plates as condition of receipt of assistance. 61 Atty. Gen. 313.

Liability for cost of providing medical care to indigent person under arrest discussed. 67 Atty. Gen. 245.

Section 53.38, 1987 stats., [now 302.38] is exclusively applicable in providing relief from medical and hospital care costs incurred by indigent prisoner while receiving emergency medical treatment in hospital. 69 Atty. Gen. 230.

Rights and obligations of hospitals, counties and individual patients under Hill-Burton Act discussed. 70 Atty. Gen. 24.

Welfare applicants are entitled to a statement of reasons and administrative hearing after their application for general welfare relief is denied. *Alexander v. Silverman*, 356 F Supp. 1179.

Duty of a private hospital to render emergency treatment. 1974 WLR 279.

**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 (1) (bt), an amount for that year determined as follows:

1. The department shall determine the lesser of the following:
  - a. For 1996, \$17,600,000, and for each year thereafter, \$16,600,000.
  - b. 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.
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. Notwithstanding s. 49.01 (2g), health care services may include treatment services for alcohol and other drug abuse.

**History:** 1995 a. 27, 216.

**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, from the appropriation under s. 20.435 (1) (bu), an amount for that year determined as follows:

1. The department shall calculate an amount as follows:
  - a. The department shall determine the total amount that the county was reimbursed under s. 49.035, 1993 stats., for general relief costs incurred in 1994.
  - b. The department shall determine the total amount of general relief reimbursements that were paid under s. 49.035, 1993 stats., for costs incurred in 1994, to all counties that are eligible to receive a relief block grant under this section.
  - c. The department shall divide the amount determined under subd. 1. a. by the amount determined under subd. 1. b.
  - d. The department shall multiply the amount determined under subd. 1. c. by the amount appropriated under s. 20.435 (1) (bu) for relief block grants for that year.
2. The department shall calculate the sum of the following:

a. 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.

b. 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.

3. The department shall determine the lesser of the amount calculated under subd. 1. and the amount calculated under subd. 2.

4. From the amount determined under subd. 3., 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).

**(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.

**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 (1) (bs), 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.

**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. 58.06 and 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. This section shall not apply to any person who receives care for pulmonary tuberculosis as provided in s. 252.08 (4).

**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.

Dependent of 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 W (2d) 32, 259 NW (2d) 701.

### SUBCHAPTER III

#### ECONOMIC SUPPORT AND WORK PROGRAMS

**49.11 Definitions.** In this subchapter:

(1) "Department" means the department of industry, labor and job development.

**NOTE:** 1995 Wis. Act 289, s. 275, authorizes the department of industry, labor and job development to use the name "department of workforce development" for any official purpose.

(2) "Secretary" means the secretary of industry, labor and job development.

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

**49.124 Food stamp administration.** (1) **DEFINITION.** In this section, "food stamp program" means the federal food stamp program under 7 USC 2011 to 2029.

(1m) **EMPLOYMENT AND TRAINING PROGRAM.** (a) The department shall administer an employment and training program for recipients under the food stamp program. The department may contract with a Wisconsin works agency to administer the employment and training program under this section. 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, as defined in s. 49.141 (1) (r), to participate in the employment and training program under this section. To the extent permitted by federal law or waiver, and except as provided in par. (cm), the department may distribute food stamp benefits on a pay-for-performance basis, as determined under par. (c). The maximum number of hours an individual may be required to work may not exceed 40 hours per week.

(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.

(c) The amount of food stamp benefits paid to the recipient in a subsequent month shall be determined as follows:

1. The department shall add the recipient's total number of hours of actual participation in the month to the total number of hours in a month for which the recipient had good cause, as defined by the department by rule, for not participating in required activities.

2. The department shall subtract the total number of hours determined under subd. 1. from the recipient's total number of hours of required participation in that month.

3. The department shall multiply the number of hours determined under subd. 2. by the federal minimum hourly wage under 29 USC 206 (a) (1).

4. The department shall subtract the dollar amount determined under subd. 3. from the amount of food stamp benefits that the recipient's family would have received if he or she had participated for the total number of assigned hours.

(cm) Notwithstanding par. (c), 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.

(1p) **WAIVER.** (a) The department shall request a waiver from the secretary of the federal department of agriculture to permit the application of par. (b). Paragraph (b) does not apply unless a waiver is granted and in effect.

(b) The department shall modify eligibility and benefit amounts under the food stamp program to provide for a graduated schedule of benefits based on income in the manner described in the waiver under par. (a).

(2) **LIABILITY FOR LOST FOOD COUPONS.** (a) A county, federally recognized American Indian tribe or Wisconsin works agency is liable for all food stamp coupons lost, misappropriated or destroyed while under the county's, tribe's or Wisconsin works agency's direct control, except as provided in par. (b).

(b) A county, federally recognized American Indian tribe or Wisconsin works agency 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, federally recognized American Indian tribe or Wisconsin works agency is liable for food stamp coupons mailed to residents of the county, members of the tribe or participants in the Wisconsin works program and lost in the mail due to incorrect information submitted to the department by the county, tribe or Wisconsin works agency.

(3) **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. (2) from the payment to the county or tribe under s. 20.445 (3) (de) and (nL) and reimburse the federal government from the funds withheld.

(4) **MIGRANT WORKER WAIVER PROGRAM.** (a) In this subsection, "migrant worker" has the meaning given in s. 49.47 (4) (av) 1.

(b) The department shall request a waiver from the secretary of the federal department of agriculture to allow the application of par. (c). The waiver shall also seek a waiver from those federal quality control standards under the food stamp program that the department determines to be necessary in order to make the application of par. (c) feasible. Paragraph (c) applies only while the waiver under this paragraph is in effect.

(c) If a migrant worker and his or her dependents do not meet the income limitations under the food stamp program using prospective budgeting, the department shall determine eligibility for

the migrant worker and his or her dependents using an income-averaging method described in the waiver under par. (b).

**History:** 1987 a. 27; 1995 a. 27 ss. 2788 to 2793, 3140, 3141; 1995 a. 289.

**49.125 Recovery of food stamps. (1)** The department, or a county, an elected governing body of a federally recognized American Indian tribe or band or a Wisconsin works agency 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), 46.22 (1) (b) 2. d. or 49.143 (2) (e). 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 employe 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:** 1985 a. 29, 176; 1987 a. 27; 1991 a. 269; 1995 a. 27, 289.

**49.127 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 employe 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, a person who violates this section may be fined not more than \$10,000 or imprisoned not more than 5 years or both.

(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, a person who violates this section may be fined not more than \$10,000 or imprisoned not more than 5 years or both.

(d) In addition to the penalties applicable under par. (a) or (b), the court may suspend a person who violates this section from participation in the food stamp program up to 18 months. 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.

**History:** 1987 a. 27, 399.

**49.129 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)** The department shall request any necessary authorization from the secretary of the federal department of agriculture to deliver food stamp benefits to recipients of food stamp benefits by an electronic benefit transfer system.

(b) 1. Except as provided in subd. 2. and sub. (8), if the necessary authorization under par. (a) is granted, the department shall begin to implement, no later than July 1, 1999, a program to deliver food stamp benefits to recipients of food stamp benefits by an electronic benefit transfer system and shall implement the program statewide no later than April 1, 2000. All suppliers, as defined in s. 49.127 (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.

2. The department need not implement a program to deliver food stamp benefits by an electronic benefit transfer system if any of the following applies:

a. The department determines that the cost of the electronic benefit transfer system would be greater than the cost of another food stamp delivery system.

b. The department determines that the state may be liable under 12 CFR 205 for lost or stolen benefits.

**(3) DELIVERY OF OTHER BENEFITS. (a)** The department shall request any necessary authorization from the appropriate federal agency to deliver benefits that are administered by the department, other than food stamp benefits, to recipients of benefits by an electronic benefit transfer system.

(b) If the necessary authorization under par. (a) is granted, and except as provided in sub. (8), 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.

**(4) DUTIES; IMPLEMENTATION.** In implementing 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 by an electronic benefit transfer system.

**(5m) JOINT COMMITTEE ON FINANCE REVIEW.** Prior to implementing the electronic benefit transfer system under this section, the department shall notify the joint committee on finance of the proposed system. The department may proceed with implementation of the system if, within 14 working days of the notification, the committee does not schedule a meeting for the purpose of reviewing the department's proposed system. If the committee schedules a meeting for the purpose of reviewing the proposed system, the system shall not take effect unless the committee approves the 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:** 1995 a. 368.

**49.13 At-risk and low-income child care.** Within the limits of available federal funds and the appropriation under s. 20.445 (3) (cp), the department shall distribute under s. 49.132 (2) not more than \$21,504,800 in fiscal year 1996–97.

**History:** 1995 a. 404.

**49.131 Expenditure of federal child care and development block grant funds. (1)** In this section, “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).

**(2)** Subject to sub. (4) and s. 16.54 (2), 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:

(a) From the appropriation under s. 20.445 (3) (md), distribute \$9,998,500 in fiscal year 1995–96 and \$10,099,200 in fiscal year 1996–97 for child day care services under s. 46.98 (2m) and (3) [49.132 (2m) and (3)].

**NOTE:** Par. (a) is shown as renumbered from s. 46.979 (2) (a), as affected by 1995 Wis. Act 404, by the revisor under s. 13.93 (1) (b). The bracketed language indicates the correct cross-references. Section 46.98 (2m) and (3) was renumbered by 1995 Wis. Act 404. Corrective legislation is pending.

(b) 1. From the appropriation under s. 20.445 (3) (mc), distribute \$190,800 in fiscal year 1995–96 and \$197,700 in fiscal year 1996–97 for the purposes of providing technical assistance for child care providers and of administering the child care programs funded under s. 20.445 (3) (cp) and (md).

2. From the appropriation under s. 20.445 (3) (mc) transfer \$1,026,800 in fiscal year 1996–97 to the appropriation under s. 20.435 (6) (kx) for the purpose of day care center licensing under s. 48.65.

(c) From the appropriation under s. 20.445 (3) (md), distribute as follows the federal child care and development block grant funds that are received under 42 USC 9858 and that are not distributed under par. (a) or (b):

1. For grants under s. 49.136 (2) for the start-up and expansion of child day care services, and for child day care start-up and expansion planning, \$430,000 in fiscal year 1995–96 and \$226,400 in fiscal year 1996–97.

2. For grants under s. 49.134 (2) for child day care resource and referral services, \$960,000 in fiscal year 1995–96 and \$960,000, in fiscal year 1996–97.

3. For grants under s. 49.137 (3) to assist child care providers in meeting the quality of care standards established under s. 49.132 (4) (e) and for a system of rates or a program of grants, as provided under s. 49.132 (4) (e), to reimburse child care providers that meet those quality of care standards, \$1,559,200 in fiscal year 1995–96 and \$1,576,700 in fiscal year 1996–97. If an amount distributed under this subdivision will not be fully expended, the department may transfer the unexpended funds to the distribution under subd. 4.

4. For grants under s. 49.137 (2) and contracts under s. 49.137 (4) to improve the quality of child day care services in this state, \$450,000 in fiscal year 1995–96 and \$450,000 in fiscal year 1996–97, plus any amounts that the department transfers to this distribution under subd. 3.

**(3)** To the extent permitted under federal law, the department may transfer to the following fiscal year any funds distributed under sub. (2) (c) that are not spent or encumbered in the fiscal year in which the funds were distributed and use those transferred funds in the following fiscal year for the purposes specified in sub. (2) (c).

**(4)** 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. (2) 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 that the committee has scheduled a meeting for the purpose of reviewing the plan within 14 working days after the date of his or her submittal, the department may implement the plan, notwithstanding any allocation limit under sub. (2). 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. (2), only with the approval of the committee.

**History:** 1991 a. 275; 1993 a. 16; 1995 a. 27, 216, 289; 1995 a. 404 ss. 77 to 88; Stats. 1995 s. 49.131; s. 13.93 (1) (b).

**49.132 Child care program. (1) DEFINITIONS.** In this section:

(ad) “At-risk child care” means child care that is provided for a person who is eligible for funding for that child care under sub. (2r) (a) and 42 USC 603 (n).

(ag) “At risk of becoming eligible for aid to families with dependent children” means having a family income that is equal to or less than 75% of the state median income as determined by the department annually.

(am) “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).

(at) “Educational program” means high school or a high school equivalency program or 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.

(b) “Gainfully employed” means working or seeking employment.

(bd) “Level I certified family day care provider” means a day care provider certified under s. 48.651 (1) (a).

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

(bm) “Low-income child care” means child care that is provided for a person who is eligible for funding for that child care under sub. (4) (a) and 42 USC 9858.

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

(cm) “Poverty line” has the meaning given in s. 46.30 (1) (c).

**(2) DISTRIBUTION OF CHILD CARE FUNDS.** (a) The department shall distribute the funds allocated under s. 49.13 for at-risk and low-income child care services under subs. (2m) and (3) to county departments under s. 46.215, 46.22 or 46.23 and to private non-profit child care providers who provide child care for the children of migrant workers.

**NOTE:** Sub. (2) (title) and par. (a), as affected by 1995 Wis. Act 404, are shown as renumbered from s. 46.98 (2) (title) and (a) by the revisor under s. 13.93 (1) (b).

(b) The department shall promulgate by rule a procedure to be used annually to develop a formula for the distribution of funds under par. (a). The formula shall include a requirement that county departments under s. 46.215, 46.22 or 46.23 to which funds are distributed under par. (a) expend a certain percentage of those funds, as determined by the department, on at-risk child care.

(c) A county may use up to 5% of the funds distributed under par. (a) to its county department under s. 46.215, 46.22 or 46.23 for the costs of administering the programs under subs. (2m) and (3).

**(2m) USE OF AT-RISK CHILD CARE FUNDS.** (a) Except as provided in sub. (2) (c), funds distributed under sub. (2) for at-risk child care may only be used for the purposes specified in this paragraph. The funds shall be used to provide care for all or part of a day for children under age 13 of persons who need child care to be able to work, who are not receiving aid to families with dependent children and who are at risk of becoming eligible for aid to families with dependent children if child care under this subsection is not provided. No funds distributed under sub. (2) may be used to provide care for a child by a person who resides with the child.

(c) From the funds distributed under sub. (2) for at-risk child care, 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) 1. No funds distributed under sub. (2) for at-risk child care may be used solely to prevent or remedy child abuse or neglect, to alleviate stress in the family or to preserve the family unit.

2. No funds distributed under sub. (2) for at-risk child care may be used for the start-up, improvement or expansion of child care services or facilities or for the recruitment, education or training of persons providing child care.

**(2r) ELIGIBILITY FOR AT-RISK CHILD CARE FUNDS.** (a) A parent who needs child care for a child under 13 years of age to be able to work, who is not receiving aid to families with dependent children and who is at risk of becoming eligible for aid to families with dependent children is eligible to receive aid from the funds distributed under sub. (2) for at-risk child care.

(b) A parent who receives aid under sub. (2m) is liable for the cost of child care received, payable in accordance with a sliding scale formula provided by the department that is based on the parent’s ability to pay.

(d) Each county shall annually set a maximum rate that it will pay for child care services provided to eligible parents. The department shall annually review each county’s rate and shall approve it if it meets the criteria specified in regulations issued by the federal secretary of health and human services. The department shall promulgate rules establishing criteria that conform to the regulations issued by the federal secretary of health and human services and establishing procedures for approving county rates.

**(3) USE OF LOW-INCOME CHILD CARE FUNDS.** (a) Except as provided in sub. (2) (c), funds distributed under sub. (2) for low-income child care may only be used for the purposes specified in this subsection. The funds shall be used to provide care for children under age 13 for all or part of a day during which a child’s parent is gainfully employed.

(b) Counties may spend moneys distributed for low-income child care under sub. (2) for child care purposes other than those in par. (a) only as provided in sub. (2) (c) or with the approval of the department. Child care purposes include start-up, improvement and expansion of child care services and facilities, and recruitment, education and training for persons providing child care.

(c) From the funds distributed under sub. (2) for low-income child care, a county may provide day care services itself or it may purchase day care services from a child care provider. In addition, from the funds distributed under sub. (2) for low-income child care, each county shall, subject to the availability of funds, provide day care by offering to each eligible parent a voucher for the payment of day care services provided by a child care provider. Each county shall allocate all or a portion of its day care funding for payment of vouchers. An eligible parent may choose whether the care will be provided by a Level I certified family day care provider or a Level II certified family day care provider or in a day care center, in the home of another person or, subject to the county’s approval, in the parent’s home. A parent who uses vouchers for the payment of day care services may supplement the maximum rate for day care services set under sub. (4) (d), (dg) or (dm) or, if a higher rate for day care services is set under sub. (4) (e), the rate set under sub. (4) (e), whichever is applicable.

**(4) ELIGIBILITY FOR LOW-INCOME CHILD CARE FUNDS.** (a) The following persons are eligible to receive aid from the funds distributed under sub. (2) for low-income child care:

1. A parent who is gainfully employed and who receives aid under s. 49.19, if the dependent child care income disregard under 42 USC 602 is less than the actual amount the parent spends for child care or if the child care income disregard is not yet available to the parent.

2. Except as provided in par. (am), a parent who is gainfully employed, or who is less than 20 years of age and is enrolled in an educational program, who is in need of child care services and whose family income is equal to or less than 75% of the state median income. The department shall annually determine the state median income.

3. A parent who is gainfully employed, who is in need of child care services and whose family income is greater than 75% of the state median income to the extent determined annually by the department. The department shall annually determine the state median income.

(am) A parent who is gainfully employed, or who is less than 20 years of age and is enrolled in an educational program, who is in need of child care services and who applies for aid on or after May 10, 1996, is eligible for aid under this section if the family income of the applicant is equal to or less than 165% of the poverty line.

(b) Parents receiving aid under sub. (3) are liable for the cost of child care received, payable in accordance with a schedule developed by the department based on ability to pay.

(c) If funds distributed under sub. (2) are insufficient to meet the needs of all eligible parents, a county shall:

2. Give first priority to parents who are eligible to receive aid under par. (a) 2. or 3., who are under the age of 20, and who are in need of child care services in order to complete high school, courses at a technical college in lieu of high school or a course of study leading to the granting of a declaration of high school graduation under s. 115.29 (4).

2m. Give 2nd priority to parents who are eligible to receive aid under par. (a) 1.

3. Give 3rd priority to parents who are eligible to receive aid under par. (a) 2. or 3., who have been recipients of aid under s. 49.19 within the prior 12 months and who are working.

4. Give 4th priority to parents who are working and who have been recipients of aid under s. 49.19 but not within the last 12 months.

(d) Each county shall annually set a maximum rate that it will pay for licensed day care services provided to eligible parents, other than licensed day care services for which a rate, if any, is established under par. (e). A county shall set its maximum rate under this paragraph 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. The department shall annually review each county's rate and shall approve it if the department finds that the rate is set at a reasonable and customary level which does not preclude an eligible parent from having a reasonable selection of child care providers. The department shall promulgate by rule a procedure and criteria for approving county rates.

(dg) Each county shall set a maximum rate that it will pay for Level I certified family day care providers for services provided to eligible parents. The maximum rate set under this paragraph may not exceed 75% of the rate established under par. (d).

(dm) Each county shall set a maximum rate that it will pay for Level II certified family day care providers for services provided to eligible parents. The maximum rate set under this paragraph may not exceed 50% of the rate established under par. (d).

(e) 1. 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 subdivision 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.

2. To the extent permitted under federal law, the department shall also 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 subd. 1. If a system of rates is established by the rules promulgated under this subdivision, the rates under that system shall be higher than the rate established under par. (d).

(5) DEPARTMENTAL DUTIES. (a) The department shall monitor the administration of the programs in this section.

(b) The department shall provide training and technical assistance to counties relating to the administration of the programs under this section.

(c) The department shall assess the extent and location of unmet child care needs in the state.

(d) The department shall provide information to the public, counties and child care providers relating to child care services.

(e) The department shall promptly recover all overpayments made under this section. The department shall promulgate rules establishing policies and procedures to administer this paragraph.

(f) Before the department distributes any funds under sub. (2) to a private nonprofit child care provider that provides child care for the children of migrant workers, it shall establish an annual grant process for selecting child care providers to whom the funds will be distributed. The department shall enter into a contract, specifying the conditions under which day care will be provided to the children of migrant workers, with each provider selected.

(6) SUNSET. This section does not apply beginning on the first day of the 6th month beginning after the date specified in the notice under s. 49.141 (2) (d).

**History:** 1983 a. 193; 1985 a. 29 ss. 904c to 904w, 3202 (23); 1985 a. 176, 281; 1987 a. 27; 1989 a. 31; 1991 a. 6, 39, 189, 275; 1993 a. 16, 399, 446; 1993 a. 490 s. 272; 1993 a. 491; 1995 a. 27, 216, 289; 1995 a. 404 ss. 89 to 94, 96 to 115, 120, 121; Stats. 1995 s. 49.132; s. 13.93 (1) (b).

**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 or any other program if any of the following applies to the child care provider, employe 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.

**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, nonprofit corporation organized under ch. 181 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. 49.131 (2) (c) 2., 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.

**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. 49.131 (2) (c) 1., the department shall award grants for the start-up or expansion of child care services.

(b) The department shall attempt to award grants under this section to head start agencies designated under 42 USC 9836, employers that provide or wish to provide child care services for their employes, family day care centers, group day care centers and day care programs for the children of student parents.

(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.

**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. 49.131 (2) (c) 4., the department may award grants to child care providers that meet the quality of care standards established under s. 49.132 (4) (e) or 49.155 (6) 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. 49.131 (2) (c) 3., the department may award grants to child care providers for assistance in meeting the quality of care standards established under s. 49.132 (4) (e).

(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) within 24 months after receipt of the grant.

**(4) TRAINING AND TECHNICAL ASSISTANCE CONTRACTS.** From the allocation under s. 49.131 (2) (c) 4., 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).

(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).

(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.

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

**(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.

**49.138 Emergency assistance for families with needy children. (1)** The department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or energy crisis. Eligibility shall not exceed the limitations for federal participation defined by applicable federal laws and regulations. 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) (dc) and (p). 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 may be used only to obtain a permanent living accommodation and, except as provided in sub. (2), may only be provided to a needy person once in a 36-month period. For the purposes of this section, a family is considered to be homeless 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.

(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.

**(2)** Emergency assistance provided to a person under sub. (1) (c) may be provided once in a 12-month period.

**History:** 1995 a. 289 ss. 83e, 103d.

**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 either a biological parent, a person who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption.

(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).

**(2) WAIVERS; LEGISLATION.** (a) If necessary, the department shall request a waiver from the secretaries of the federal department of health and human services, the federal department of agriculture and the federal social security administration or shall seek the passage of federal legislation to permit the department to conduct the Wisconsin works program in lieu of the aid to families with dependent children program under s. 49.19, the job opportunities and basic skills program under s. 49.193, the parental responsibility pilot program under s. 49.25 and the work–not–welfare program under s. 49.27 and as part of the food stamp program under 7 USC 2011 to 2029 and the medical assistance program under 42 USC 1396 to 1396u.

(b) If a waiver is granted and in effect or legislation is enacted, and if the department determines that sufficient funds are available, the department may begin to implement the Wisconsin works program no sooner than July 1, 1996, for selected counties or groups determined by the department and shall implement the Wisconsin works program statewide for all groups no later than September 1997. If a waiver is not granted and in effect or federal legislation is not enacted before March 30, 1997, the department shall implement the Wisconsin works program statewide for all groups no later than 3 months after the necessary waiver has been granted or federal legislation has been enacted.

(d) Before implementing the Wisconsin works program, the department shall publish a notice in the Wisconsin Administrative Register that states the date on which the department will begin to implement the Wisconsin works program statewide.

**(2g) FINANCIAL AND PERFORMANCE AUDIT.** (a) 1. The department shall contract with the legislative audit bureau to conduct a financial and performance audit of Wisconsin works. The legislative audit bureau shall include in its audit all of the following:

a. The effect of the Wisconsin works employment component on the unsubsidized wages of former Wisconsin works employment position participants, the wages of trial job participants and the wages of participants that move from community service jobs and transitional placements to trial jobs.

b. The effect of Wisconsin works on the provision of child care services.

c. The utilization and cost of the Wisconsin works health plan under s. 49.153.

2. The legislative audit bureau shall file the audit no later than July 1, 2000, in the manner described under s. 13.94 (1) (b).

(b) If an evaluation is required under the terms of a federal waiver obtained under sub. (2) (a), the legislative audit bureau, in consultation with the department, may contract with a private or public agency to perform that evaluation and may charge the department for the cost of the evaluation.

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

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

(b) 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.

(c) 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.

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

(a) Knowingly and wilfully 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 may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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 one year or both.

**(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, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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 may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

**History:** 1995 a. 289.

#### 49.143 Wisconsin works; agency contracts.

**(1) AWARDING CONTRACTS.** (a) Except as provided in par. (am), the department may 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 department shall award contracts under this paragraph before the date that is specified in s. 49.141 (2) (d).

(am) 1. The department shall contract with a county under s. 46.215, 46.22 or 46.23 or with a tribal governing body to administer Wisconsin works in that county or within the boundaries of that reservation if the county or tribal governing body has met the aid to families with dependent children caseload performance standards established by the department. The contract shall be awarded before the date that Wisconsin works is implemented in that county or on that reservation and shall be for a term of at least 2 years beginning on the date on which the department implements Wisconsin works in that county or reservation. When the contract expires, a county or tribal governing body may apply for a new contract under the competitive process established under par. (a). A county or tribal governing body may elect not to enter into a contract under this subdivision if the county or tribal governing body informs the department by the date established by the department that the county or tribal governing body has made that election.

2. A county or tribal governing body that has not met the aid to families with dependent children caseload performance standards established by the department may apply for a contract under the competitive process established under par. (a).

(at) A county that is awarded a contract under par. (am) 1. to administer Wisconsin works shall offer a subcontract for the administration of s. 49.147 to the public or private agency, if different from the county department under s. 46.215, 46.22 or 46.23, that administers the job opportunities and basic skills program under s. 49.193 in that county. A contract entered into under this paragraph is subject to approval by the department.

(ay) A county or tribal governing body that enters into a contract under par. (a) or (am) 1. but elects not to compete for a subsequent contract under par. (a) shall provide the notice required under this paragraph at least 6 months prior to the expiration of its contract under par. (a) or (am) 1. A county or tribal governing body that elects not to enter into a contract under par. (am) 1. or to compete for a contract under par. (am) 2. shall provide the notice required under this paragraph by the date established by the department, by rule, under par. (am) 1. 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); that the employees may obtain information from the department on the competitive process under par. (a) 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). 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) or (am), the department shall administer Wisconsin works in that geographical area.

**NOTE: 1995 Wis. Act 216 amended par. (a) and created par. (av), but contained the following reconciliation provision at section 9162 (2t). Act 216 was passed by the legislature in the form of assembly substitute amendment 3, but was not enacted in that form due to the governor's partial vetoes. Pars. (a) and (av) as affected by 1995 Wis. Act 216 are set forth below.**

**(2t) RECONCILIATION: WISCONSIN WORKS.**

(a) If 1995 Wisconsin Act ... (Assembly Bill 591) is not enacted into law or is enacted into law in a form other than that of assembly substitute amendment 3, the treatment of section 49.143 (1) (a) and (av) of the statutes by this act and section 9462 (3t) of this act are void.

49.143 (1) (a) Except as provided in pars. (am) and (av), the department may 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 department shall award contracts under this paragraph at least 6 months before the date that is specified in s. 49.141 (2) (d).

(av) 1. In a county having a population of 500,000 or more the department shall, prior to awarding a contract to administer Wisconsin works in that county, work with the county for a period not to exceed 6 months to establish a plan for the first 2 years of administration of Wisconsin works in that county. The plan shall establish the methodology for conducting a competitive bidding process to award a contract to administer Wisconsin works in that county. The plan shall identify an administrator to oversee the administrative structure of Wisconsin works in that county and to oversee the Wisconsin works agencies in that county. In establishing a selection process for Wisconsin works agencies in the county, if the county has met the aid to families with dependent children caseload performance standards established by the department under par. (am), the plan shall, to the extent practicable, give preference to agencies that administer the job opportunities and basic skills program under s. 49.193 in that county.

a. If a plan is approved by the department and the county, the department shall award a contract to administer Wisconsin works in that county in accordance with the plan. The plan shall remain in effect for 2 years.

b. If a plan is not approved by the department or the county, the department shall award a contract to administer Wisconsin works in accordance with par. (a) or (am), whichever is applicable.

**(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 governor's council on workforce excellence under s. 106.115 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.

9. Seek sources of private funding to match employment skills advancement grants under s. 49.185 (3) (i).

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.

(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.

(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.

(e) Certify eligibility for and issue food coupons to eligible Wisconsin works participants in conformity with 7 USC 2011 to 2029.

(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.

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

**(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 any or all payment from the Wisconsin works agency.

**(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.

#### 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 resided in this state for at least 60 consecutive days prior to applying under s. 49.141 (3) and, unless the person is a migrant worker, has demonstrated an intent to continue to reside in this state.

(f) 1. Subject to subd. 2., the individual fully cooperates in efforts directed at establishing the paternity of the dependent child and obtaining support payments or any other payments or property to which that individual and the dependent child may have rights. Such cooperation shall be in accordance with federal law

and regulations and rules promulgated by the department applicable to paternity establishment and collection of support payments.

2. An individual who fails 3 times to meet the requirements under subd. 1. remains ineligible until the individual cooperates 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.

(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) Beginning on the date on which the individual has attained the age of 18, the total number of months in which the individual has actively participated in the job opportunities and basic skills program under s. 49.193 or has participated in a Wisconsin works employment position or both does not exceed 60 months. The months need not be consecutive. Participation in the job opportunities and basic skills program under s. 49.193 begins to count toward the 60-month limit beginning on July 1, 1996. A Wisconsin works agency may extend the time limit 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.

(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.

**(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), and any assistance received under s. 49.148.

2. Child support payments received on behalf of a child who is a member of the Wisconsin works group.

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 exceed the asset limits for at least 2 months or until the income of the Wisconsin works group is expected to exceed the income limits for at least 2 consecutive months.

*History:* 1995 a. 289.

**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.

**49.147 Wisconsin works; work programs and job access loans. (1) DEFINITION.** (a) *Definition.* In this section, "unsubsidized employment" means employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities.

**(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 Wisconsin 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 individuals who are not otherwise able to obtain employment, as determined by the Wisconsin works agency, by providing work experience and training to assist them 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 projects 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 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 par. (at), a Wisconsin works agency may require a participant placed in a community service job program to work not more than 30 hours per week in a community service job. 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).

(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 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), 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. 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 employe 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.

**(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 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) (e), 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.

(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 secretary of education 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.

#### 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.* For a participant in a community service job, a monthly grant of \$555, paid by the Wisconsin works agency. For every hour that the participant misses work or education or training activities without good cause, the Wisconsin works agency shall reduce the grant amount by \$4.25. 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, a grant of \$518, 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 Wisconsin works agency shall reduce the grant amount by \$4.25. 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 \$555. 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.

**(3) WISCONSIN WORKS HEALTH PLAN.** A participant in a Wisconsin works employment position shall participate in the Wisconsin works health plan under s. 49.153. The participant shall pay a premium in an amount and in the manner established under s. 49.153 (4) (d).

*History:* 1995 a. 289

#### 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.

**49.151 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 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 refuses to participate in a Wisconsin works employment position component if the participant does any of the following:

(a) Expresses verbally or in writing to a Wisconsin works agency that he or she refuses to participate.

(b) Fails to appear for an interview with a prospective employer or, if the participant is in a Wisconsin works transitional placement, 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) Voluntarily leaves appropriate employment or training without good cause, as determined by the Wisconsin works agency.

(d) Loses employment as a result of being discharged for cause.

(e) 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.

**49.152 Review of agency decisions. (1) PETITION FOR REVIEW.** Any individual whose application for Wisconsin works under s. 49.147 (1) to (5) 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, 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 a certified copy of its decision to 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 15 days of receiving the decision of the Wisconsin works agency, 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 15 days after receiving the decision of the Wisconsin works agency, 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.

**History:** 1995 a. 289.

**49.153 Wisconsin works health plan. (1) DEFINITIONS.** In this section:

(a) "Employer-subsidized health care coverage" means a health care plan, which provides coverage of health care costs, offered by the employer for which the employer pays at least 50% of the cost of the plan for the employee, including dependent coverage and excluding any deductibles or copayments that may be required under the plan.

(b) "Unsubsidized employer-offered health care coverage" means a health care plan, which provides coverage of health care costs, offered by the employer for which the employer pays less than 50% of the cost of coverage for the employee, including dependent coverage and excluding any deductibles or copayments that may be required under the plan.

(2) **ADMINISTRATION.** The department of health and family services shall provide health services and benefits under sub. (4) to individuals who have been determined by a Wisconsin works agency to be eligible under subs. (3) to (3p) for such services and benefits. The Wisconsin works agency shall maintain a list of eligible individuals and shall make the list available to the department of health and family services upon request.

(3) **ELIGIBILITY.** (a) *General provisions.* 1. A Wisconsin works agency shall determine eligibility for benefits and services under this section, in accordance with rules promulgated by the department of health and family services in consultation with the department of industry, labor and job development. The Wisconsin works agency shall make the eligibility determination after the date on which the agency receives a completed application from the individual for services and benefits under this section and shall immediately notify the department of health and family services of that determination. An individual who applies for and receives benefits and services under this section is considered to have assigned to the state 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 benefits and services under this section and any rights to support accruing during the time for which benefits and services under this section are provided. Eligibility for benefits and services under this section begins on the day on which the department of health and family services or the provider issues a health plan membership card. The department of health and family services or the provider shall issue the health plan membership card to an individual after the date on which the Wisconsin works agency notifies the department of health and family services that the individual is eligible.

2. a. Except as provided in subd. 3. and pars. (em) and (f), an individual who is eligible for the health care coverage under this section remains eligible under this section for 12 consecutive

months or until the individual has access to unsubsidized employer–offered health care coverage, whichever is later.

b. Notwithstanding subd. 2. a., an individual who is described under par. (f) 1. a., b., c. or d. who is eligible for health care coverage under this section remains eligible until the individual no longer meets eligibility criteria, as provided in subd. 3.

3. A Wisconsin works agency shall, within the period of an individual's eligibility, as specified under subd. 2., periodically review an individual's eligibility. The individual remains eligible for benefits and services under this section until any of the following applies:

a. The assets of the individual or, if the individual is a member of a Wisconsin works group, the assets of the Wisconsin works group of which the individual is a member, exceed the asset limits for at least 2 months.

b. The income of the individual, or, if the individual is a member of a Wisconsin works group, the income of the Wisconsin works group of which the individual is a member, is expected to exceed the income limits for at least 2 consecutive months.

(e) *Access to employer–subsidized health care coverage.* An individual is eligible for health care coverage under this section only if the individual has not had access to employer–subsidized health care coverage within the 18 months immediately preceding application for health care coverage under this section. This paragraph does not apply to any of the following:

1. An individual who has lost access to employer–subsidized health care coverage within the 18 months immediately preceding application for health care coverage under this subsection because of the termination by the employer of the employment relationship for a reason other than misconduct on the part of the employee and who has not had access to employer–subsidized health care coverage since the termination.

2. An individual who has lost access to employer–subsidized health care coverage within the 18 months immediately preceding application for health care coverage under this subsection because of the termination by the employee of the employment relationship for just cause.

3. A dependent child who has lost eligibility for employer–subsidized health care coverage for any reason.

3m. A pregnant woman with an income equal to or less than 165% of the poverty line who has lost eligibility for employer–subsidized health care coverage for any reason.

4. A participant in a Wisconsin works employment position.

(em) *Continuous coverage requirement.* An individual who withdraws from health care coverage under this section while the individual is still eligible for health care coverage under this section is ineligible for health care coverage under this section for a period of 6 months following the withdrawal.

(f) *Ineligibility.* No individual is eligible for health care coverage under this section in a month in which any of the following applies:

1. The individual is eligible for employer–subsidized health care coverage. This subdivision does not apply to any of the following:

a. A pregnant woman in a Wisconsin works group with an income that is equal to or less than 165% of the poverty line.

b. A child who has not attained the age of 6 in a Wisconsin works group with an income equal to or less than 165% of the poverty line.

c. A child who has attained the age of 6 and has not attained the age of 12 in a Wisconsin works group with an income that is equal to or less than 100% of the poverty line.

d. A child who has attained the age of 6 and has not attained the age of 12 in a Wisconsin works group with an income in excess of 100% of the poverty line if the total amount obligated or expended for medical care or other type of remedial care and for health insurance premiums, when subtracted from the Wisconsin

works group's income, places the Wisconsin works group at or below 100% of the poverty line.

2. The individual fails to pay the established premium in a timely manner, as defined by the department of industry, labor and job development by rule.

**(3g) ELIGIBLE GROUPS.** Subject to the requirements under sub. (3), the following individuals are eligible for benefits and services under this section:

(a) *Wisconsin works groups.* Except as provided in par. (c), an individual who is a member of a Wisconsin works group, if all of the following conditions apply:

1. The individual meets the criteria under s. 49.145 (2) (c), (f), (g), (i), (L) and (m) and resides in this state.

2. The Wisconsin works group meets the asset limitation under s. 49.145 (3) (a).

3. The gross income of the Wisconsin works group is at or below 165% of the poverty line, or, for a Wisconsin works group that is already receiving health care coverage under this section, the gross income is at or below 200% of the poverty line. In calculating the gross income of the Wisconsin works group, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. to 3.

(b) *Pregnant women.* A pregnant woman whose pregnancy has been medically verified and who has no dependent children, if she meets all of the following conditions:

1. The woman meets the criteria under s. 49.145 (2) (c), (g), (i), (L) and (m) and resides in this state.

2. The woman meets the asset limitation under s. 49.145 (3) (a).

3. The gross income of the woman is at or below 165% of the poverty line. In calculating gross income under this subdivision, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. and 3.

(c) *Minor parents.* An individual who is a custodial parent and who is under the age of 18, and any dependent children with respect to whom the individual is a custodial parent, only if the individual meets one of the following conditions:

1. The individual resides with his or her custodial parent and the gross income of the Wisconsin works group of which the individual is a member does not exceed 165% of the poverty line. In calculating the gross income of the Wisconsin works group, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. to 3.

2. The individual is in an independent living arrangement supervised by an adult and the gross income of the individual does not exceed 165% of the poverty line. In calculating the gross income of the individual, the Wisconsin works agency shall include income described under s. 49.145 (3) (b) 1. to 3.

**(3m) MEDICALLY NEEDY.** (am) Notwithstanding sub. (3) (a) 2. a., (e) and (f) 1., if the individual is a pregnant woman or a child who has not attained the age of 6, and the individual meets all of the requirements of sub. (3g) (a), (b) or (c), except that the income calculated for the individual under sub. (3g) (a) 3., (b) 3. or (c) 1. or 2. exceeds the applicable income limit under sub. (3g) (a) 3., (b) 3. or (c) 1. or 2., the individual is eligible for benefits and services under this section if all of the excess income above the applicable limit has been obligated or expended for medical care or other type of remedial care or for personal health insurance premiums.

(as) Notwithstanding sub. (3) (a) 2. a., if the individual is a child who has attained the age of 6 and has not attained the age of 12, and the individual meets all of the requirements of sub. (3g) (a) except that the income calculated for the individual under sub. (3g) (a) 3. exceeds the income level under sub. (3g) (a) 3., the individual is eligible for benefits and services under this section if the total amount obligated or expended for medical care or other type of remedial care and for health insurance premiums, when subtracted from the Wisconsin works group's income, places the Wisconsin works group at 100% of the poverty line.

(b) In determining the income for an individual under this subsection for purposes of determining the premium amount under sub. (4) (d), the Wisconsin works agency shall exclude the excess income specified under par. (am) or (as).

**(3p) PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN.** (a) Notwithstanding sub. (3g) (a), (b) and (c), a pregnant woman is eligible under this subsection for ambulatory prenatal care services under this section during the period beginning on the day on which an authorized health care provider under contract under sub. (4) (a) determines, on the basis of preliminary information, that the woman's family income does not exceed 165% of the poverty line and that the woman's family's assets do not exceed the asset limits under s. 49.145 (3) (a). Eligibility under this subsection ends as follows:

1. If the woman applies under sub. (3g) (a), (b) or (c) for benefits and services under this section within the time required under par. (c), on the day on which the Wisconsin works agency determines whether the woman is eligible for benefits and services under sub. (3g) (a), (b) or (c).

2. If the woman does not apply under sub. (3g) (a), (b) or (c) for benefits and services under this section within the time required under par. (c), on the last day of the month following the month in which the health care provider makes the determination under this paragraph.

(c) A woman who is determined to be eligible under this subsection shall apply under sub. (3g) (a), (b) or (c) for benefits and services under this section within 14 days after the date on which the health care provider makes that determination.

(cm) A woman who receives services under this subsection is liable for a monthly premium payable in the amount and in the manner prescribed under sub. (4) (d) beginning with the first month in which she receives those services.

(d) A health care provider under contract under sub. (4) (a) that determines that a woman is eligible under this subsection for benefits and services under this section shall do all of the following:

1. Notify the Wisconsin works agency of that determination within 5 working days after the day on which the determination is made.

2. Notify the woman of the requirements under pars. (c) and (cm).

(e) The Wisconsin works agency shall provide health care providers under contract under sub. (4) (a) with application forms for benefits and services under this section and information on how to assist women in completing the forms.

(f) No provider may make more than one eligibility determination under this subsection with respect to an individual.

**(4) ADMINISTRATION AND BENEFITS.** (a) *Health maintenance organization contract.* The department of health and family services shall contract with health maintenance organizations or other health care providers, including federally qualified health centers, to provide health care services under this subsection. A health maintenance organization or other health care provider that contracts under this subsection shall meet the certification criteria established by the department of health and family services under s. 49.45 (2) (a) 11.

(b) *Health care services provided.* 1. Except as provided in subd. 2., the Wisconsin works health plan shall cover the care and services specified under s. 49.46 (2).

1m. The Wisconsin works health plan shall cover in-home psychotherapy for individuals who are under the age of 21 if the in-home psychotherapy is prescribed pursuant to a physical examination under 42 USC 1396 (r) (1).

1s. The Wisconsin works health plan shall cover insulin if it is prescribed by a physician.

2. Except as otherwise required under a federal waiver received under 42 USC 1315, the Wisconsin works health plan shall not cover the following goods and services:

a. Home care, as defined in s. 632.895 (1) (b), in excess of the minimum required under s. 632.895 (2).

b. Skilled nursing care in excess of the minimum required under s. 632.895 (3).

c. Over-the-counter drugs.

d. Treatment of alcoholism or other drug abuse problems in excess of the minimum coverage required under s. 632.89 (2).

e. Services described under 42 USC 1396d (r) (5), unless the services are otherwise covered under this section.

(bm) *Abortion coverage excluded.* 1. In this paragraph:

a. "Abortion" means the intentional destruction of the life of an unborn child.

b. "Unborn child" means a human being from the time of conception until it is born alive.

2. Except as provided in subd. 3., each contract that is entered into under par. (a) shall explicitly provide that it does not include coverage for the performance of an abortion.

3. This paragraph does not apply to any of the following:

a. The performance by a physician of an abortion which is directly and medically necessary to save the life of the woman or in a case of sexual assault or incest, provided that prior thereto the physician signs a certification which so states, and provided that, in the case of sexual assault or incest the crime has been reported to the law enforcement authorities. The certification shall be affixed to the claim form or invoice when submitted to any agency or fiscal intermediary of the state for payment or when submitted by an individual health care provider to the coverage provider for payment or for submittal to any agency or fiscal intermediary of the state for payment, and shall specify and attest to the direct medical necessity of the abortion upon the best clinical judgment of the physician or attest to his or her belief that sexual assault or incest has occurred.

b. The performance by a physician of an abortion if, due to a medical condition existing prior to the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman, provided that prior thereto the physician signs a certification which so states. The certification shall be affixed to the claim form or invoice when submitted to any agency or fiscal intermediary of the state for payment or when submitted by an individual health care provider to the coverage provider for payment or for submittal to any agency or fiscal intermediary of the state for payment, and shall specify and attest to the direct medical necessity of the abortion upon the best clinical judgment of the physician.

c. The authorization or payment of funds to a physician or surgeon or a hospital, clinic or medical facility for or in connection with the prescription of a drug or the insertion of a device to prevent the implantation of a fertilized ovum.

4. Quarterly, as determined by the department of health and family services, following any annual quarter in which health care services have been provided under coverage that is affected by this paragraph, the coverage provider shall submit a written report to the agency which contracted for the services of the provider. The report shall specify the number of abortions provided in the previous quarter by the provider to individuals who have coverage for the abortion under this subsection, as permitted under subd. 3. a. or b., the reason for each abortion, and the total cost of each abortion.

5. A copy of each report submitted under subd. 4. shall be forwarded to the department of health and family services, which shall review the data for compliance with this paragraph and annually publish a summary of the information obtained under this subdivision.

(c) *Distribution of payments.* From the appropriations under s. 20.435 (1) (b) and (o), the department of health and family services shall make payments to a health maintenance organization or other health care provider with which the department of health

and family services has contracted under par. (a) in accordance with a payment schedule established by contract.

(d) *Premiums*. 1. An individual who receives the Wisconsin works health plan shall pay, in the manner prescribed in subd. 3., the monthly premium that the department of health and family services specified.

3. Payment of the premium shall be made as follows:

a. For a participant in a trial job, the Wisconsin works agency shall deduct the premium from the subsidy that is paid to the employer under s. 49.147 (3) (a). The employer shall deduct the premium from the trial job participant's wages.

b. For a participant in a community service job or transitional placement, the Wisconsin works agency shall deduct the premium from the participant's monthly grant amount under s. 49.148 (1) (b) or (c).

c. For an individual not specified under subd. 3. a. or b., the individual shall pay the premium directly to the Wisconsin works agency, or, if the individual and his or her employer agree, the individual's employer may deduct the premium from the individual's payroll and pay the premium to the Wisconsin works agency.

4. The Wisconsin works agency shall remit to the department of industry, labor and job development in the manner prescribed by the department of industry, labor and job development all premium payments that the Wisconsin works agency receives under this paragraph.

**History:** 1995 a. 289.

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

(a) "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).

**(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 if the individual meets all of the following conditions:

(a) The individual is a custodial parent of a child who is under the age of 13, or is a person who, under s. 48.57 (3m), is providing care and maintenance for a child who is under the age of 13, 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).

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 education or training activities under s. 49.147 (3) (am), (4) (am) or (5) (bm).

4. Participate in other employment skills training, including an English as a 2nd language course, if the Wisconsin works agency determines that the course would facilitate the individual's efforts to obtain employment; a course of study meeting the standards established by the secretary of education under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation; a course of study at a technical college; or participation in educational courses that provide an employment skill, as determined by the department. An individual may receive aid under this subdivision for up to one year. An individual may not receive aid under this subdivision unless the individual meets at least one of the following conditions:

a. The individual has been employed in unsubsidized employment for 9 consecutive months and continues to be so employed.

b. The individual is a participant in a Wisconsin works employment position.

(b) The individual meets the eligibility conditions under s. 49.145 (2) (c) to (g) and (3) (a), except that an individual may be eligible for a child care subsidy under this section regardless of the number of days the individual has resided in this state prior to applying for the child care subsidy.

(c) The gross income of the individual's family is at or below 165% 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. to 3.

(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.

**(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 that the department specified.

**(6) CHILD CARE RATES AND QUALITY STANDARDS.** (a) The department shall establish the maximum rate that a county department under s. 46.215, 46.22 or 46.23 may pay for child care services provided under this section. The department 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 each county or in a multicounty area determined by the department can be purchased at or below that maximum rate.

(b) The department shall set a maximum rate that a county department under s. 46.215, 46.22 or 46.23 may pay for Level I certified family day care providers for services provided to eligible individuals. The maximum rate set under this paragraph may not exceed 75% of the rate established under par. (a).

(c) The department shall set a maximum rate that a county department under s. 46.215, 46.22 or 46.23 may pay for Level II certified family day care providers for services provided to eligible individuals. The maximum rate set under this paragraph may not exceed 50% of the rate established under par. (a).

(d) The department may establish a system of rates for child care programs that exceed the quality of care standards required for licensure under s. 48.65 or for certification under s. 48.651 (1) (a).

**(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, employe 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.

**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, 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.

**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 or has received 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) and (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 promul-

gated 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.

**49.185 Employment skills advancement program.**

**(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).

(c) "Family" 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. "Family" includes any nonmarital coparent, as defined in s. 49.141 (1) (i), 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. "Family" does not include any person who is receiving benefits under s. 49.027 (3) (b).

**(2) GRANTS.** A person contracting with the department under sub. (4) may make an employment skills advancement grant of up to \$500 to an individual eligible under sub. (3) for tuition, books, transportation or other direct costs of training or education in a vocational training or education program.

**(3) ELIGIBILITY.** An individual is eligible for an employment skills advancement grant only if all of the following eligibility requirements are met:

(a) The training or education is approved by the person contracting with the department under sub. (4) as part of a career training or education plan that will lead to increased income.

(b) The individual is at least 18 years of age and is a custodial parent of a minor child.

(c) The individual has been determined eligible for aid under s. 49.19 or for a Wisconsin works employment position under s. 49.145 within 5 years before applying for a grant.

(d) The individual has been employed in an unsubsidized job for at least 9 consecutive months before applying for a grant.

(e) The individual is working an average of at least 40 hours per week, unless the employer and the person contracting with the department under sub. (4) agree that the person may work fewer hours.

(f) The assets of the individual's family do not exceed \$2,500 in combined equity value, excluding the equity value of vehicles up to a total equity value of \$10,000 and one home in which the family lives.

(g) The income of the individual's family does not exceed 165% of the poverty line.

(h) The individual has sought other forms of assistance, as required by the department.

(i) The individual contributes an amount at least equal to the amount of the grant, and obtains funding from other sources in an amount at least equal to the amount of the grant, for tuition, books, transportation or other direct costs of the training or education.

(j) The amount of the grant plus the amount of any grant that that individual has previously received under this section does not exceed \$500.

(4) ADMINISTRATION. The department may contract with any person to administer the program under this section. The department shall contract with one person to administer the program in each area of the state, as determined by the department.

(5) APPLICABILITY. This section applies beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

History: 1995 a. 289.

**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 child-caring institution licensed under s. 48.60, and has been placed in the foster home, treatment foster home, group home or institution 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 state treasurer. 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.

NOTE: Par. (bm) is shown as amended eff. 6-1-97 by 1995 Wis. Act 295. Prior to 6-1-97 it reads:

(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) (b) and (c) 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 earning 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. 767.23 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. 767.08 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 compensation but refuses to apply for or accept unemployment compensation; 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.

(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 employe. 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 family 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. 49.30.

(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. 45.37 (1a), 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) Aid under this section may also be granted to a non-relative 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 child-caring institution by the county depart-

ment. 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 child–caring institution 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 foster home or treatment foster home, to a group home licensed under s. 48.625 or to a child–caring institution 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 child–caring institution 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) (d) and (p) 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 subds. 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 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. 20.435 (4) (a) [20.445 (3) (a)], the department may award grants to county departments under ss. 46.215, 46.22 and 46.23 for providing family planning education services to persons who are subject to par. (b).

**NOTE:** The bracketed language indicates the correct cross-reference. 1995 Wis. Act 27 renumbered s. 20.435 (4) (a) to be 20.445 (3) (a). Corrective legislation is pending.

**(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 state treasurer 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 state treasurer recovers the amount of the original check or draft that amount shall be returned to the department. If the state treasurer 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.

**(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), 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) 1. The department shall request a waiver from the secretary of the federal department of health and human services to allow the application of subd. 2. Subdivision 2. does not apply unless a waiver under this subdivision is granted and in effect.

2. Notwithstanding par. (a):

a. If a nonlegally responsible relative is receiving aid under this section on behalf of a dependent child on July 1, 1996, no aid under this section may be paid to the nonlegally responsible relative after June 30, 1997, or the first reinvestigation under sub. (5) (e) occurring after June 30, 1996, whichever is earlier.

b. If a nonlegally responsible relative is not receiving aid under this section on behalf of a dependent child on July 1, 1996, no aid under this section may be paid to the nonlegally responsible relative after June 30, 1996.

**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.

A mother receiving aid to dependent children is herself receiving aid so as to support a prosecution under 49.12 for failing to report a change in circumstances within 7 days. *Weber v. State*, 59 W (2d) 371, 208 NW (2d) 396.

AFDC recipient whose need is both temporary and extraordinary may be entitled to general relief. See note to 49.01, citing *State ex rel. Tiner v. Milwaukee County*, 81 W (2d) 277, 260 NW (2d) 393.

State may not deny aid to person eligible under federal standards unless Congress has clearly indicated that supplementary state restrictions are permissive. *Woodman v. HSS Dept.* 101 W (2d) 315, 304 NW (2d) 723 (1981).

The assignment to the state of child support by AFDC recipients under s. 49.19 (5) does not prevent a trial court acting under s. 767.51 (5) from giving the father credit for amounts actually contributed for support prior to the entry of an order even though the credit results in there being no payments owing from the father from which AFDC payments made during the same period can be recovered. *Paternity of Cheyenne D.L.* 181 W (2d) 868, 112 NW (2d) 522 (Ct. App. 1994).

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 US 575.

See note to Art. I, sec. 1, citing *Alvarado v. Schmidt*, 317 F Supp. 1027.

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.

**49.191 Aid to families with dependent children child care funding.** (1) CHILD CARE FUNDS FOR CERTAIN RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN. (b) Within the limits of funds available under s. 20.445 (3) (cn), (jg) and (na), the department shall provide funds for individuals who are working and who receive aid to families with dependent children to pay child care costs in excess of the amount of the child care disregard under s. 49.19 (5) (a) and child care costs incurred before the child care disregard under s. 49.19 (5) (a) becomes available if the child care is provided by a child care provider. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(2) CHILD CARE FUNDS FOR FORMER RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN. The department shall pay the child care costs of an individual who secures unsubsidized employment and loses eligibility for aid to families with dependent children because of earned income or number of hours worked for up to 12 months following the loss of eligibility if the child care is provided by a child care provider. The department shall establish a formula for assistance based on ability to pay. The rates for child care services under this subsection shall be determined under s. 49.132 (4) (d), (dg) or (dm), whichever is applicable, or, if a higher rate is established under s. 49.132 (4) (e) and if the child care services meet the quality standards established under s. 49.132 (4) (e), the rates for child care services under this subsection that meet those standards shall be determined under s. 49.132 (4) (e). The department shall promulgate rules for the disbursement of funds under this subsection. This subsection does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(3) ADMINISTRATION OF CHILD CARE FUNDS UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM. (a) County departments under ss. 46.215, 46.22 and 46.23 shall administer the funds appropriated for the purpose of providing child care under subs. (1) and (2) for recipients and former recipients of aid under s. 49.19 and under s. 49.26 (1) (e) for participants in the learnfare program. The department shall allocate funds to county departments under ss. 46.215, 46.22 and 46.23 for the purposes of this paragraph.

(b) Beginning on January 1, 1994, a county department under s. 46.215, 46.22 or 46.23 may, with the approval of the department, provide payment for, or reimbursement of, child care under sub. (1) or s. 49.193 (8) using funds allocated under par. (a). The department shall approve or disapprove this use of funds under criteria established to maximize state and federal funding available for child care.

(c) Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under subs. (1) and (2) and ss. 49.193 (8), 49.26 (1) (e) and 49.27 (6) (c). The department shall promulgate rules establishing policies and procedures to administer this paragraph.

(4) CHILD CARE EXPENDITURE INFORMATION. The department shall collect information on expenditures for child care for individuals participating in the employment and training programs under this section.

**History:** 1995 a. 27 ss. 2872, 3089c, 3090, 3092, 3093c, 3095, 3096 3099, 3100c; 1995 a. 289, 404.

**49.193 Job opportunities and basic skills program.**

(1) PLAN; ADMINISTRATION. (a) The department shall submit a plan that meets the requirements under 42 USC 682 (a) to the federal secretary of health and human services. If the plan is approved, the department shall administer a job opportunities and basic skills program under 42 USC 682 (a) to provide employment

and training and educational and supportive services to assist recipients of aid under s. 49.19 in obtaining gainful employment.

(b) 1. The department shall administer the program under this section directly or through a contract with an agency in each county or in groups of counties or through contracts with federally recognized American Indian tribes or bands. If upon reviewing the performance of an agency administering the program the department determines that the agency is not complying with the terms of the contract or if an agency wishes to terminate its responsibility to administer the program, the department shall terminate the contract and contract with another agency.

2. Notwithstanding s. 16.75 (1) and (2m), the department may contract with a public or private agency selected by the department without competitive bidding or competitive sealed proposals, to administer the program under this section in a county with a population of 500,000 or more.

(c) The department shall coordinate the program under this section with the programs of the department of administration, the department of industry, labor and job development, the department of commerce, the department of education and the technical college system board and with programs operated under the job training partnership act, 29 USC 1501 to 1791j.

**NOTE:** Par. (c) is shown as amended by 1995 Wis. Act 27. The treatment of this provision by 1995 Wis. Act 27, s. 9145 (1), was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27, s. 9145 (1), it read:

(c) The department shall coordinate the program under this section with the programs of the department of administration, the department of industry, labor and job development, the department of commerce, the department of public instruction and the technical college system board and with programs operated under the job training partnership act, 29 USC 1501 to 1791j.

(d) The department shall ensure that records of the number of participants in the program under this section and of the number of job placements made are kept according to gender and according to whether or not the participant is eligible under s. 49.19 (4) (dm).

(e) The department shall pay the portion of the costs of the services provided under this section that is not paid by the federal government. The department shall, to the extent possible, use available in-kind services to provide that nonfederal share of the costs of this program.

(2) PARTICIPATION. (a) Except as provided in par. (am), the department shall ensure that all persons required under 42 USC 602 (a) (19) and 42 USC 681 to 687 to participate in a job opportunities and basic skills training program participate in the program under this section. In addition, the department shall require a parent or other caretaker relative of a child who is at least one year of age to participate in the program under this section on a full-time basis, unless the parent or other caretaker relative is exempt from participation in the program for a reason other than being a parent or other caretaker of a child under 3 years of age.

(am) 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. If a waiver is granted and in effect, the department shall implement subd. 2. no later than the first day of the 2nd month beginning after the waiver is approved.

2. If a waiver is granted and in effect, the department shall require a parent or other caretaker relative of a child who is at least 12 weeks of age to participate in the program under this section on a full-time basis, unless the parent or other caretaker relative is exempt from participation for a reason other than being a parent or other caretaker of a child under 3 years of age.

(b) The department shall give priority for receipt of services under this section to a person who is any of the following:

1. A recipient of aid under s. 49.19 who has received aid for any 36 of the preceding 60 months.

2. A custodial parent under the age of 24 who 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) and

who, at the time of application for aid under s. 49.19, is not enrolled in school, as defined in s. 49.26 (1) (a) 2.

3. A custodial parent under the age of 24 who had little or no work experience in the year before applying for aid under s. 49.19.

4. A member of a family in which the youngest child is within 2 years of being ineligible for aid under s. 49.19 because of age.

5. Another long-term or potentially long-term recipient of aid under s. 49.19, as determined by the department.

(d) Following the development of an employability plan under sub. (4) (c) for a participant, the agency administering the program under this section shall assign the participant to one or more activities that are appropriate for the person in accordance with 42 USC 684 (a). The agency shall ensure that a participant receives appropriate supportive services.

**(3)** INFORMATION. The department shall, directly or by contract, do all of the following:

(a) Notify applicants for and recipients of aid under s. 49.19 of the availability of employment and training activities and supportive services.

(b) Inform recipients of aid under s. 49.19 of the opportunity to indicate a desire to participate in the program under this section.

(c) Inform persons required to participate in the program under this section of the sanctions for failing, without good cause, to participate in the program, for failing, without good cause, to accept employment and for terminating employment or reducing earnings without good cause.

(d) Provide information concerning the program under this section to a person who does not speak English in a language that the person understands.

**(3m)** ORIENTATION AND JOB SEARCH REQUIREMENT. (a) The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of pars. (b) to (e) beginning on the date specified in the waiver. The waiver may not request the application of pars. (b) to (e) before January 1, 1996. The waiver may request permission to apply pars. (b) to (e) to all applicants for aid under s. 49.19 or to a test group of these applicants determined by the department. Paragraphs (b) to (e) apply only while a waiver under this paragraph is in effect and only with respect to applicants covered by the waiver.

(b) The department may not provide aid under s. 49.19 to any applicant who is subject to the requirements under par. (c) or (d) and who is not exempt under par. (e), until the applicant has provided verification, in a form to be specified by the department by rule, that he or she has complied with these requirements.

(c) The department may require any adult applicant for aid under s. 49.19 to attend one or more orientation sessions offered during the 30-day period beginning on the date that the caretaker relative applies for aid under s. 49.19. Orientation sessions offered under this paragraph shall emphasize self-sufficiency and shall encourage applicants to consider alternatives to aid under s. 49.19. The department may not require an applicant for aid who would be subject to the school attendance requirement under s. 49.50 (7) (g) [49.26 (1) (g)] to attend an orientation session under this paragraph at a time that would conflict with school attendance.

**NOTE:** The bracketed language indicates the correct cross-reference. 1995 Wis. Act 27 renumbered s. 49.50 (7) (g) to be 49.26 (1) (g). Corrective legislation is pending.

(d) The department may require any adult applicant for aid under s. 49.19 who is required to participate in the program under this section to participate in job search activities under this paragraph. The department may require participation in not more than 30 days of job search activities under this paragraph. The department may not require an applicant for aid who would be subject to the school attendance requirement under s. 49.50 (7) (g) [49.26 (1) (g)] to participate in any job search activity under this paragraph at a time that would conflict with school attendance.

**NOTE:** The bracketed language indicates the correct cross-reference. 1995 Wis. Act 27 renumbered s. 49.50 (7) (g) to be 49.26 (1) (g). Corrective legislation is pending.

(e) The agency administering the program under this section may exempt an applicant for aid under s. 49.19 from any requirement under pars. (c) and (d) if the agency determines that the applicant would not benefit from complying with the requirement. The department shall promulgate rules establishing standards to be used by agencies administering the program under this section in making determinations under this paragraph.

**(4)** COMPONENTS. The department shall ensure that the program under this section includes all of the following:

(a) Enrollment and orientation.

(b) Assessment of each participant's employability based on skills, work experience, needs for educational and supportive services and a review of the family circumstances.

(c) Development of an employability plan for each participant.

(d) Case management.

(e) Job search activities.

(f) On-the-job training.

(g) Work supplementation, as described in 45 CFR 250.62, in which participation is mandatory.

(h) Community work experience, as described in 45 CFR 250.63.

(i) Other work experience activities.

(j) Educational activities which may include payment for or referral to any of the following:

1. High school or equivalent education.

2. Basic and remedial education.

3. Education for individuals with limited English proficiency.

4. Postsecondary education and vocational skills training for individuals who, as of December 1, 1995, are enrolled in postsecondary education or vocational skills training under this subdivision and are participating satisfactorily as determined by the agency administering the job opportunities and basic skills program. This subdivision does not apply after June 30, 1997.

5. Job skills training.

6. Parenting skills training for parents under the age of 20.

(k) Supportive services which may include any of the following:

1. Counseling.

1m. Alcohol and other drug abuse prevention, assessment and treatment programs.

2. Child care.

3. Transportation.

4. Payment for other work-related expenses.

(L) Grievance and conciliation procedures.

(m) Evaluation of the employment status of participants at 2 intervals following the start of employment, the first no sooner than 30 days and the 2nd no sooner than 6 months and no later than one year following the start of employment.

**(4m)** ALCOHOL AND OTHER DRUG ABUSE PREVENTION AND TREATMENT PROGRAM. The department may require participation in an alcohol and other drug abuse assessment, prevention and treatment program to fulfill employment and training requirements described in this section.

**(5)** WORK SUPPLEMENTATION. (a) The department shall establish a work supplementation component in an area in which a development zone, development opportunity zone or enterprise development zone is designated under subch. VI of ch. 560, upon the request of the local governing body, as defined in s. 560.70 (4), of the area.

(b) Upon notification from the department of commerce under s. 560.75 (11), 560.795 (3) (e) or 560.797 (4) (e) that a development zone, development opportunity zone or enterprise develop-

ment zone has been designated, the department shall do all of the following:

1. Provide the department of commerce with information about whether a work supplementation component is established in the area where the development zone, development opportunity zone or enterprise development zone is located.

2. If a work supplementation component has been established in an area where the development zone, development opportunity zone or enterprise development zone is located, provide information about how the work supplementation component is administered.

3. With the department of commerce and the local governing body of the area, help employers in the development zone, development opportunity zone or enterprise development zone to participate in the work supplementation component.

**(6) COMMUNITY WORK EXPERIENCE.** (a) A participant in a community work experience component operated by an agency administering the program under this section is considered an employe of that agency for purposes of worker's compensation benefits, except to the extent that the person for whom the participant is performing work agrees to provide worker's compensation coverage or the administrative agency delegates, by contract, the responsibility to provide that coverage to the person administering the community work experience component.

(b) A community work experience component may not be operated so as to fill an established vacant position or supplant a regular employe of any governmental unit.

(c) Except as provided in par. (e), no person may be required to work more than 32 hours per week in a community work experience component. No person may be required to work more than 16 weeks in a component under this subsection during a 12-month period, except that a person who is eligible for aid under s. 49.19 (4) (dm) may be required to work for more than 16 weeks in a component under this subsection in order to comply with 45 CFR 250.33.

(d) The department shall ensure that a person's participation in a community work experience component is reassessed as required in 42 USC 682 (f) (2) and that job search and other activities related to employment under the program under this section receive priority over participation in a community work experience component.

(e) The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to require a person to work, without regard to the person's grant amount under s. 49.19, not more than 40 hours per week in a community work experience component and not more than 6 months in a component under this subsection during a 12-month period. If the waiver is granted and in effect, the department may require a person to work not more than 40 hours per week in a community work experience component. If a waiver is granted and in effect, the department may require a person to work not more than 6 months in a component under this subsection during a 12-month period, except that the department may require a person who is eligible for aid under s. 49.19 (4) (dm) to work for more than 6 months in a component under this subsection in order to comply with 45 CFR 250.33.

**(7) POSTSECONDARY EDUCATION.** The department shall, by rule, define allowable or satisfactory participation in postsecondary education and vocational skills training activities. This subsection does not apply June 30, 1997.

**(8) CHILD CARE.** (a) The department shall pay child care costs of persons with approved employability plans who are participating in the program under this section and of persons who are participating in orientation and job search activities required under sub. (3m). Payment or reimbursement shall be in an amount based on need, with the maximum amount per child equal to the lesser of the actual cost of care or the rate established under s. 49.132 (4) (d), (dg) or (dm), whichever is applicable, or, if a higher rate is established under s. 49.132 (4) (e) and if the child care meets the

quality standards established under s. 49.132 (4) (e), payment or reimbursement for child care that meets those standards shall be 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. 49.132 (4) (e).

(b) The department shall establish procedures to ensure that an agency administering the program under this section reimburses the child care costs of a participant in the program under this section within 4 weeks after the participant submits a claim form.

(bm) Beginning on January 1, 1994, a county department under s. 46.215, 46.22 or 46.23 that receives funds to pay or reimburse child care costs under this subsection may, with the approval of the department, use those funds to pay or reimburse child care costs under s. 49.191 (1) or (2) or 49.26 (1) (e). The department shall approve or disapprove of this use of funds under criteria established to maximize state and federal funding available for child care.

(c) The department may only pay child care costs under this subsection if the child care is provided by a child care provider.

**(9) NOTICE CONCERNING SANCTIONS.** Following conciliation and before imposing a sanction on a person receiving aid under s. 49.19 who fails without good cause to participate in the program under this section or to accept employment or who terminates employment or reduces earnings without good cause, the county department under s. 46.215, 46.22 or 46.23 shall notify the person in writing of the reason for the proposed sanction. The notice shall inform the person of the right to appeal under s. 49.21 (1).

**(9m) SANCTIONS.** (ag) In this subsection, "recipient" includes the head of household of an aid to families with dependent children case, regardless of whether the needs of the head of household are not considered as the result of a sanction.

(am) The department shall request a waiver from the federal department of health and human services to permit the application of pars. (b) and (c) beginning on the date specified in the waiver. The waiver may not request the application of pars. (b) and (c) before January 1, 1996. The waiver may request permission to apply pars. (b) and (c) to all recipients of aid under s. 49.19, or to a test group of these recipients, to be determined by the department. Paragraphs (b) and (c) apply only while a waiver under this paragraph is in effect and only with respect to recipients covered by the waiver.

(b) Notwithstanding s. 49.19 (11) (a), if all of the following conditions apply in a month to a recipient of aid under s. 49.19, the department shall determine the amount of aid under s. 49.19 to be paid to the recipient's family in a subsequent month as provided in par. (c):

1. The recipient of aid is required to participate in an activity under this section for a regularly scheduled number of hours in the month.

2. The recipient of aid participates in the activity in the month for less than the required number of hours without good cause, as defined by the department by rule.

3. The agency administering the program under this section determines, in accordance with standards established by the department by rule, that the activity that the recipient is engaged in during the month has continued, or is expected to continue, for more than one month.

(c) 1. Except as provided in subd. 2., if par. (b) applies, the amount of aid under s. 49.19 paid to the recipient's family in a subsequent month shall be determined as follows:

a. The department shall add the recipient's total number of hours of actual participation in the month to the total number of hours in a month for which the recipient had good cause, as defined by the department by rule, for not participating in required activities.

b. The department shall subtract the total number of hours determined under subd. 1. a. from the recipient's total number of hours of required participation in that month.

c. The department shall multiply the number of hours determined under subd. 1. b. by the federal minimum hourly wage under 29 USC 206 (a) (1).

d. The department shall subtract the dollar amount determined under subd. 1. c. from the amount of aid under s. 49.19 that the recipient's family would have received if he or she had participated for the total number of assigned hours.

2. a. If there is only one individual included in a grant of aid under s. 49.19 who is required to participate in an activity under this section for a regularly scheduled number of hours in a month and if the total number of hours determined under subd. 1. a. for that individual is less than 25% of the total number of hours of required participation in that month for that individual, no grant of aid under s. 49.19 shall be made to the individual's family in a subsequent month.

b. If there is more than one individual included in a grant of aid under s. 49.19 who is required to participate in an activity under this section for a regularly scheduled number of hours in a month and if the total number of hours determined under subd. 1. a. for all of those individuals is less than 25% of the total number of hours of required participation in that month for all of those individuals, no grant of aid under s. 49.19 shall be made to the individuals' family in a subsequent month.

**(10) EMPLOYMENT AND TRAINING COUNCIL.** Each agency that administers the program under this section shall appoint an employment and training council to advise the agency concerning employment and training activities. The agency administering the program in a county or group of counties shall consult with the county board of the county or the county boards of the group of counties in making the appointments to the council. The council shall include the following members:

- (a) An elected county official.
- (b) A representative of the county department under s. 46.215, 46.22 or 46.23.
- (c) A representative of a local school district.
- (d) A representative of organized labor.
- (e) A recipient of aid to families with dependent children or a representative of a recipient advocacy group.
- (f) A representative of private business nominated by the area private industry council under the job training partnership act, 29 USC 1501 to 1781.
- (g) A representative of the office which administers the program under this section in the county.

**(10m) WORK-FIRST PROGRAM.** The department shall select Kenosha county and additional counties in which to pilot the work-first program under this subsection. The work-first program shall be conducted as part of the job opportunities and basic skills program under this section and shall be funded from s. 20.445 (3) (df). The work-first program shall seek to increase the amount of job opportunities and basic skills program services provided to recipients of aid to families with dependent children and to minimize the time between the date on which a person in a pilot county first applies for aid to families with dependent children under s. 49.19 and the date on which the person begins to participate in the job opportunities and basic skills program under this section.

**(11) RULES.** The department shall promulgate rules for the administration of the program under this section.

**(12) SUNSET.** 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), 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 enactment of this subsection, is required to be given to recipients of aid under this section to terminate their benefits under this subsection.

**History:** 1993 a. 16, 99, 491; 1995 a. 12; 1995 a. 27 ss. 2875 to 2885, 9116 (5), 9130 (4); 1995 a. 225, 289, 404.

**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, 49.153, 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). 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)** Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.153, 49.155 or 49.157 and shall promulgate rules establishing policies and procedures to administer this subsection.

**(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.

The words "both prior to and" as contained in (2) constitute an unconstitutional enactment and are therefore stricken from the statute. Estate of Peterson, 66 W (2d) 535, 225 NW (2d) 644.

Recovery may be had only from parent who immediately received aid. Richland County Dept. of Soc. Serv. v. McHone, 95 W (2d) 108, 288 NW (2d) 879 (Ct. App. 1980).

This section does not authorize recovery against child with guardianship account, where child never applied for, directly received or made representations to obtain aid. There may be common-law authority for claim against guardianship estate. In Matter of Guardianship of Kordecki, 95 W (2d) 275, 290 NW (2d) 693 (1980).

**49.197 Fraud investigation and reduction and error reduction. (1m) FRAUD INVESTIGATION.** From the appropriations under s. 20.445 (3) (de), (L), (n) and (nL), the department

shall establish a program to investigate suspected fraudulent activity on the part of recipients of medical assistance under subch. IV, aid to families with dependent children under s. 49.19 and the food stamp program under 7 USC 2011 to 2029. 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 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 medical assistance under subch. IV, Wisconsin works under ss. 49.141 to 49.161, aid to families with dependent children under s. 49.19 and the food stamp program under 7 USC 2011 to 2029. The department shall fund the activities under this section from the appropriation under s. 20.445 (3) (L) [20.445 (4) (L)].

NOTE: The bracketed "20.445 (4) (L)" was inserted by 1995 Wis. Act 289 without being underscored and "20.445 (3) (L)" was deleted without being stricken. No change was intended. Corrective legislation is pending.

(4) COUNTY AND TRIBAL ERROR REDUCTION. The department shall provide funds from the appropriations under s. 20.445 (3) (de), (L) and (Lm) and federal matching funds from the appropriations under s. 20.445 (3) (n) and (nL) to counties and governing bodies of federally recognized American Indian tribes administering medical assistance under subch. IV, aid to families with dependent children under s. 49.19 or the food stamp program under 7 USC 2011 to 2029 to offset administrative costs of reducing payment errors in those programs.

History: 1985 a. 29, 176; 1987 a. 27, 413; 1989 a. 31; 1991 a. 39; 1995 a. 27, 289.

**49.20 Aid to 18-year-old students.** (1) PURPOSE. The purpose of this section is to provide state aid for the maintenance of 18-year-old high school students who are ineligible for assistance under s. 49.19 solely because of their age, except for those students who were eligible at age 17 under s. 49.19 (10) (a).

(2) ELIGIBILITY. A person is eligible for aid under this section if he or she:

- (a) Is 18 years of age;
- (b) Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;
- (c) Received aid under s. 49.19, but not under s. 49.19 (10) (a), immediately prior to his or her 18th birthday; and
- (d) Is living in a home situation specified in s. 49.19 (1) (a), but not including a foster home or treatment foster home.

(3) PAYMENT. Aid under this section shall be paid from the appropriation under s. 20.445 (3) (d) and shall be in an amount equal to that to which the person would be entitled under s. 49.19 if he or she were 17 years of age, except that if the person's family became ineligible for aid under s. 49.19 on the person's 18th birthday, the amount paid shall equal the amount of aid granted to a single person under s. 49.19.

(4) RULES. The department shall promulgate rules for the administration of this program, including rules which provide for the monitoring of classroom attendance of persons receiving aid under this section.

History: 1977 c. 418; 1989 a. 31; 1991 a. 39; 1993 a. 446; 1995 a. 27.

**49.21 Aid to families with dependent children hearings.** (1) FAIR HEARING AND REVIEW. (a) Any person whose application for aid to families with dependent children is not acted upon by the county department under s. 46.215 or 46.22 or by the federally recognized tribal governing body with reasonable promptness after the filing of the application, or is denied in whole or in part, whose award is modified or canceled, or who believes the award to be insufficient, may petition the department for a review of such action. Review is unavailable if the decision or failure to act arose more than 45 days prior to 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 deems necessary. Notice of the hearing shall be given to the applicant and to the county clerk. 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, the county clerk and the county officer charged with administration of such assistance. The decision of the department shall have the same effect as an order of the county officer charged with the administration of such form of assistance. Such 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 grant adjustment or change for a class of recipients as required by state or federal law, unless the issue concerns the incorrect computation of a grant of aid to families with dependent children.

d. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled hearing without providing the department with good cause therefor.

2. If a recipient requests a hearing within the timely notice period specified in 45 CFR 205.10, aid shall not be suspended, reduced or discontinued until a decision is rendered after the hearing but may be recovered by the department if the contested decision or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides that the recipient has requested a hearing. Until a decision is rendered after the hearing, the manner or form of aid payment to the recipient shall not change to a protective or direct payment. Aid 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 recipient's grant computation.

b. The recipient is notified of a change in his or her grant 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 aid is to be suspended, reduced or terminated pending the hearing decision.

(c) This subsection does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(2) HEARING TO INSURE PROPER ADMINISTRATION. (a) The department may at any time terminate payment of state or federal aid on any grant of aid to families with dependent children which may have been improperly allowed or which is no longer warranted due to altered conditions. Such action shall be taken only after thorough investigation and after fair notice and hearing. Such notice shall be given to the recipient of the assistance, the county clerk, and the county officer charged with the administration of such assistance, and their statements may be presented either orally or in writing, or by counsel.

(b) Any decision of the department terminating the payment of state and federal aid shall be transmitted to the county treasurer. After receipt of such notice the county treasurer shall not include any payments thereafter made in such case in the certified statement of the expenditures of the county for which state or federal aid is claimed.

History: 1995 a. 27 ss. 2894, 3122, 3124; 1995 a. 198 s. 9; 1995 a. 289.

**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 liability support 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 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 children 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) The department may request from any person any information it determines appropriate and necessary for the administration of this section, ss. 49.19, 49.46, 49.468 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029. Any person in this state shall provide this information within 7 days after receiving a request under this subsection. Except as provided in sub. (2p), the department or the county child and spousal support agency may disclose information obtained under this subsection only in the administration of this section, ss. 49.19, 49.46 and 49.47 and programs carrying out the purposes of 7 USC 2011 to 2029.

(2p) The department or a county child and spousal support agency 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.

(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.

(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 or benefits under s. 49.148, 49.153 or 49.155 and to individuals not receiving kinship care payments under s. 48.57 (3m). 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) (p) to carry out a contract under this subsection.

(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, retain up to 50% of any incentive payment made to this state under 42 USC 658 for a collection under this subsection, and retain 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).

(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 support 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) The department may, upon request, disclose to a consumer reporting agency, as defined under 45 CFR 303.105 (a), the amount of overdue child support owed by a parent. The department shall notify the parent prior to disclosing the information to the consumer reporting agency and inform the parent of the methods available for contesting the accuracy of the information.

**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.

The state may request patient billing records under sub. (2m) (formerly 46.25 (2m)) which may be admitted into evidence under the exception to confidentiality found under s. 146.82 (2) (a) 3. *State v. Allen*, 200 W (2d) 301, 546 NW (2d) 517 (1996).

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.*

#### 49.23 Revision of child support orders and collection incentive programs. (1) From the appropriation under s.

20.445 (3) (cb), the department shall award grants to counties for programs to revise child support orders. Each county receiving a grant shall review child support orders awarded to persons who receive benefits under s. 48.57 (3m) or 49.148 or whose children receive benefits under s. 49.19 and to persons who do not receive benefits under s. 48.57 (3m) or 49.148 and whose children do not receive benefits under s. 49.19 and shall initiate actions to revise the orders based on that review. Each county receiving a grant shall review child support orders awarded to persons who receive benefits under s. 48.57 (3m) or 49.148 or whose children receive benefits under s. 49.19 and child support orders awarded to persons who do not receive benefits under s. 48.57 (3m) or 49.148 and whose children do not receive benefits under s. 49.19 in proportion to the number of those 2 categories of orders in the county's child support case load. Before a county may initiate an action to revise a child support order under this subsection for a person who does not receive benefits under s. 48.57 (3m) or 49.148 and whose children do not receive benefits under s. 49.19, the custodial parent of the children must voluntarily consent to the revision.

(2) (a) From the appropriation under s. 20.445 (3) (cb), the department shall provide state incentive payments, in a total amount of not less than \$259,000 in each fiscal year, to counties that meet the child support collection and child support administrative efficiency criteria, according to a distribution formula determined by the department that does all of the following:

1. Provides an incentive for a county to increase its child support collections for persons who receive benefits under s. 48.57 (3m) or 49.148 or whose children receive benefits under s. 46.261 or 49.19 as well as for persons who do not receive benefits under s. 48.57 (3m) or 49.148 and whose children do not receive benefits under s. 46.261 or 49.19.

2. Provides an incentive for a county to increase its paternity establishments.

3. Provides for state incentive payments to a county in an amount such that the total of state and federal incentive payments to the county is not more than 5% more than the costs of the county's child support program under s. 49.22.

(b) A county that receives a state incentive payment under par. (a) may use the funds only to pay the costs of its child support program under s. 49.22.

**History:** 1989 a. 31; 1991 a. 39, 322; 1993 a. 16; 1995 a. 27, 289; 1995 a. 404 ss. 60 to 64; Stats. 1995 s. 49.23.

#### 49.25 Parental responsibility pilot program.

(1) **WAIVER; APPLICABILITY.** The department shall request a waiver from the secretary of the federal department of health and human services to allow the department to conduct a parental responsibility pilot program as part of the program under s. 49.19. If the department receives the federal waiver and if sufficient funds are available, the department may conduct the program in a county with a population of 500,000 or more and up to 3 other counties. The county department under s. 46.215, 46.22 or 46.23 in each pilot county shall administer the program under a contract with the department. Subsections (3) to (8) apply only while the waiver is in effect and the department is conducting the program.

(3) **PARTICIPATION.** (a) Except as provided in par. (c), a person who lives in a pilot county is subject to the program under this section beginning when the person both receives aid under s. 49.19 and is one of the following:

1. A woman who is under the age of 20, has no children of her own and has entered the 3rd trimester of pregnancy, if that 3rd trimester began after June 30, 1994.

2. A woman who is under the age of 20, is not pregnant and is the mother of only one child, if that child was born after June 30, 1994.

3. A woman who is under the age of 20, is not pregnant and is the mother of more than one child, if the children were all born as a result of one pregnancy and were born after June 30, 1994.

4. A man who is under the age of 20 and is the father of only one child living, if that child was born after June 30, 1994, and, if the man is married and living with his spouse, whose spouse is not pregnant.

5. A man who is under the age of 20 and is the father of more than one child, if the children were all born as a result of one pregnancy and were born after June 30, 1994, and, if the man is married and living with his spouse, whose spouse is not pregnant.

6. Subject to par. (am), the spouse of a woman subject to the program under this section under subd. 1., 2. or 3. if the spouse is living with the woman.

7. Subject to par. (am), the spouse of a man subject to the program under this section under subd. 4. or 5. if the spouse is living with the man.

8. A man who has been adjudicated to be the father of a child of a woman subject to the program under this section under subd. 1., 2. or 3., if the man is living with the woman.

(am) If the spouse of a person subject to the program under this section under par. (a) 1., 2., 3., 4. or 5. is the stepparent of the per-

son's child or children and is living with the person, the couple may decide whether to have the needs of the stepparent taken into consideration for the purposes of determining the amount of aid under s. 49.19. If the couple chooses to have the stepparent's needs taken into consideration, the stepparent is subject to the program under this section.

(b) A person who, under par. (a), becomes subject to the program under this section remains subject to the program under this section as long as he or she lives in a pilot county and the program is in effect unless the person has not received aid under s. 49.19 for at least 36 consecutive months.

(c) A person described in par. (a) is not subject to the program under this section if he or she is assigned to a control group by the department.

(4) **LIMITED PAYMENT AMOUNT.** Notwithstanding s. 49.19 (11) (a) 1. and 2., the department shall make a monthly payment under s. 49.19 to a family of \$38 for a single child, or \$38 for one of the children and a full payment for the other children who are all born as a result of one pregnancy, if the child or children's parent is a member of the family and is subject to the program under this section and if the child is or children are born or adopted after the family includes either one child of that parent or more than one child who were all born as a result of one pregnancy. Notwithstanding s. 49.19 (11) (a) 1. and 2., the department may not make any monthly payment under s. 49.19 to a family for any later born or adopted child of that parent. This subsection does not affect the payment of the allowance under s. 49.19 (11) (a) 4.

(5) **EARNED INCOME DISREGARD.** (a) Instead of the earned income disregards in s. 49.19 (5) (a) 2., 4. and 4m. and (am), the department shall apply the earned income disregard in par. (b) in determining the benefit amount of a person subject to the program under this section and in determining eligibility under s. 49.19 of a person subject to the program under this section if the person received benefits under s. 49.19 in one of the 4 months before he or she applies for benefits.

(b) For a person described in par. (a), the department shall disregard \$200 of earned income plus an amount equal to 50% of the person's remaining income not disregarded.

(6) **EMPLOYMENT REQUIREMENTS.** Notwithstanding s. 49.19 (4) (dm), the department may not apply the federal aid to families with dependent children program requirements as to past employment and past and current unemployment to a married couple subject to the program under this section if the married couple live together.

(7) **TRAINING AND PARENTAL EDUCATION.** (a) The department shall contract with the county department under s. 46.215, 46.22 or 46.23 to provide education on parenting, human growth and development, family planning and independent living skills and employment-related training to persons subject to the program under this section and to persons subject to orders under s. 767.078 (1) (d). The county department may contract with other agencies for the provision of these services.

(b) The agency providing services under par. (a) shall develop a plan for the provision of the services under par. (a) to a person who is subject to the program under this section or to an order under s. 767.078 (1) (d). If a person who is subject to the program under this section fails to cooperate with his or her services plan, the person may be sanctioned, as provided by the department by rule.

(8) **PILOT COUNTY CHILD SUPPORT ASSISTANCE.** (a) From the appropriation under s. 20.445 (3) (cb), the department shall provide funds to pilot counties for assistance in establishing paternity and obtaining child support.

(b) From the appropriation under s. 20.445 (3) (cb), the department shall provide funds to Milwaukee county to fund an additional family court commissioner.

(9) EVALUATION. The department shall evaluate the program under this section or shall contract with a public or private agency for an evaluation of the program under this section.

(10) SUNSET. 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), 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 enactment of this subsection, is required to be given to recipients of aid under this section to terminate their benefits under this subsection.

**History:** 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 2895 to 2898b, 9126 (19); 1995 a. 289, 404.

**49.26 Learnfare program. (1)** (a) In this subsection:

1. “Habitual truant” means a pupil who is absent from school without an acceptable excuse under ss. 118.15 and 118.16 for any of the following:

- a. Part or all of 5 or more days out of 10 consecutive days on which school is held during a school semester.
- b. Part or all of 10 or more days on which school is held during a school semester.

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 secretary of education under s. 115.29 (4) for the granting of a declaration of equivalency of high school graduation.

(c) A county department 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 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 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 shall submit the plan to the department of industry, labor and job development and the department of education by August 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 either subject to the school attendance requirement under par. (ge) or is under 20 years of age and wants to attend school, 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 19 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 19 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 available 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 who is subject to this paragraph fails to meet the school attendance requirement if the individual meets at least one of the following conditions:

1. The individual is either not enrolled in school or is a habitual truant.

2. During the immediately preceding semester, the individual was either not enrolled in school or was a habitual truant.

(gm) The first time that an individual fails to meet the school attendance requirement under par. (ge), the county department under s. 46.215, 46.22 or 46.23 or the Wisconsin works agency shall do all of the following:

1. Monitor on a monthly basis the individual’s school attendance.

2. Offer case management services described in sub. (2) to the individual and his or her family.

(h) 1. An individual who is 6 to 12 years of age and who fails to meet the school attendance requirement under par. (ge) is subject to sanctions as provided under subd. 1s. only if all of the following apply:

a. The county department under s. 46.215, 46.22 or 46.23 or Wisconsin works agency complies with par. (gm).

am. The individual is not enrolled in school or has more than 2 absences without an acceptable excuse under ss. 118.15 and 118.16 in any calendar month.

as. The individual has failed to request a hearing under s. 49.21 (1) or has failed to show good cause for the absences or non-enrollment under subd. 1. am. in a hearing under s. 49.21 (1). 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).

1m. An individual who is 13 to 19 years of age and who fails to meet the school attendance requirement under par. (ge) is subject to sanctions as provided under subd. 1s. only if all of the following apply:

a. The county department under s. 46.215, 46.22 or 46.23 complies with par. (gm) 1.

b. The individual is not enrolled in school or has more than 2 absences without an acceptable excuse under ss. 118.15 and 118.16 in any calendar month.

c. The individual has failed to request a hearing under s. 49.21 (1) or has failed to show good cause for the absences or nonenrollment under subd. 1m. b. at a hearing under s. 49.21 (1). The department shall determine by rule the criteria for good cause.

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).

(i) The department shall request a waiver from the secretary of the federal department of health and human services to permit the application of the school attendance requirement under par. (ge). Paragraphs (e) and (g) to (hr) do not apply unless the federal waiver is in effect. If a waiver is received, the department shall implement par. (e) beginning with the fall 1987 school term, as defined under s. 115.001 (12), or on the date the waiver is effective, whichever is later.

(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) From the appropriation under s. 20.445 (3) (dg), the department shall allocate funds to county departments for the provision of 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. At least 75% of the funds that the department allocates under this paragraph to provide case management services to individuals who are 13 to 19 years of age shall be allocated to a county department of a county with a population of 500,000 or more. A county department is eligible to receive funds under this subsection to provide case management services to individuals who are 13 to 19 years of age in a year if 35 or more individuals, 13 to 19 years of age, residing in the county were sanctioned under sub. (1) (h) or were subject to the monthly attendance requirement under s. HSS 201.195 (4) (b) 2., Wis. adm. code, in any month during the previous year.

**History:** 1995 a. 27 ss. 2319 to 2324, 2898g to 2898r, 3101 to 3120b, 9130 (4), 9145 (1); 1995 a. 289.

**49.27 Work-not-welfare pilot program.** (1) DEFINITIONS. In this section:

(a) "Benefit period" means, with respect to a work-not-welfare group, a period commencing on the work-not-welfare group's enrollment date and ending 48 months later, except as the benefit period may be extended under sub. (4) (g).

(b) "Enrollment date" means the first day of the first month for which a work-not-welfare group receives a benefit payment determined under sub. (4), unless the work-not-welfare group has not received a benefit payment determined under sub. (4) within the previous 36 months, in which case the enrollment date means the first day of the first month, after that 36-month period,

for which the work-not-welfare group receives a benefit payment determined under sub. (4).

(c) "Work-not-welfare group" means all persons in an aid to families with dependent children case, if the head of household of the case is subject, under sub. (3), to the work-not-welfare pilot program under this section. "Work-not-welfare group" includes a caretaker of dependent children, regardless of whether the needs of the caretaker are not considered in determining the amount of the benefit determined under sub. (4) or (11) (a) to (f).

(2) WAIVER; APPLICABILITY. The department shall request a waiver from the secretaries of the federal department of health and human services and the federal department of agriculture to conduct a work-not-welfare pilot program as part of the aid to families with dependent children program under s. 49.19, the food stamp program under 7 USC 2011 to 2029 and the medical assistance program under subch. IV. If the department receives the federal waivers and if sufficient funds are available, the department shall pilot the program, beginning on January 1, 1995, in one or more pilot counties selected by the department. If a pilot county is a county in which a demonstration project under s. 49.19 (11m) is being conducted or a county selected for participation in the parental responsibility pilot program under s. 49.25, the department shall promulgate rules regarding the relationship between the work-not-welfare pilot program and the other demonstration or pilot programs operating in the pilot counties. These rules shall provide that a person may not be required to participate in more than one of these demonstration or pilot programs at a time. Subsections (3) to (11) apply only while the waiver is in effect and the department is conducting the program.

(3) PARTICIPATION. A person is subject to the work-not-welfare pilot program under this section if at least one of the following conditions is met:

(a) The person resides in a pilot county; is receiving, or is the caretaker of a child who is receiving, aid to families with dependent children benefits, other than benefits under s. 49.19 (10) or s. 49.19 (11) (b), 1993 stats., on January 1, 1995; and has had a regularly scheduled reinvestigation under s. 49.19 (5) (e) after January 1, 1995.

(b) The person resides in a pilot county and applies for aid to families with dependent children benefits, other than benefits under s. 49.19 (10) or s. 49.19 (11) (b), 1993 stats., for himself or herself or for a dependent child, on or after January 1, 1995.

(c) The person moves to a pilot county on or after January 1, 1995, and, at the time of the move, the person is receiving, or is the caretaker of a child who is receiving, aid to families with dependent children benefits, other than benefits under s. 49.19 (10) or s. 49.19 (11) (b), 1993 stats.

(d) The person resides in this state in a county other than a pilot county and, within the preceding 36 months, the person had resided in a pilot county, was subject to the work-not-welfare program under par. (a), (b) or (c) and received benefits determined under sub. (4).

(4) CASH BENEFITS. (a) *Relation with other public assistance benefits.* Except as determined under this subsection or sub. (7) or (11) (a) to (f), a member of a work-not-welfare group may not receive an aid to families with dependent children benefit, other than aid to families with dependent children benefits under s. 49.19 (10) or s. 49.19 (11) (b), 1993 stats. Except as determined under this subsection or sub. (11) (a) to (f), a member of a work-not-welfare group may not receive food stamp benefits under 7 USC 2011 to 2029 for a month unless one of the following conditions is met:

1. The work-not-welfare group has received the maximum number of benefit payments permitted under pars. (e) and (g).

2. The portion of the benefit amount calculated under par. (c) 1. for the work-not-welfare group equals \$0 for a reason other than a sanction, an adult caretaker in the work-not-welfare group has earned income and the work-not-welfare group elects to

apply for food coupons under 42 USC 2011 to 2029 in lieu of a cash benefit determined under this subsection.

(b) *Eligibility requirements.* A county department under s. 46.215, 46.22 or 46.23 in a pilot county shall determine the eligibility of a work–not–welfare group for benefits determined under this subsection in the same manner as it determines eligibility for aid to families with dependent children benefits under s. 49.19, except as follows:

1. Once eligibility for a work–not–welfare group is established, the work–not–welfare group does not lose continued eligibility solely because one or more wage earners in the work–not–welfare group work more than 100 hours in a month.

2. Once eligibility for a work–not–welfare group is established, the work–not–welfare group remains eligible until the next eligibility review, unless the benefit determined under this subsection could be adjusted under par. (d) prior to the next regularly scheduled reinvestigation under s. 49.19 (5) (e).

3. Instead of the child support disregard under s. 49.19 (5) (a) 1m., the department shall disregard \$50 of the unearned income received under par. (h) by a work–not–welfare group in a month.

(c) *Calculation of benefit amount.* Notwithstanding s. 49.19, subject to the limitations in pars. (d) to (g) and except as provided in subs. (5) (f) and (9), a county department under s. 46.215, 46.22 or 46.23 in a pilot county shall pay to a work–not–welfare group that is eligible under par. (b) a combined monthly aid to families with dependent children benefit under s. 49.19 and monthly food stamp benefit under 7 USC 2011 to 2029. The combined monthly benefit amount is equal to the sum of the following:

1. An amount equal to the aid to families with dependent children benefit that would be payable under s. 49.19 if the waiver under sub. (2) were not in effect, except as follows:

a. Child support payments shall be treated as provided in par. (h).

b. The amount of the portion of the benefit amount determined under this subdivision is not increased to reflect the birth of a child into the work–not–welfare group, if the birth occurs more than 10 months after the work–not–welfare group's enrollment date, unless the work–not–welfare group did not receive benefits determined under this paragraph for a period of at least 6 months, for a reason other than a sanction under sub. (5) (f), and the child is born into the work–not–welfare group no more than 10 months after the date on which the work–not–welfare group began receiving benefits determined under this paragraph after that period or unless the child was conceived as a result of incest in violation of s. 944.06 or 948.06 or 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 and that incest or sexual assault has been reported to law enforcement authorities.

c. The amount of child support to be disregarded in determining the portion of the benefit amount determined under this subdivision is determined by applying par. (b) 3. instead of s. 49.19 (5) (a) 1m.

d. Instead of the earned income disregards under s. 49.19 (5) (a) 2., 4. and 4m., \$120 and an amount equal to one–sixth of the remaining monthly income earned from the unsubsidized employment of a person who is a member of a work–not–welfare group is disregarded from the monthly earned income of that person. Notwithstanding s. 49.19 (5) (a) 4. or 4m. or (am), the disregard in this subd. 1. d. shall apply to a person as long as the person is a member of a work–not–welfare group.

e. The portion of the benefit amount calculated under this subdivision is based on the average income of the work–not–welfare group, estimated prospectively for a 6–month period, except that for the first 2 months for which benefits calculated under this paragraph are paid the portion of the benefit amount calculated under this subdivision is based on the estimated income for those first 2 months.

f. The income received as a result of the application of subd. 2. is not considered income in determining the portion of the benefit amount calculated under this subdivision.

2. An amount equal to the cash value of the food coupons that the work–not–welfare group would receive under 7 USC 2011 to 2029 if the waiver under sub. (2) were not in effect, except as follows:

a. Child support payments shall be treated as provided in par. (h).

b. The portion of the benefit amount calculated under this subdivision is based on the average income of the work–not–welfare group, estimated prospectively for a 6–month period, except that for the first 2 months for which benefits calculated under this paragraph are paid the portion of the benefit amount calculated under this subdivision is based on the estimated average income for those first 2 months.

(d) *Partial freezing of benefits.* 1. Notwithstanding s. 49.19 (2) (a), (4) (es) and (k) and (11), the benefit amount calculated under par. (c) may be adjusted, after the first 2 months for which benefits calculated under par. (c) are paid, only at a regularly scheduled reinvestigation under s. 49.19 (5) (e), except as follows:

a. The benefit amount calculated under par. (c) may be adjusted to reflect a significant change in circumstances under subd. 2.

b. The benefit amount calculated under par. (c) may be adjusted to reflect a decrease in earned income if there is good cause, as defined by the department by rule, for the decrease.

c. The benefit amount calculated under par. (c) may be adjusted to reflect an increase in earned income if the head of household of the work–not–welfare group requests a reduction in the benefit amount determined under this subsection.

2. A work–not–welfare group experiences a significant change in circumstances, for purposes of subd. 1. a., in any month in which at least one of the following occurs:

a. The number of persons in the work–not–welfare group changes.

b. A person in the work–not–welfare group is sanctioned under sub. (5) (f) or s. 49.127, 49.19 (4) (h) 2., 49.26 (1) (h), 49.29, 49.49 or 49.95.

c. A person in the work–not–welfare group obtains a new source of unsubsidized employment or experiences an increase or a decrease in unsubsidized employment of 10 or more hours per week.

d. A person in the work–not–welfare group receives a new source of unearned income in an amount greater than was estimated and that source of unearned income is expected to continue until the next regularly scheduled reinvestigation under s. 49.19 (5) (e).

e. The work–not–welfare group experiences an increase or decrease in the amount of unearned income in a month that differs from the estimated amount of monthly unearned income by more than \$50.

em. The work–not–welfare group experiences an increase or decrease in child care expenses of more than \$50 per month or a change in the maximum allowable child care disregard under s. 49.19 (5) (a) 4s.

f. The combined equity value of all of a work–not–welfare group's assets exceeds the limitation in s. 49.19 (4) (bm), except as permitted under s. 49.19 (4) (bu) or (by).

g. A person in the work–not–welfare group enters the 7th month of pregnancy.

h. A person in the work–not–welfare group experiences a life–threatening emergency, as defined by the department by rule.

(e) *Maximum number of benefit payments.* Except as provided in par. (g), a work–not–welfare group may not receive more than 24 monthly benefit payments determined under this subsection

during the work–not–welfare group’s benefit period. The benefit payments need not be for consecutive months.

(f) *Period of ineligibility.* A work–not–welfare group may not receive a benefit payment determined under this subsection after the work–not–welfare group’s benefit period has elapsed unless it has been at least 36 months since the work–not–welfare group received a benefit payment determined under this subsection.

(g) *Additional monthly payments; extension of benefit period.*

1. A work–not–welfare group shall receive one monthly benefit payment in addition to the 24 monthly benefit payments permitted under par. (e) and a one–month extension to the work–not–welfare group’s benefit period for each month after the work–not–welfare group’s enrollment date in which each person in the work–not–welfare group meets at least one of the following conditions:

a. The person receives or has been determined to be eligible for a supplemental security income payment under 42 USC 1381 to 1383c or a supplemental payment under s. 49.77 for the month.

b. The person is the head of household of the work–not–welfare group, is a nonlegally responsible relative of a dependent child in the work–not–welfare group and is not included in determining the payment under this subsection.

c. The person is required to attend school as part of the learnfare program under s. 49.26.

d. The person is under 18 years of age.

e. The person is incapacitated or is needed in the home to care for a member of the work–not–welfare group who is incapacitated.

f. The person is needed in the home to care for a child who is under one year of age and who was born not more than 10 months after the work–not–welfare group’s enrollment date.

g. The person requires child care services in order to participate in the employment and training program under sub. (5), is subject to the employment and training requirements under sub. (5) (b) and child care services are not available to the person under sub. (10) (d) 3. for at least the number of hours specified as part of the person’s assignment under sub. (10) (d) 3.

2. A work–not–welfare group may receive monthly benefit payments in addition to the 24 monthly benefit payments permitted under par. (e) and extensions to the group’s benefit period if a county department under s. 46.215, 46.22 or 46.23 determines, in accordance with rules promulgated by the department, that unusual circumstances exist that warrant an additional benefit payment and an extension of the benefit period.

(h) *Child support payments.* Notwithstanding s. 49.19 (4) (h) 1. b., the rights of work–not–welfare group members to support or maintenance from other persons, including rights to unpaid amounts accrued on the work–not–welfare group’s enrollment date and rights to unpaid amounts accruing during the time that the work–not–welfare group member is subject to the work–not–welfare pilot program under sub. (3), are not assigned to the state. Work–not–welfare group members shall comply with s. 49.19 (4) (h) 1. a. and are subject to sanction under s. 49.19 (4) (h) 2. Child support payments shall be treated as unearned income in determining eligibility for benefits and in determining the amount of a monthly benefit determined under this subsection. If child support payments are being received by the work–not–welfare group regularly, such payments shall be budgeted prospectively in determining the amount of any benefit determined under this subsection. If child support payments are not being received regularly, the payments may not be budgeted prospectively in determining the amount of any benefit determined under this subsection.

(5) **EMPLOYMENT AND TRAINING REQUIREMENTS.** (a) *Relation with other public assistance employment and training requirements.* The department shall conduct the employment and training program described in this subsection as part of the job opportunities and basic skills program under s. 49.193. Compliance with the employment and training program described in this subsection by a person in a work–not–welfare group satisfies the employ-

ment and training requirements of the job opportunities and basic skills program under s. 49.193 and the food stamps workfare program under 7 CFR 273.22.

(b) *Persons subject to employment and training requirements.* Notwithstanding s. 49.193 (2) and except as provided in par. (c), every person in a work–not–welfare group who is over 16 years of age shall comply with the requirements of the employment and training program described in this subsection, as a condition to receiving a benefit determined under sub. (4).

(c) *Exemptions.* A person is not subject to the requirements of the employment and training program described in this subsection in any month in which at least one of the following conditions is met:

1. The person is ill, incapacitated or of an advanced age within the meaning of 42 USC 602 (a) (19) (C) (i).

2. The person is needed in the home because of the illness or incapacity of another member of the work–not–welfare group.

3. The person receives a supplemental security income payment under 42 USC 1381 to 1383c or a supplemental payment under s. 49.77 for that month.

4. The person is a nonlegally responsible relative of a dependent child in the work–not–welfare group and the person’s needs are not considered in calculating the amount of the benefit determined under sub. (4).

5. The person is required to attend school as part of the learnfare program under s. 49.26.

6. The person is the head of household of the work–not–welfare group and is under 18 years of age.

7. The person is the caretaker of a child who is under 6 months of age.

8. The person is the caretaker of a child who is under one year of age and who was born not more than 10 months after the work–not–welfare group’s enrollment date.

9. The person is pregnant and a physician has indicated that the person is unable to work.

10. The county department under s. 46.215, 46.22 or 46.23 determines, in accordance with rules promulgated by the department, that the person has good cause for not complying with the employment and training requirements of this subsection.

(d) *Participation requirements.* Within a 2–month period beginning on the work–not–welfare group’s enrollment date, each member of the work–not–welfare group who is subject to the employment and training program described in this subsection shall participate in orientation activities under sub. (10) (d) 2. Beginning on the first day of the month following the completion of the orientation activities under sub. (10) (d) 2., each member of the work–not–welfare group who is subject to the employment and training program described in this subsection is required to participate in the employment and training program for a specified number of hours each month. The number of hours of participation required shall be based on the amount of the monthly benefit determined under sub. (4) that is paid to the work–not–welfare group and on the number of persons in the work–not–welfare group who are subject to the employment and training program described in this subsection. The department shall promulgate a rule specifying the manner in which the number of required hours is to be calculated. No person may be required to spend more than 40 hours per week participating in the employment and training program described under this subsection. The number of hours of participation required under this paragraph may not exceed the number of hours that a person is assigned under sub. (10) (d) 3. If the person needs child care services, the number of hours of participation required under this paragraph also may not exceed the number of hours for which child care is made available under sub. (10) (d) 3.

(e) *Program components and requirements.* A county department under s. 46.215, 46.22 or 46.23 shall operate the employment and training program described in this subsection in a manner designed to provide members of a work–not–welfare group

who are over age 16 with the means to achieve long-term independence from public assistance, including, where appropriate, education. The employment and training program described in this subsection shall include all of the same program components and requirements as in s. 49.193, except that:

1. The services priorities in s. 49.193 (2) (b) do not apply to persons who are subject to the employment and training program described in this subsection, all of whom shall receive equal priority.

3. Notwithstanding s. 49.193 (6) (c), a person who is subject to the employment and training program described in this subsection may be required to work more than 32 hours per week and more than 16 weeks in a 12-month period in a community work experience program.

4. Notwithstanding s. 49.193 (4) (g), a county department under s. 46.215, 46.22 or 46.23 may require participation in a work supplementation program.

5. A person in need of a high school diploma shall be assigned to a course of study meeting the standards established by the secretary of education for the granting of a declaration of equivalency of high school graduation unless the person demonstrates a basic literacy level or the employability plan for the individual identifies a long-term employment goal that does not require a high school diploma or a declaration of equivalency.

6. In addition to the employment and training activities under s. 49.193 (4) to (7), the employment and training program described in this subsection shall include an independence jobs program, providing for subsidized employment in the public sector.

7. Participation in alcohol and other drug abuse prevention and treatment programs may be required to fulfill employment and training requirements described in this subsection.

8. The employment and training requirements described in this subsection may be satisfied through working the number of hours required under par. (d) in unsubsidized employment or in a combination of unsubsidized employment and employment and training activities.

9. The subsidized employment components of the employment and training program described in this subsection may not be operated so as to do any of the following:

a. Displace any regular employe or reduce the wages, employment benefits or hours of work of any regular employe.

b. Impair an existing contract for services or collective bargaining agreement.

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

d. Have the effect of filling a vacancy created by an employer terminating a regular employe or otherwise reducing its work force for the purpose of hiring an individual under this subsection.

e. Infringe in the promotional opportunities of a regular employe.

10. The department shall establish a grievance procedure for resolving complaints by regular employes or their representatives that the subsidized employment components of the employment and training program under this subsection violate subd. 9.

(f) *Sanctions.* If, after the first month for which a work-not-welfare group receives cash benefits determined under sub. (4), a person in the work-not-welfare group fails to meet the employment and training requirements under this subsection in a month, the work-not-welfare group may be sanctioned by reducing, or by not paying, the benefit amount determined under sub. (4) for that month. For purposes of the maximum number of monthly benefit payments permitted under sub. (4) (e), a work-not-welfare group shall be considered to have received a monthly benefit in a month in which, as a result of sanctions under this paragraph, a reduced monthly benefit or no monthly benefit is

paid. The notice requirement under s. 49.193 (9) and the fair hearing and review provisions under s. 49.21 (1) apply to a sanction imposed under this paragraph.

(g) *Voluntary participation.* To the extent that funding permits, persons who are exempt under par. (c) may participate in the employment and training program under this subsection and, to the extent that funding permits, persons may participate in the employment and training program described in this subsection for more hours than are required under par. (d).

(6) **TRANSITIONAL CHILD CARE.** (a) *Eligibility.* Except as provided in par. (b), a work-not-welfare group is eligible for transitional child care services under par. (c) in any month in which all of the following conditions are met:

1. The work-not-welfare group has received at least one monthly cash benefit determined under sub. (4).

2. The work-not-welfare group will not receive benefits determined under sub. (4) or (11) (a) to (f) for the month.

3. The work-not-welfare group's benefit period has not yet expired.

4. At least one person in the work-not-welfare group is employed in unsubsidized employment.

(b) *Time limitations on transitional child care benefits.* A work-not-welfare group that is eligible for transitional child care under par. (a) may receive transitional child care benefits under par. (c) for a maximum of 12 months during a benefit period. These months need not be consecutive. A work-not-welfare group may not receive transitional child care benefits under this subsection after the work-not-welfare group's benefit period has elapsed unless it has been at least 36 months since the work-not-welfare group received benefits determined under sub. (4) or (11) (a) to (f).

(c) *Benefits.* A county department under s. 46.215, 46.22 or 46.23 shall provide assistance in paying the child care costs of a work-not-welfare group that is eligible to receive benefits under this paragraph if the child care is provided by a child care provider, as defined in s. 49.132 (1) (am). The formula for determining the amount of assistance shall be the same as the formula established by the department under s. 49.191 (2). The rates for child care services under this paragraph shall be determined under s. 49.132 (4) (d), (dg) or (dm), whichever is applicable, or, if a higher rate is established under s. 49.132 (4) (e) and if the child care services meet the quality standards established under s. 49.132 (4) (e), the rates for child care services under this paragraph that meet those standards shall be determined under s. 49.132 (4) (e). The department shall promulgate rules for the disbursement of funds under this paragraph.

(7) **SHELTER PAYMENTS.** (a) *Eligibility.* A work-not-welfare group is eligible for shelter payment benefits under this subsection if all of the following conditions are met:

1. The work-not-welfare group has received the maximum number of benefit payments determined under sub. (4) or (11) (a) to (f), as provided in sub. (4) (e) and (g).

2. The period of ineligibility under sub. (4) (f) and (g) for the work-not-welfare group has not yet expired.

3. The work-not-welfare group is in danger of becoming homeless, as defined by the department by rule.

(b) *Benefits.* For a work-not-welfare group that is eligible for benefits under this subsection, the department shall pay a shelter benefit equal to the lesser of the work-not-welfare group's shelter expenses or the benefit amount that the work-not-welfare group would have received under s. 49.19 if a waiver under sub. (2) were not in effect, based only on the number of children in the work-not-welfare group. The shelter benefit under this subsection shall be paid directly to the provider of the shelter or in the form of a voucher that may be used only for shelter expenses.

(8) **TRANSITIONAL MEDICAL BENEFITS.** (a) *Eligibility.* Except as provided in par. (b), all members of a work-not-welfare group

are eligible for transitional medical benefits under par. (c) for any month in which all of the following conditions are met:

1. The work–not–welfare group has received at least one monthly cash benefit determined under sub. (4).
2. The work–not–welfare group will not receive benefits determined under sub. (4) or (11) (a) to (f) for the month.
3. The work–not–welfare group’s benefit period has not yet expired.
4. At least one member of the work–not–welfare group is employed in unsubsidized employment.
5. The income of the work–not–welfare group is not greater than 185% of the poverty line for a family the size of the work–not–welfare group.
6. If the income of the work–not–welfare group is greater than 100% of the poverty line for a family the size of the work–not–welfare group, the work–not–welfare group pays, notwithstanding ss. 49.45 (18) and 49.47 (8), a health care services premium to the department.

(b) *Time limitation on benefits.* The work–not–welfare group is eligible for transitional medical benefits under par. (c) for a maximum of 12 months during a benefit period. The months need not be consecutive. A work–not–welfare group may not receive transitional medical benefits under this subsection after the work–not–welfare group’s benefit period has elapsed unless it has been at least 36 months since the work–not–welfare group received benefits determined under sub. (4) or (11) (a) to (f).

(c) *Benefits.* Each person in a work–not–welfare group that is eligible for benefits under this paragraph in a month shall receive medical assistance coverage under s. 49.46 (1) (cs) or, if a person could be covered by an insurance plan offered by the employer of one of the members in the work–not–welfare group and if the department determines that it would be cost–effective to do so, a payment equal to the amount of the premium that is required to be paid by the employe member of the work–not–welfare group, if any.

(9) **COOPERATION REQUIREMENT.** As a condition for continued benefits under this section, a person who is subject to the work–not–welfare pilot program under this section shall comply with reasonable requests for cooperation by work–not–welfare case management workers in applying for programs or resources that these workers believe may be available to the person.

(10) **ADMINISTRATION IN PILOT COUNTIES.** (a) *Contracts.* The department shall enter into a contract with the county department under s. 46.215, 46.22 or 46.23 in each pilot county. The contract shall specify the obligations of the county department in administering the work–not–welfare pilot program in that county and shall require at least the following:

1. The establishment of a community steering committee under par. (b).
2. The establishment of a children’s services network under par. (c).
3. The provision of case management services under par. (d).

(b) *Community steering committee.* 1. Each county department under s. 46.215, 46.22 or 46.23 entering into a contract with the department under par. (a) shall establish a community steering committee instead of an employment and training council under s. 49.193 (10). The chairperson and the other members of the community steering committee shall be appointed by the county executive or county administrator in the pilot county or, if the pilot county has no county executive or county administrator, by the chairperson of the county board of supervisors. The appointments shall be made in consultation with the department. The community steering committee shall have at least 12 members but not more than 15 members. The chairperson of the community steering committee shall be a person who represents business interests.

2. The community steering committee shall do all of the following:

- a. Perform the functions of an employment and training council under s. 49.193 (10).
- b. Identify and encourage employers to provide permanent jobs for persons who are subject to the employment and training program described in sub. (5).
- c. Create and encourage others to create subsidized jobs for persons who are subject to the employment and training program described in sub. (5).
- d. Create and encourage others to create on–the–job training sites for persons who are subject to the employment and training program described in sub. (5).
- e. Foster and guide the entrepreneurial efforts of persons who are subject to the employment and training program described in sub. (5).
- f. 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 subject to the requirements of the employment and training program described in sub. (5).

(c) *Children’s services network.* Each county department under s. 46.215, 46.22 or 46.23 entering into a contract with the department under par. (a) shall establish a children’s services network. The children’s services network shall provide information about community resources available to the children in a work–not–welfare group during the work–not–welfare group’s benefit period and the work–not–welfare group’s period of ineligibility under sub. (4) (f), including charitable food and clothing centers; the state supplemental food program for women, infants and children under s. 253.06; and child care programs under s. 49.132.

(d) *Case management services.* 1. The county department under s. 46.215, 46.22 or 46.23 administering a work–not–welfare pilot program under this section shall assign each work–not–welfare group to a case management team. The case management team shall be composed of case managers representing the income maintenance, job opportunities and basic skills, child care and child support components of the work–not–welfare pilot program under this section.

2. During the month beginning with the work–not–welfare group’s enrollment date, the county department under s. 46.215, 46.22 or 46.23 shall provide work–not–welfare group members with orientation services. The services shall include provision of oral and written explanations of the limitations on the benefits described under this section and of the participation requirements for the employment and training program described in sub. (5). As a condition of receiving benefits under this section, adult work–not–welfare group members may be required to sign a statement, which may be referred to as an “Independence Pact”, indicating that they received a copy of the written explanation of benefits and understand the employment and training requirements and the time–limited benefits of the work–not–welfare pilot program under this section. The orientation services shall also include the provision of a benefit account book, in which the case management team will indicate the remaining number of months of eligibility for cash and transitional benefits under this section.

3. To the extent that assignments are available, the case management team shall assign to persons who are subject to the employment and training requirements described in sub. (5) an employment or training assignment that enables the person to fulfill the participation requirements described in sub. (5) (d). To the extent that funding for child care is available, the case management team shall also assist persons who are subject to the employment and training program described in sub. (5) in obtaining child care services.

(e) *Child support assistance.* From the appropriation under s. 20.445 (3) (cb), the department may provide funds to pilot counties for assistance in establishing paternity and obtaining child support.

**(11) ADMINISTRATION IN NONPILOT COUNTIES.** A county department under s. 46.215, 46.22 or 46.23 in a nonpilot county may not pay aid to families with dependent children benefits under s. 49.19 to any person in a work–not–welfare group, except as provided in this subsection. With respect to persons in a work–not–welfare group residing in a nonpilot county, the county department in the nonpilot county shall do all of the following:

- (a) Determine the eligibility of a work–not–welfare group member for aid to families with dependent children under s. 49.19 without regard to sub. (4) (b).
- (b) Determine the amount of aid to families with dependent children under s. 49.19 without regard to sub. (4) (c).
- (c) Issue food coupons in administering the food stamp program under s. 46.215 (1) (k) or 46.22 (1) (b) 2. d. without regard to sub. (4) (c) 2.
- (d) Adjust aid to families with dependent children and food stamp benefits without regard to sub. (4) (d).
- (e) Apply the limitations contained in sub. (4) (e) to (g) to aid to families with dependent children payments under s. 49.19.
- (f) Treat child support payments as provided in s. 49.19 without regard to sub. (4) (h).
- (g) Administer the job opportunities and basic skills program under s. 49.193 and the food stamp employment and training program under s. 49.124 (1m) without regard to any of the provisions in sub. (5), including the hours–of–participation requirement under sub. (5) (d) and the sanctions provisions under sub. (5) (f).
- (h) Give priority for receipt of services under s. 49.193 (2) (b).
- (i) Provide transitional child care services under sub. (6), shelter payments under sub. (7) and transitional medical assistance coverage under sub. (8).

**(12) EVALUATION.** If the work–not–welfare program under this section is conducted, the department shall enter into a contract with a public or private agency for the preparation of evaluations of the work–not–welfare program under this section. These evaluations shall include an implementation evaluation, an outcome evaluation and an impact evaluation.

**(13) SUNSET.** 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), 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 enactment of this subsection, is required to be given to recipients of aid under this section to terminate their benefits under this subsection.

**History:** 1993 a. 99, 437, 491; 1995 a. 27 ss. 2899 to 2917, 9126 (19), 9145 (1); 1995 a. 289, 404, 407.

**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.

**49.30 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 \$1,000 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).

**(2)** The state 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). The state shall reimburse a county or applicable tribal governing body or organization for cemetery expenses or for funeral and burial expenses for persons 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.

**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.

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.

**49.32 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.

(d) The department shall disburse from state or federal funds or both the entire amount and charge the county for its share under s. 49.33 (8) and (9).

**(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 records of recipients of medical assistance under s. 49.46, 49.468 or 49.47, aid to families with dependent children under s. 49.19 and the food stamp program under 7 USC 2011 to 2029 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 medical assistance under s. 49.46, 49.468 or 49.47, aid to families with dependent children under s. 49.19 and the food stamp program under 7 USC 2011 to 2029 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 medical assistance under s. 49.46, 49.468 or 49.47, aid to families with dependent children under s. 49.19 and the food stamp program under 7 USC 2011 to 2029 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 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 such aid 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 and addresses 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. 42.261 [46.261] or 49.19 (10).

**NOTE:** Par. (a) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(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. [or Wisconsin works agency] Within 7 days after the record is inspected, or on the next regularly scheduled communication with that person, whichever is sooner, the department 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 and 46.22 administering aid to families with dependent children 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, but in no case may the department 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 telephone number, the request to inspect this information may be denied.

NOTE: Par. (b) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language inserted by 1995 Wis. Act 289 was rendered surplusage by the treatment of this provision by 1995 Wis. Act 361. Corrective language is pending.

(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 or 46.22 may release the current address of a recipient 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 and social security number of the recipient.

2. The officer satisfactorily demonstrates, in writing, all of the following:

a. That the recipient is a fugitive felon under 42 USC 602 (a) (9).

b. That the location or apprehension of the felon 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 employe 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 or relief agency under s. 49.01 (3m) 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) or aid to families with dependent children to a person, the person's attorney or an employe 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 or relief agency may not release the current address of the recipient. No county department or relief 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 or relief 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 and relief 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; s. 13.93 (2) (c).

#### 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.

**49.33 Income maintenance administration. (1) DEFINITIONS.** In this section:

(b) "Income maintenance program" means aid to families with dependent children under s. 49.19, Wisconsin works under ss. 49.141 to 49.161, medical assistance under subch. IV of ch. 49 or the food stamp program under 7 USC 2011 to 2029.

(c) "Income maintenance worker" means a person employed by a county, a governing body of a federally recognized American Indian tribe or a Wisconsin works agency whose duties include determinations or redeterminations of income maintenance program eligibility.

(2) CONTRACTS. County departments under ss. 46.215, 46.22 and 46.23 shall annually enter into a contract with the department detailing the reasonable cost of administering the income maintenance programs and the food stamp program under 7 USC 2011 to 2029 when so appointed by the department. Contracts created under this section control the distribution of payments under s. 20.445 (3) (de) and (nL) in accordance with the reimbursement method established under sub. (8). The department may reduce its payment to any county under s. 20.445 (3) (de) and (nL) if federal reimbursement is withheld due to audits, quality control samples or program reviews.

(3) RULES. The department shall promulgate rules establishing standards of competency, including training requirements, for income maintenance workers.

(4) RULES; MERIT SYSTEM. The department 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 department of employment relations. The department of 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 where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the department's authority under sub. (4) to establish and maintain personnel standards including salary levels.

(8) REIMBURSEMENT FOR INCOME MAINTENANCE ADMINISTRATION. (a) The department shall reimburse each county for reasonable costs of income maintenance relating to the administration of the programs under this subchapter and subch. IV according to a formula based on workload within the limits of available state and federal funds under s. 20.445 (3) (de), (dz) and (nL) by contract under s. 49.33 (2). The amount of reimbursement calculated under this paragraph and par. (b) is in addition to any reimburse-

ment provided to a county for fraud and error reduction under s. 49.197 (1m) and (4).

(b) The department may adjust the amounts determined under par. (a) for workload changes and computer network activities performed by counties.

(9) REIMBURSEMENT FOR INCOME MAINTENANCE BENEFITS. The department shall reimburse each county from the appropriations under s. 20.445 (3) (d) and (p) for 100% of the cost of aid to families with dependent children granted under s. 49.19 and for funeral expenses paid for recipients of aid under s. 49.30.

(10) COUNTY CERTIFICATION. (a) The county treasurer and each director of a county department under s. 46.215, 46.22 or 46.23 shall certify monthly under oath to the department in such manner as the department prescribes the claim of the county for state reimbursement under subs. (8) and (9) and if the department approves such claim it shall certify to the department of administration for reimbursement to the county for amounts due under these subsections 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 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.

**History:** 1995 a. 27 ss. 2041 to 2049, 2933 to 2936, 3084 to 3087, 3130; 1995 a. 289, 417.

**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 certified 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 nonprofit, nonstock corporation organized under ch. 181 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 peri-

ods 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.

**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 s. 48.396 (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.

**49.36 Work experience program for noncustodial parents.** (1) In this section, "custodial parent" means a parent who lives with his or her child for substantial periods of time.

(2) The department may contract with any county 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 or 49.147 (3) or (4). The program may also include job search and job orientation activities. The department shall fund the program from the appropriation under s. 20.445 (3) (df).

(3) (a) Except as provided in par. (f), a person ordered to register under s. 767.295 (2) (a) 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.

(g) If the person's child receives benefits under s. 49.19, the liability under s. 49.195 of a parent who is a member of the child's household is reduced by the amount of the federal minimum hourly wage under 29 USC 206 (a) (1) for each hour the person participates in a program under this section. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(4) When a person completes 16 weeks of participation in a program under this section, the county 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 employe of the county or Wisconsin works agency administering the program under this section for purposes of worker's compensation benefits only.

(6) A county 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 or Wisconsin works agency \$200 for each person who participates in the program under this section in the region in which the county or Wisconsin works agency administers the program under this section. The county 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.

**49.37 New hope project. (1)** From the appropriation under s. 20.445 (3) (dk), the department shall allocate funds to new hope project, inc., for a demonstration project that will be conducted in 2 areas in the city of Milwaukee, if all of the following conditions are satisfied:

(a) A person who lives in either of the 2 areas is eligible to enter the project if he or she is at least 18 years of age and has a family income below 200% of the poverty line, as defined in s. 49.01 (6m) [49.001 (5)], for a family the size of the person's family.

**NOTE:** The bracketed language indicates the correct cross-reference. 1995 Wis. Act 27 renumbered s. 49.01 (6m) to be 49.001 (5). Corrective legislation is pending.

(b) The project assists a participant who is not employed to obtain a job other than a community service job under par. (c).

(c) The project assists a participant who is not employed before entering the project and who does not obtain a job under par. (b) within a reasonable time, as determined by new hope project, inc., to obtain a community service job and funds the wages paid for that community service job.

(d) If a participant is employed before starting the project or becomes employed under par. (b) but his or her wages are lower than wage levels established by new hope project, inc., the project assists the participant in obtaining state and federal earned income tax credits and, if the wages plus the earned income tax credits are lower than the established wage levels, provides the participant with wage supplements.

(e) If a participant is employed, the project assists the participant to obtain and, if necessary, funds any of the following services needed by a participant and his or her family:

1. Health care.
2. Child care.
3. Counseling and training for job retention or advancement.

(g) New hope project, inc., contracts for an evaluation of the project of a quality sufficient to show whether and to what extent the project has succeeded in reducing welfare dependency, unemployment and poverty.

(h) New hope project, inc., demonstrates that it has obtained funds for the project from other public or private sources in an amount that is at least equal to the amount of state funds appropriated for the program.

(2) New hope project, inc., may require a participant to pay a portion of the cost of health care and child care funded by the project.

(3) The contract under sub. (1) (g) shall require an interim evaluation to be submitted to the department no later than January 1, 1993. New hope project, inc., may not use funds appropriated under s. 20.445 (3) (dk) to fund the evaluation under sub. (1) (g).

(4) This section does not apply after June 30, 1997.

**History:** 1991 a. 39, 1993 a. 16, 99; 1995 a. 27 ss. 2277b, 2277d.

**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 49.47 and 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 employe 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.

**(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).

**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 designate this function to the county department under s. 46.215 or 46.22.

4. To the extent funds are available under s. 20.435 (1) (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 education to carry out the provisions of Title XIX.

**NOTE:** Subd. 5. is shown as amended by 1995 Wis. Acts 27 and 417. The treatment by Act 27 s. 9145 (1) was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Subd. 5. as not affected by Act 27 s. 9145 (1) reads as follows:

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. After reasonable notice and opportunity for hearing, recover money improperly or erroneously paid, or overpayments

to a provider either 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 by requiring the provider to make direct payment to the department or its fiscal intermediary.

11. Establish criteria for the certification of eligible providers of services under Title XIX of the social security act and certify such eligible providers.

12. Decertify or suspend a provider from the medical assistance program, if after giving reasonable notice and opportunity for hearing, the department finds that the provider has violated federal or state law or administrative rule and such violations are by law, regulation or rule grounds for decertification or suspension. 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.

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 under s. 20.435 (1) (b) is 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.

21. Submit a report, by October 1, 1990, and annually thereafter, on access to obstetric and pediatric services under the medical assistance program, including the effect of medical assistance reimbursement rates.

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 assisted living facility, as defined under s. 50.01 (1d), for purposes of reimbursement under ss. 46.27 (11) (c) 7. and 46.277 (5) (e).

(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, includ-

ing 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.

(3) PAYMENT. (a) Reimbursement shall be made to each county department under ss. 46.215, 46.22 and 46.23 for the administrative services performed in the medical assistance program on the basis of s. 49.33 (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.

(am) 1. From the appropriation under s. 20.435 (1) (bm), the department shall make incentive payments to counties to encourage counties to identify medical assistance applicants and recipients who have other health care coverage and the providers of the health care coverage and give that information to the department.

2. The department shall promulgate rules governing the distribution of payments under this paragraph.

(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.

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 continued 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. 45.375 (1) 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 the facility created under s. 45.365 (1).

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.

(g) The secretary may appoint personnel to audit or investigate and report to the department on any matter involving violations or complaints alleging violations of laws, regulations, or rules applicable to Title XIX of the federal social security act or 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 appointed by the secretary under this paragraph shall be issued and shall possess at all times during which they are performing their investigatory or audit functions under this section identification signed by the secretary which specifically designates the bearer as possessing the authorization to conduct medical assistance investigations or audits. Pursuant to the request of a designated person and upon presentation of that person's authorization, providers and recipients shall accord such person access to any records, books, recipient medical records, documents or other information needed. Authorized employees shall have authority to hold hearings, administer oaths, take testimony and perform all other duties necessary to bring such matter before the department for final adjudication and determination.

(h) 1. For purposes of any audit, investigation, examination, analysis, review or other function authorized by law with respect to the medical assistance program, the secretary shall have the power to sign and issue subpoenas to any person requiring the production of any pertinent books, records, medical records or other information. Subpoenas so issued shall be served by anyone authorized by the secretary by delivering a copy thereof to the person named therein, or by registered mail or certified mail addressed to such person at his or her last–known residence or principal place of business. A verified return by the person so serving the subpoena setting forth the manner of service, or, in the event service is by registered or certified mail, the return post–office receipt signed by the person so served shall constitute proof of service.

2. In the event of contumacy or refusal to obey a subpoena issued under this paragraph and duly served upon any person, any judge in a court of record in the county where the person was served may enforce the subpoena in accordance with s. 885.12.

3. The failure or refusal of a person to purge himself or herself of contempt found under s. 885.12 and perform the act as required by law shall constitute grounds for decertification or suspension of that person from participation in the medical assistance pro-

gram and no payment may be made for services rendered by that person subsequent to decertification or during the period of suspension.

(i) The department may not reimburse a provider for certain elective surgical procedures without a 2nd opinion from another provider. Second opinions are required for selected elective surgical procedures for which 2nd opinions disagree with the original opinions at demonstrably high rates. The department shall notify the providers of the surgical procedures for which a 2nd opinion is required.

(j) Reimbursement for administrative contract costs under this section is limited to the funds available under s. 20.435 (1) (bm).

(k) If a physician performs a surgical procedure that is within the scope of practice of a podiatrist, as defined in s. 448.01 (7), 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).

**(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.** 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 may file an appeal with the department pursuant to s. 49.21 (1).

**(5m) SUPPLEMENTAL FUNDING FOR RURAL HOSPITALS.** (a) Notwithstanding sub. (3) (e), from the appropriations under s. 20.435 (1) (b) and (o) 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, except that the department may not distribute funds to a rural hospital to the extent that the distribution would exceed any limitation under 42 USC 1396b (i) (3).

(b) The supplemental funding under par. (a) 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 which involves a relocation from a center for the developmentally disabled, as follows:

(a) Beginning in fiscal year 1995–96, for relocations from the central Wisconsin center for the developmentally disabled, by \$205 per day.

(b) Beginning in fiscal year 1995–96, for relocations from the northern Wisconsin center for the developmentally disabled, by \$199 per day.

(c) Beginning in fiscal year 1995–96, for relocations from the southern Wisconsin center for the developmentally disabled, by \$149 per day.

**(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).

7. “Mental illness” has the meaning given in 42 USC 1396r (e).

(b) *Preadmission screening.* Except as provided in par. (e), beginning on August 9, 1989, 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. Beginning on August 9, 1989, 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.

(c) *Resident review.* Except as provided in par. (e), by April 1, 1990, and at least annually thereafter, 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 to determine if any of the following applies:

1. The resident needs facility care.
2. The resident requires active treatment for developmental disability or active treatment for mental illness.

(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 medic-aid 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 as defined under s. 50.01 (3) 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.

4. “Net property tax” means property tax from which the Wisconsin state property tax credit has been deducted.

(ag) Payment for care provided in a facility under this subsection made under s. 20.435 (1) (b), (o) or (p) 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 which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care in conformity with this section, with federal regulations authorized under 42 USC 1396a (a) (13) (A), 1396a (a) (30), 1396b (i) (3), 1396L and 1396r (e) and with quality and safety standards established under subch. II of ch. 50 and ch. 150. In administering this payment system, the department shall allow costs it determines are necessary and proper for providing patient care. The payment system shall reflect all of the following:

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. Standards established by the department for costs of economically and efficiently operated facilities 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 state fiscal year 1995–96, rates that shall be set by the department based on information from cost reports for the 1994 fiscal year of the facility and for state fiscal year 1996–97, rates that shall be set by the department based on information from cost reports for the 1995 fiscal year of the facility.

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.

8. Calculation of total payments and supplementary payments to facilities that permits an increase in funds allocated under s. 20.435 (1) (b) and (o) for nursing home care provided medical assistance recipients over that paid for services provided in state fiscal year 1994–95 of no more than 4.25% during state fiscal year 1995–96 and over that paid for services provided in state fiscal year 1995–96 of no more than 3.5% during state fiscal year 1996–97, excluding increases in total payments attributable to increases in recipient utilization of facility care, payments for the provision of active treatment to facility residents with developmental disability or chronic mental illness and payments for pre-admission screening of facility applicants and annual reviews of facility residents required under 42 USC 1396r (e).

(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.
- b. Medical supplies.
- d. Services of facility medical personnel that are not separately billable under medical assistance requirements.
- e. Nonbillable services of a registered nurse, licensed practical nurse, nursing assistant, 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.

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.

3. Allowable fuel and utility costs, including the facility expenses that the department determines are allowable for the provision of:

- a. Electrical service.
- b. Water and sewer services.
- c. Heat.
4. Net property tax or allowable municipal service costs incurred by the owner of the facility for the facility.

5. 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.

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.

(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 that are at least 110% of the median for direct care costs for facilities that do not primarily serve the developmentally disabled and separate standards for payment of allowable direct care costs that are at least 110% of the median for direct care costs for facilities primarily serving the developmentally disabled. The standards shall be adjusted by the department for regional labor cost variations. The department may decrease the percentage established for the standards only if amounts available under par. (ag) (intro.) are insufficient to provide total payment under par. (am), less capital costs under subd. 6.

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 emotionally disturbed or 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.

**NOTE:** Subd. par. c. is amended eff. 7–1–97 by 1995 Wis. Act 27 to read:

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. Notwithstanding the limitations under par. (ag) 8., 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:

a. The department shall establish one or more standards for the payment of support service costs that are not less than the median of support service costs for a sample of all facilities within the state.

b. The department shall establish the support service component of the facility rate for each facility by comparing actual allowable support service cost information of that facility, adjusted for inflation, to the applicable standard established under subd. 2. a.

d. The department may provide an efficiency incentive payment to a facility whose allowable support service costs are less than the standards set forth under subd. 2. a. and a cost share payment to a facility whose allowable support service costs are greater than the standards set forth under subd. 2. a.

3. For fuel and utility costs:

a. The department shall establish standards, adjusted for heating degree day variations in the state, for payment of fuel and utility costs that are not less than the median of heating fuel and utility costs for a sample of all facilities within the state.

b. The department shall establish the fuel and utility component of the facility rate for each facility by comparing actual allowable fuel and utility cost information of that facility, adjusted for inflation, to the standard established under subd. 3. a.

c. The department may provide an efficiency incentive payment to a facility whose allowable heating fuel and utility costs are less than the standard set forth under subd. 3. a. and a cost share payment to a facility whose allowable heating fuel and utility costs are greater than the standards set forth under subd. 3. a.

4. For net property taxes or municipal services, payment shall be made for those costs that range from the amount of the previous calendar year's tax or the amount of municipal service costs for a period specified by the department to a maximum limit as determined by the department.

5. For administrative and general costs:

a. The department shall establish one or more standards for the payment of administrative and general costs that are not less than the median of administrative and general costs for a sample of all facilities within the state.

b. The department shall establish the administrative and general component of the facility rate for each facility by comparing actual allowable administrative and general cost information of that facility, adjusted for inflation, to the applicable standard established under subd. 5. a.

c. The department may provide an efficiency incentive payment to a facility whose allowable administrative and general costs are less than the standards set forth under subd. 5. a.

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, except that the department may not reduce final capital payment of a facility by more than \$3.50 per patient day.

(av) 1. The department shall calculate a payment rate for a facility by applying the criteria set forth under pars. (ag) 1. to 5., 7. and 8., (am) 1. to 5. and (ar) 1. to 5. to information from cost reports submitted by the facility.

2. The department shall compile an average payment rate for each facility based on that facility's rates for cost centers described under par. (am) 1. to 5. that were in effect on June 30, 1994. The department may develop a method for adjusting the facility's rate for the cost center under par. (am) 1. in compiling the average payment rate under this subdivision.

3. The department shall calculate the facility's projected cost per patient day, based on that facility's cost centers under par. (am) 1. to 5., adjusted for inflation.

4. If the facility's payment rate under subd. 1. is a decrease from its average payment rate under subd. 2., and if the figure calculated under subd. 3. exceeds the payment rate for the facility under subd. 1., the facility's average payment rate shall be the greater of its average payment rate under subd. 2. or its rate under subd. 1.

5. If subd. 4. does not apply, the facility's payment rate shall be the payment rate calculated under subd. 1.

5m. Notwithstanding the limitations under par. (ag) 8., the rate under subd. 1., 4. or 5. may be adjusted by the department to reflect payments for the provision of active treatment to facility residents with a diagnosis of developmental disability.

6. The total payment rate for a facility as calculated under subd. 1., 4., 5. or 5m. shall be the sum of the rate so calculated, plus capital payment calculated under pars. (am) 6. and (ar) 6. and payment for ancillary services and materials under par. (b) and for nonprescription drugs under par. (bc).

(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.

(bc) The department may include charges for nonprescription drugs approved by the department as an adjustment to the rate determined under par. (av).

(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 the Wisconsin veterans home at King 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 apply:

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. (ag) 3m., (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 (1) (bt) or (bu) or (7) (b) or 20.445 (3) (de), the department shall reduce allocations of funds to counties in the amount of the disallowance from the appropriations under s. 20.410 (3) (cd) or 20.435 (1) (bt) or (bu) or (7) (b), or the department shall direct the department of industry, labor and job development to reduce allocations of funds to counties or Wisconsin works agencies in the amount of the disallowance from the appropriation under s. 20.445 (3) (de) or (dz), 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 limited 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).

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 bene-

fits 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. HSS 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 chronic 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).

(6r) ASSESSMENTS TO PROVIDERS. (a) In this section:

1. "Ambulatory surgery center" has the meaning given under 42 CFR 416.2.

1g. "Facility" means a nursing home as defined in s. 50.01 (3) 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.

1m. "Provider" means a facility or an ambulatory surgery center, except that "provider" does not include a facility or ambulatory surgery center that is state-owned or state-operated, federally owned or federally operated or located outside the state.

1r. "Services" means services or items under this section that the provider directly provides and does not reimburse a 3rd party for providing.

2. "State share" means that portion of the medical assistance payments made to a provider under this section for the provision of authorized services that is not reimbursed by federal funds, unless no federal financial participation is available for these services. If no federal financial participation is available for a service that is payable under this section, "state share" means that portion of the payments that would be the state share if federal financial participation were available.

(b) For the privilege of doing business in this state, there is imposed on a provider an assessment at the rate of 6.98% in fiscal year 1991–92 and 13.10% in fiscal year 1992–93 that shall be

deposited in the general fund. The assessment shall be made on the state share of payments made to a provider for services provided beginning on July 1, 1991, except that assessments imposed on ambulatory surgery centers shall be made for services provided beginning on January 1, 1992.

(c) The department shall send an invoice to each provider on October 31, 1991, for the amount due for the 3 months preceding that month and shall, thereafter, send an invoice to each provider by the end of every month for the amount due, which shall be based on payments received for services to which the assessment is applicable for the month preceding the month during which the invoice is sent, except that, for an ambulatory surgery center, the department shall first send an invoice by February 29, 1992. Each provider shall pay the amount shown on the invoice on or before the last day of the month after the month in which the invoice is sent. The department may provide to a provider an alternative to payment by invoice under which a provider may elect to have the assessment amounts deducted from net payments made for services.

(d) The interest and penalty provisions under ss. 71.82 (1) (a) and (b) and (2) (a) and (b), 71.83 (1) (a) 1., 2. and 7. and (b) 1., (2) (a) 1. to 3. and (b) 1. to 3. and (3) and 71.85 as they apply to the taxes under ch. 71 and to the department of revenue apply to the assessment under this section and to the department.

(e) The department shall levy, enforce and collect the assessment under this subsection.

(f) Sections 71.74 (1) to (3), (6), (7) and (9) to (15), 71.75 (1), (2), (4), (5) and (6) to (10), 71.76, 71.77, 71.78 (1) to (8), 71.80 (1) (a) to (d), (3), (3m), (6), (8) to (12), (14) and (18), 71.87, 71.88, 71.89, 71.90, 71.91 and 71.93 as they apply to the taxes under ch. 71 and to the department of revenue apply to the assessment under this subsection and to the department.

(g) This subsection does not apply after September 30, 1992.

**(6s) SUPPLEMENTAL PAYMENTS TO COUNTY HOMES.** Notwithstanding sub. (6m), the department shall, from the appropriation under s. 20.435 (1) (o), distribute not more than \$20,000,000 in fiscal year 1995–96 and not more than \$20,000,000 in fiscal year 1996–97, to provide supplemental payments for care to recipients of medical assistance provided in county homes established under s. 49.14 (1) [49.70 (1)], except that the department shall also distribute for this same purpose from the appropriation under s. 20.435 (1) (o) any additional federal medical assistance funds that were not anticipated before enactment of the biennial budget act or other legislation affecting s. 20.435 (1) (o), were not used to fund nursing home rate increases under sub. (6m) (ag) 8. and are matched by county funds under sub. (6u) (b) 2. and certified under sub. (6u) (b) 2m. The total amount certified under sub. (6u) (b) 2m. and under this subsection may not exceed 100% of otherwise-unreimbursed care.

**NOTE:** The bracketed language indicates the correct cross-reference. 1995 Wis. Act 27 renumbered s. 49.14 (1) to be 49.70 (1). Corrective legislation is pending.

**(6t) COUNTY DEPARTMENT AND LOCAL HEALTH DEPARTMENT OPERATING DEFICIT REDUCTION.** From the appropriation under s. 20.435 (1) (o), for reduction of operating deficits, as defined under criteria developed by the department, incurred by a county department under s. 46.215, 46.22, 46.23 or 51.42 or by a local health department, as defined in s. 250.01 (4), for services provided under s. 49.46 (2) (a) 4. d. and (b) 6. f., j., k. and L., 9. and 15., for case management services under s. 49.46 (2) (b) 12. and for mental health day treatment services for minors provided under the authorization under 42 USC 1396d (r) (5), the department shall allocate up to \$4,500,000 in each fiscal year to these county departments, or local health departments as determined by the department, and shall perform all of the following:

(a) For the reduction of operating deficits incurred by the county departments or local health departments, estimate the availability of federal medicaid funds that may be matched to county, city, town or village funds that are expended for costs in excess of reimbursement for services provided under s. 49.46 (2)

(a) 4. d. and (b) 6. f., j., k. and L., 9. and 15., for case management services under s. 49.46 (2) (b) 12. and for mental health day treatment services for minors provided under the authorization under 42 USC 1396d (r) (5).

(b) Based on the amount estimated to be available under par. (a), develop a method, which need not be promulgated as rules under ch. 227, to distribute this allocation to the individual county departments under s. 46.215, 46.22, 46.23 or 51.42 or to local health departments that have incurred operating deficits that shall include all of the following:

1. Development of criteria for determining operating deficits.

2. Agreement, by the county in which is located a county department that has an operating deficit, or by the county, city, town or village that has established a local health department that has an operating deficit, to provide funds to match federal medicaid funds.

3. Consideration of the size of a county department's or local health department'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 (1) (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.

**(6u) FACILITY OPERATING DEFICIT REDUCTION.** Except as provided in par. (g), from the appropriation under s. 20.435 (1) (o), for reduction of operating deficits, as defined under criteria developed by the department, incurred by a facility, as defined under sub. (6m) (a) 2., that is established under s. 49.70 (1) or that is owned and operated by a city, village or town, the department shall distribute to these facilities not more than \$18,600,000 in each fiscal year, as determined by the department, and shall perform all of the following:

(a) 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.

(b) Based on the amount estimated available under par. (a), develop a method to distribute this allocation to the individual facilities that have incurred operating deficits that shall include:

1. Development of criteria for determining operating deficits.

2. 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 subsection.

2m. 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.

3. Consideration of the size of a facility's operating deficit.

(c) Distribute the allocation under the distribution method that is developed, unless a county has failed to comply with par. (b) 2m.

(d) If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (1) (o) that result in a lesser allocation amount than that allocated under this subsection, allocate not more than the lesser amount so approved by the federal department of health and human services.

(e) If the federal department of health and human services approves for state expenditure in a fiscal year amounts under s. 20.435 (1) (o) that result in a lesser allocation amount than that allocated under this subsection, submit a revision of the method

developed under par. (b) for approval by the joint committee on finance in that state fiscal year.

(f) If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds distributed under par. (c), the requirements under sub. (6m) (br) shall apply.

(g) 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, the department may not allocate to that facility funds under this section after the date on which the finding is made.

**(6w) HOSPITAL OPERATING DEFICIT REDUCTION.** From the appropriation under s. 20.435 (1) (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 (1) (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 appropriations under s. 20.435 (1) (b) and (o) 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 (1) (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 appropriations under s. 20.435 (1) (b) and (o) the department shall distribute 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).

(b) The department need not promulgate as rules under ch. 227 the procedures, methods of distribution and criteria required for distribution under par. (a).

**(6z) SUPPLEMENTAL FUNDING FOR CERTAIN HOSPITALS SERVING LOW-INCOME PATIENTS.** (a) Notwithstanding sub. (3) (e), from the appropriations under s. 20.435 (1) (b) and (o) 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 \$40 unearned income or the amount of any pension paid under 38 USC 3203 (f), 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 \$40 or the amount of any pension paid under 38 USC 3203 (f), 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 employes 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. 448.01 (2g).

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 (1) (b) and (o) 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.

**(8e) MONTHLY LIMITS ON HOME HEALTH, PERSONAL CARE AND PRIVATE-DUTY NURSING SERVICES REIMBURSEMENT.** (a) Except as

provided in par. (b), reimbursement under s. 20.435 (1) (b) and (o) for home health, personal care and private-duty nursing services provided to a medical assistance recipient in a month may not exceed 120% of the average monthly cost of nursing home care, as determined by the department.

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

1. A medical assistance recipient under the age of 22.

2. A ventilator-dependent individual under s. 49.46 (2) (b) 6. m. or 49.47 (6) (a) 1.

3. Any individual, if the department determines that the cost of providing the individual with nursing home care would exceed the cost of providing the individual with home health, personal care and private-duty nursing services.

4. Any individual, if the department determines that nursing home care is not available for that individual.

**(8m) RATES FOR RESPIRATORY CARE SERVICES.** Notwithstanding the limits under subs. (8) and (8e), 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, \$30 per hour.

(b) For visits subsequent to an initial visit and for extended visits by a licensed practical nurse, \$20 per hour.

**(8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE.** The rate of payment for obstetric and gynecological care provided in primary care health professional shortage areas, as defined in s. 560.184 (1) (c), or provided to recipients of medical assistance who reside in primary care health professional shortage areas, that is equal to 125% of the rates paid under this section to primary care physicians in primary care health professional 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, not-

withstanding 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 employe 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 employe 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.** The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance.

**(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 orga-

nization 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.** Except as provided in pars. (a) to (d), 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 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 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. Liability under this subsection is limited by the following provisions:

(a) 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.

6. Transportation by common carrier or private motor vehicle, if authorized in advance by a county department under s. 46.215 or 46.22, or by specialized medical vehicle.

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 \$5 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 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.

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 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) TRANSFER OF BUSINESS, LIABILITY FOR REPAYMENTS.** (a) If any provider liable for repayment of improper or erroneous payments or overpayments under ss. 49.43 to 49.497 sells or otherwise transfers ownership of his or her business or all or substantially all of the assets of the business, the transferor and transferee are each liable for the repayment. Prior to final transfer, the transferee is responsible for contacting the department and ascertaining if the transferor is liable under this paragraph.

(b) If a transfer occurs and the applicable amount under par. (a) has not been repaid, the department may proceed against either the transferor or the transferee. Within 30 days after receiving notice from the department, the transferor or the transferee shall pay the amount in full. Upon failure to comply, the department may bring an action to compel payment. If a transferor fails to pay within 90 days after receiving notice from the department, the department may proceed under sub. (2) (a) 12.

(c) The department may enforce this subsection within 4 years following a transfer.

(d) This subsection supersedes any provision of chs. 180, 181 and 185.

**(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 maintenance organizations that provide or that contract to provide comprehensive, specialized health care services to pregnant teenagers.

**(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.

**(24m) HOME HEALTH CARE AND PERSONAL CARE PILOT PROGRAM.** From the appropriations under s. 20.435 (1) (b) and (o), 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.

**(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) and (bg) 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 chronic mental illness, as defined under s. 51.01 (3g).
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.

(b) A county, city, village or town 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 or town 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 (1) (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.

(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. (be) and (bg), 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.

**(30m) CERTAIN SERVICES FOR DEVELOPMENTALLY DISABLED.** A county shall provide the portion of the services under s. 51.06 (1)

(d) to individuals who are eligible for medical assistance that is not provided by the federal government.

**(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 employes who administer the medical assistance program.

**(35) TRAINING FOR NONPROFIT ORGANIZATIONS.** The department shall provide training to employes 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.** 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) or a charter school, as defined in s. 115.001 (1). 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) to (c). If the amendment to the state plan is approved, school districts and cooperative educational service agencies claim reimbursement under pars. (b) to (c). Paragraphs (b) to (c) do not apply unless the amendment to the state plan is approved and in effect.

(b) *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 for allowable administrative costs. The department shall promulgate rules establishing a methodology for making reimbursements under this paragraph. All other expenses for the school medical services 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 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.

(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.** The department shall cooperate with the department of industry, labor and job development in matching records of medical assistance recipients under s. 49.32 (7).

**(41) MENTAL HEALTH CRISIS INTERVENTION SERVICES.** (a) In this subsection:

1. “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 or municipality, if the county or municipality is certified as a medical assistance provider.

2. “Municipality” means a city, village or town.

(b) If a county or municipality elects to become certified as a provider of mental health crisis intervention services, the county or municipality may provide mental health crisis intervention services under this subsection in the county or municipality to medical assistance recipients through the medical assistance program. A county or municipality 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 or municipality 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.

**(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. The department shall provide reimbursement for these 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.

**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.

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 W (2d) 207, 522 NW (2d) 22 (Ct. App. 1994).

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 rea-

sonable methodology for apportioning a period of ineligibility under this paragraph.

**(4) IRREVOCABLE ANNUITIES.** (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 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.

(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.

**(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.

**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.

**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 or cooperative, 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 or cooperative 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 ade-

quate 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. Medical Assistance & Divestment. Canellos. Wis. Law. Aug. 1991.

**49.46 Medical assistance; recipients of social security aids. (1) ELIGIBILITY.** (a) The following shall receive medical assistance under this section:

1. Any person included in the grant of aid to families with dependent children and any person who does not receive such aid solely because of the application of s. 49.19 (11) (a) 7. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

1m. Any pregnant woman who meets the resource and income limits under s. 49.19 (4) (bm) and (es) 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. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

3. Any essential person.

4. Any person receiving benefits under s. 49.77 or federal Title XVI.

5. Any child in an adoption assistance, foster care, kinship care or treatment foster care placement under ch. 48 or 938, as determined by the department.

**NOTE:** Subd. 5. is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

6. Any person not described in pars. (c) to (e) who is considered, under federal law, to be receiving aid to families with dependent children for the purpose of determining eligibility for medical assistance. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

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. or 1m. whose family income does not exceed 133% of the poverty line for a family the size of the woman's family. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

10. Any child not described under subd. 1. 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. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

11. Any child not described under subd. 1. 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. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

12. Any child not described under subd. 1. who is under 19 years of age and who meets the resource and income limits under s. 49.19 (4). This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

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. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

14. Any person who would meet the financial and other eligibility requirements for home or community-based services under s. 46.27 (11) or 46.277 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) or 46.277.

15. Any individual who is infected with tuberculosis and meets the income and resource eligibility requirements for the federal supplemental security 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) 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.

3. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(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 pars. (co) and (cs), 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.

(cb) Paragraph (c) does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(cg) Except as provided in par. (cs), 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 dependent 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. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(co) 1. Except as provided under subd. 2. and par. (cs), 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 subsd. 1. and 2. Subdivision 1. does not apply unless a federal waiver is in

effect. If a waiver is received, the department shall implement subsd. 1. and 2. no later than the first day of the 6th month beginning after the waiver is approved.

4. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(cr) 1. Except as provided in par. (cs), medical assistance shall be provided for 9 consecutive calendar months to a family that ceased to receive aid to families with dependent children after September 30, 1981, and prior to October 1, 1984, solely because of the loss of the disregards for earned income under s. 49.19 (5) (a) 4., after receiving the disregards for 4 consecutive months, if the family:

a. Applies for the medical assistance no later than the last day of the 6th month commencing after the month in which the secretary of the federal department of health and human services promulgates final regulations under 42 USC 602 (a) (37).

b. Discloses in the application under subd. 1. a. any health insurance possessed by a member of the family.

c. Demonstrates that, but for the loss of the disregards for earned income under s. 49.19 (5) (a) 4., the family was continuously eligible for aid to families with dependent children from the date of that loss until the date of the application made under subd. 1. a.

2. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(cs) Medical assistance shall be provided to members of a work-not-welfare group, as defined in s. 49.27 (1) (c), that is eligible for transitional medical assistance coverage under s. 49.27 (8) (c). If the person is or was a member of a work-not-welfare group, as defined in s. 49.27 (1) (c), and if the period of ineligibility under s. 49.27 (4) (f) and (g) for that work-not-welfare group has not yet expired, the person is not eligible for medical assistance under par. (c), (cg), (co) or (cr), unless the person was a dependent child, as defined in s. 49.19 (1) (a), at the time that he or she was a member of the work-not-welfare group. This paragraph does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(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. This subdivision does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

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) 1. If an application under s. 49.47 (3) shows that the person has income and resources within the limitations of s. 49.19, federal Title XVI or s. 49.77, or that the person is an essential person, an accommodated person or a patient in a public medical institution, the person shall be granted the benefits enumerated under sub. (2) whether or not the person requests or receives a grant of any of such aids.

2. Beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d), this paragraph

does not apply with respect to a person who has income and resources within the limitations of s. 49.19 whether or not the person requests or receives a grant of aid under that section.

(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.

(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).

d. Home health services, subject to the limitations under s. 49.45 (8) and (8e), or, if a home health agency is unavailable, nursing services, subject to the limitations under s. 49.45 (8e).

e. Laboratory and X-ray services.

f. Family planning services and supplies.

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.

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.

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 limitations under s. 49.45 (8e) and (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.

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 or 46.278.

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 and family planning services, 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 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 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 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; s. 13.93 (2) (c).

Categorically needy person applying for assistance under this section need not comply with divestment of assets provisions under 49.47 (4) (d). *Sinclair v. H&SS Department*, 77 W (2d) 322, 253 NW (2d) 245.

Sub. (1) (b) and s. 49.47 (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 W(2d) 37, 519 NW (2d) 706 (Ct. App. 1994).

States need not fund nontherapeutic abortions. *Beal v. Doe*, 432 US 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.

(7) This section does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

**History:** 1987 a. 27, 307, 413; 1989 a. 9; 1989 a. 31 ss. 1460p, 2909g, 2909i; 1991 a. 269; 1995 a. 289.

**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 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.

**49.47 Medical assistance; medically indigent.** (1) **PURPOSE.** Medical assistance as set forth herein shall be provided to persons over 65, all disabled children under 18 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) Except as provided in par. (ag), 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 18 years of age or, if the person resides in an intermediate care facility, skilled nursing facility or inpatient psychiatric hospital, under 21 years of age.

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.

3. 65 years of age or older.

4. Blind or totally and permanently disabled as defined under federal Title XVI.

(ag) No individual is eligible for medical assistance in a month that the individual is eligible for health care coverage under s. 49.153.

(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.

(an) Paragraph (am) does not apply beginning on the first day of the 6th month beginning after the date stated in the notice under s. 49.141 (2) (d).

(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) or 46.277 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) or 46.277.

(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 horticultural 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. or 2., 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).

NOTE: Subd. 3. is shown as amended eff. 6–1–97 by 1995 Wis. Act 295. Prior to 6–1–97 it reads:

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).

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. No individual is eligible for medical assistance under this subdivision in a month in which the individual is eligible for health care coverage under s. 49.153.

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.

(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.

NOTE: Subd. par. a. is shown as amended eff. 6–1–97 by 1995 Wis. Act 295. Prior to 6–1–97 it reads:

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) 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 subsd. 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](#) 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](#) 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 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) (a) 2. or (am) 1., for services under s. [49.46](#) (2) (a) and (b) that are related to pregnancy, including postpartum and family planning services, 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 activities 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.

Spend–down requirements discussed. *Swanson v. HSS*, 105 W (2d) 78, 312 NW (2d) 833 (Ct. App. 1981).

Five–step process for evaluating disability claims applied. *Clauer v. DHSS*, 174 W (2d) 344, 497 NW (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 W (2d) 37, 519 NW (2d) 706 (Ct. App. 1994).

Regulation which “deemed” resources of one spouse to be “available” to the other was valid. *Schweiker v. Gray Panthers*, 453 US 34 (1981).

#### 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 (1) (bm) and (p), 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.

#### 49.49 Medical assistance offenses. (1) FRAUD. (a) *Prohibited conduct.* No person, in connection with a medical assistance program, may:

1. Knowingly and wilfully 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 wilfully 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 wilfully 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 convicted of violating this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

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 rec-

ommending 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, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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 wilfully 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. Violators of this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(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 may be fined not more than \$25,000 or imprisoned not more than 5 years or both.

(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 wilfully 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 may be fined not more than \$25,000 or imprisoned not more than 5 years or both.

(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 employe 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. Ten percent of the money deposited in the general fund that was awarded under this subsection for 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.

The only state of mind required 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 W (2d) 80, 505 NW (2d) 468 (Ct. App. 1993).

Nursing home guarantor agreements may violate (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, [49.046] or 253.05 or medical assistance.

**NOTE:** Section 49.046 was repealed by 1995 Wis. Act 27.

(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 to medical benefits or assistance.

**History:** 1991 a. 178, 214; 1993 a. 481; 1995 a. 27, 407.

**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 examining 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.** (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 and cannot reasonably be expected to be discharged from the nursing home and return home. The lien is for the amount of medical assistance paid on behalf of the recipient while the recipient resides in a nursing home.

(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.

(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, 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 and provided care to the recipient that delayed the recipient's admission to the nursing home.
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.

(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 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 recipient or against the estate of the surviving spouse of a recipient 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 medical institution 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 (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.

(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 \$3,000 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 \$1,000 in value.

(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) 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, 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 shall record the final judgment as provided in s. 863.29.

(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.

(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. 49.33 (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 (1) (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.

**History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27.

Preserving the Homestead of the Small Estate: Wisconsin's Medical Recovery Law. Gilbert. Wis. Law. July 1992.

Recovery of benefits from the estate of a recipient's surviving spouse under sub. (3) (a) exceeds the authority granted by federal law. DHSS v. Estate of Budney, 197 W (2d) 949, 541 NW (2d) 245 (Ct. App. 1995).

**49.497 Recovery of incorrect medical assistance payments.** (1) The department may recover any payment made incorrectly for benefits specified under s. 49.46, 49.468 or 49.47 if the incorrect payment results from any misstatement or omission of fact by a person supplying information in an application for benefits under s. 49.46, 49.468 or 49.47. The department may also recover if a medical assistance recipient or any other person responsible for giving information on the recipient's behalf fails to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. The department's right of recovery is against any medical assistance 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 shall begin recovery actions on behalf of the department according to rules promulgated by the department.

(2) A county or governing body of a federally recognized American Indian tribe may retain 15% of benefits distributed under s. 49.46, 49.468 or 49.47 that are recovered under sub. (1) due to the efforts of an employe 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.

**History:** 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359.

See note to 767.51 citing In re Paternity of N.L.M., 166 W (2d) 306, 479 NW (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 employe" 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.

(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 individual 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 wilfully and knowingly certify under subd. 2. a material and false statement in an assessment.

4. No individual may wilfully 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 wilfully 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 found incompetent under s. 880.33, 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 neglect, abuse or misappropriation of property 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 found incompetent under s. 880.33, 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 appointed under s. 880.33.

(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 state treasurer for deposit in the school fund. The department shall deposit all penalty assessments and interest in the appropriation under s. 20.435 (1) (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.

**49.499 Nursing facility resident protection.** From the appropriation under s. 20.435 (1) (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:

(1) The cost of relocating the resident from the nursing facility to another nursing facility.

(2) Maintenance of operation of a nursing facility pending correction of deficiencies or closure of the nursing facility.

(3) 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.

**History:** 1989 a. 31.

## SUBCHAPTER V

### OTHER MEDICALLY RELATED SERVICES AND SUPPORT 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).

**49.68 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) 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) 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–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 or from private health, accident, sickness, medical and hospital insurance coverage. 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 becomes available during the treatment period, state aid 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.

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).

(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. 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.

**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 \$3,000 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 \$1,000 in value.

(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) 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, 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 shall record the final judgment as provided in s. 863.29.

(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.

**History:** 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128.

**49.683 Cystic fibrosis aids.** (1) 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 under s. 20.435 (1) (e).

**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.

**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. 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 which 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 which are payable under any other state or federal program or under any grant, contract and any 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.

**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 appropriation under s. 20.435 (1) (am), 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.

**(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.

**49.687 Disease aids; patient financial and liability requirements. (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 current income exceeds specified limits 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.

**(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. To ensure that the needs for treatment of patients with lower incomes receive priority within the availability of funds under s. 20.435 (1) (e), the department shall revise the sliding scale for patient liability by January 1, 1994, and shall, every 3 years thereafter by January 1, review and, if necessary, revise the sliding scale.

**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.

**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.

County didn't violate (3) by terminating county home operations, conveying home's assets and leasing physical plant to private operator. *Local Union 2490 v. Waukesha County*, 143 W (2d) 438, 422 NW (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 depen-

dent 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.

**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.

## SUBCHAPTER VI

### GENERAL PROVISIONS

**49.81 Public assistance recipients' bill of rights.** The department of health and family services, the department of industry, labor and job 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.
- (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) and 9130 (4).

#### 49.82 Administration of public assistance programs.

(1) DEPARTMENTS TO ADVISE COUNTIES. The department of health and family services and the department of industry, labor and job 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 blanks and reports. The department of health and family services and the department of industry, labor and job development shall also publish such information as it deems 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), 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).

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 services under s. 49.22 or supplemental payments under s. 49.77 for any purpose not connected with the administration of the programs. 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.

**NOTE:** This section is shown as affected by three acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

**History:** 1995 a. 27 ss. 3142, 3144; Stats. 1995 s. 49.83; 1995 a. 289, 361, 404; s. 13.93 (2) (c).

#### 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.

#### 49.85 Certification of certain public assistance overpayments.

(1) COUNTY DEPARTMENT NOTIFICATION REQUIREMENT. If a county department under s. 46.215, 46.22 or 46.23, a governing body of a federally recognized American Indian tribe or band or a Wisconsin works agency determines that the department of health and family services may recover an amount under s. 49.497 or that the department of industry, labor and job development may recover an amount under s. 49.125, 49.161 or 49.195 (3), the county department or governing body shall notify the affected department 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. 49.497, except that the department of health and family services 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.

(b) At least annually, the department of industry, labor and job 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 industry, labor and job development, the department of industry, labor and job development has determined that it may recover under ss. 49.125, 49.161 and 49.195 (3), except that the department of industry, labor and job 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. 49.497, 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 industry, labor and job development 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 industry, labor and job development intends to certify to the department of revenue an amount that the department of industry, labor and job development has determined to be due under s. 49.125, 49.161 or 49.195 (3), 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 industry, labor and job 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 industry, labor and job development is appealed, that department will not certify the amount to the department of revenue while the determination of the department of industry, labor and job development is under appeal.

4. Inform the person that, unless a contested case hearing is requested to appeal the determination of the department of industry, labor and job 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 industry, labor and job 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 industry, labor and job development shall hold a contested case hearing under s. 227.44, except that the department of industry, labor and job 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 industry, labor and job development from attempting to recover the amount through other legal means. The department of health and family services or the department of industry, labor and job development shall promptly notify the department of revenue upon recovery 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.

**49.855 Certification of delinquent payments. (1)** If a person obligated to provide child support or maintenance is delinquent in making court-ordered payments, or owes an outstanding amount that has been ordered by the court for past support, medical expenses or birth expenses, the clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)], whichever is appropriate, upon application of the county designee under s. 59.53 (5) or the department of industry, labor and job development, shall certify the delinquent payment or outstanding amount to the department of industry, labor and job development.

**NOTE:** Sub. (1) is shown as affected by three acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(2) At least annually, the department of industry, labor and job development shall provide to the department of revenue the certifications that it receives under sub. (1) and 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.

(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 or maintenance order, 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). The notice shall provide that within 20 days the obligor may request a hearing before the circuit court rendering the order. 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 family court commissioner, the clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)] is prohibited from disbursing the obligor's state tax refund or credit. The family 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. An obligor may, within 20 days of receiving notice that the amount certified shall be withheld from his or her federal tax refund or credit, request a hearing under this subsection.

**NOTE:** The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(4) The department of revenue shall send that portion of any state or federal tax refunds or credits withheld for delinquent child support or maintenance or past support, medical expenses or birth expenses to the department of industry, labor and job development for distribution to the appropriate clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)]. The department of industry, labor and job development shall make a settlement at least annually with the department of revenue and with each clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)] who has certified a delin-

quent obligation or outstanding amount for past support, medical expenses or birth expenses. The settlement shall state the amounts certified, the amounts deducted from tax refunds and credits and returned to the clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)] and the administrative costs incurred by the department of revenue. The department of industry, labor and job development may charge the county whose clerk of circuit court or [county] support collection designee under s. 59.07 (97m) [59.53 (5m)] certified the obligation or outstanding amount the related administrative costs incurred by the department of industry, labor and job development and the department of revenue.

**NOTE:** The bracketed numbers indicate the correct cross–references. The bracketed "county" was inserted by 1995 Wis. Act 404 without being shown as underscored. The change was intended. Corrective legislation is pending.

**(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. (2) or (2m) 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. 45.351 (1), this chapter or ch. 46 or 108. 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. 45.351 (1), this chapter or ch. 46 or 108, 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 or maintenance order, 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). 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. 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. The family court commissioner may conduct the hearing. Pending further order by the court or family court commissioner, the clerk of circuit court or county support collection designee under s. 59.07 (97m) [59.53 (5m)] 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.

**NOTE:** The bracketed language indicates the correct cross–reference. 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 industry, labor and job development for distribution to the appropriate clerk of court, county support collection designee under s. 59.07 (97m) [59.53 (5m)] or department of health and family services, whichever is appropriate.

**NOTE:** The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(d) A setoff under s. 73.12 (3) has priority over withholding under this subsection.

**(5)** Certification of an obligation to the department of industry, labor and job development does not deprive any party of the right to collect the obligation or to prosecute the obligor. The clerk of court or county support collection designee under s. 59.07 (97m) [59.53 (5m)], whichever is appropriate, shall immediately notify the department of industry, labor and job development of any collection of an obligation that has been certified by the clerk

of court or county support collection designee under s. 59.07 (97m) [59.53 (5m)]. The department of industry, labor and job development shall correct the certified obligation according to the amount the county has collected and report the correction to the department of revenue.

**NOTE:** The bracketed language indicates the correct cross–references. Corrective legislation is pending.

**(6)** If the state implements the child and spousal support and paternity program under s. 59.53 (5), the state may act under this section in place of the county designee under s. 59.07 (97) [59.53 (5)].

**NOTE:** Sub. (6) is shown as affected by 2 acts of the 1995 legislature. The correct cross–reference is shown in brackets. Correction legislation is pending.

**(7)** The department of industry, labor and job development may provide a certification under sub. (1) to a state agency or authority under s. 21.49 (2) (e), 36.11 (6) (b), 36.25 (14), 36.34 (1), 39.30 (2) (e), 39.38 (2), 39.435 (6), 39.44 (4), 39.47 (2m), 45.351 (2) (c), 45.356 (6), 45.396 (6), 45.74 (6), 145.245 (5m) (b), 234.04 (2), 234.49 (1) (c), 234.59 (3) (c), 234.65 (3) (f), 234.90 (3) (d) or (3g) (c), 234.905 (3) (d), 281.65 (8) (L) or 949.08 (2) (g).

**NOTE:** Sub. (7) is shown as affected by 2 acts of the 1995 legislature and merged by the revisor under s. 13.93 (2) (c).

**History:** 1981 c. 20, 391; 1983 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; s. 13.93 (2) (c).

State's right to certification and interception is not extinguished by children's attainment of majority. *Marriage of Howard v. Howard*, 130 W (2d) 206, 387 NW (2d) 96 (Ct. App. 1986).

**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 industry, labor and job development or any of its divisions or agencies shall be by check, share draft or other draft signed by the secretary of industry, labor and job development or by one or more persons in the department of industry, labor and job development designated by written authorization of the secretary of industry, labor and job development. Such checks, share drafts and other drafts shall be signed personally or by use of a mechanical device adopted by the secretary of industry, labor and job 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 industry, labor and job development or his or her designees.

**History:** 1995 a. 27 ss. 3213, 9130 (4).

**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 industry, labor and job 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.

**(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 chap-

ter, 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).

(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 industry, labor and job 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. 49.19, 49.20, 49.30 or 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.

(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 industry, labor and job development within 30 days after the end of the month in which the recovery is made in a man-

ner specified by the department of industry, labor and job 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.

Counties were entitled to be reimbursed for medical assistance from insurance settlements obtained by accident victims, despite fact that neither victim had been fully compensated. *Waukesha County v. Johnson*, 107 W (2d) 155, 320 NW (2d) 1 (Ct. App. 1982).

County recouped medical assistance payments from recipient of assistance who was minor. *Perkins v. Utneher*, 122 W (2d) 497, 361 NW (2d) 739 (Ct. App. 1984).

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 industry, labor and job 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 or the department of industry, labor and job 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. 767.45 (1) or an action for child support under s. 767.02 (1) (f) or (j) or 767.08, 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. 767.25.

**(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 ss. 767.45 to 767.60. 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 W (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.

Sub. (1) (a) 2 is substantive provision and legislative intent indicates it is to have prospective effect only. In re Paternity of C.J.H., 149 W (2d) 624, 439 NW (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, wilfully makes any false representations may, if the value of the assistance so secured does not exceed \$300, be required to forfeit not more than \$1,000; if the value of the assistance exceeds \$300 but does not exceed \$1,000, be fined not more than \$250 or imprisoned for not more than 6 months or both; if the value of the assistance exceeds \$1,000 but does not exceed \$2,500, be fined not more than \$500 or imprisoned for not more than 5 years or both; and if the value of the assistance exceeds \$2,500, be punished as prescribed under s. 943.20 (3) (c).

**(2)** Any person who wilfully 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.

Sub. (9) is not unconstitutionally vague. Weber v. State, 59 W (2d) 371, 208 NW (2d) 396.

A welfare fraud involving a sum between \$100 and \$500 constitutes a felony, because it authorizes imprisonment in such event for not more than one year and the section was amended after enactment of the new criminal code. Zastrow v. State, 62 W (2d) 381, 215 NW (2d) 426.

Welfare fraud under (9) is a continuing offense. John v. State, 96 W (2d) 183, 291 NW (2d) 502 (1980).

Insurance payment compensating for loss of personal and household property, which are exempt assets under AFDC regulations, is not exempt asset and must be reported under (6). State v. Salzer, 133 W (2d) 54, 393 NW (2d) 121 (Ct. App. 1986).

Welfare fraud is chargeable as continuing offense. State v. Schumacher, 144 W (2d) 388, 424 NW (2d) 672 (1988).

Sub. (6) requires recipients to report all assets or income, regardless of whether they were illegally obtained. *State v. Baeza*, 156 W (2d) 651, 457 NW (2d) 522 (Ct. App. 1990).

Where 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 W (2d) 485, 525 NW (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 [49.148 \(1\) \(b\)](#) 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.

**NOTE:** This section is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. [13.93 \(2\) \(c\)](#).

**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; s. 13.93 (2) (c).

AFDC money did not lose exemption from garnishment when deposited in checking account. *Northwest Eng. Credit Union v. Jahn*, 120 W (2d) 185, 353 NW (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 W (2d) 617, 492 NW (2d) 350 (Ct. App. 1992).