



TESTIMONY
for the
Joint Committee for Review of Administrative Rules
Public Hearing January 20, 2000

RE: Emergency Rule to Establish ss. HFS 106.12 (9), and 108.02 (9) (f): relating to the rights in contested case proceedings involving health care providers under the Medical Assistance Program.

Statement:

Thank you for the opportunity of testifying this afternoon. My name is Michael Steinhauer and I currently serve as the Executive Director of the Wisconsin Occupational Therapy Association (WOTA). The association represents the interests of over 2000 members who serve the rehabilitative, educational, academic, community, and social needs of the citizens of Wisconsin. This testimony is being provided by the association on behalf of its member **occupational therapists and occupational therapy assistants who universally DO NOT SUPPORT THE EMERGENCY RULE BEING PROPOSED.**

The association strongly objects to the notion that health care providers should have no rights to due processes under the law to discover and understand any actions that adversely impacts on their practice. Regardless of whether the matter is related to a criminal or civil case, it is a fundamental right of all Americans to obtain information about a case being developed by an entity, in this case the Medical Assistance Programs, for use against its operations. Previous neutral administrative law judge findings support this contention. In addition, please consider the following perspectives:

The Medicaid program should be held accountable like most other state programs – it should be required to answer questions and provide information that impacts on the financial integrity and operations of legitimate providers;

We find that no “emergency” exists in this matter, and thus the request for immediate action has no basis in fact. The question of the rights of providers to discovery does not pose a threat to the “public peace, health, safety or welfare.” Therefore, the stated reasons for pursuing introduction of this proposal by use of the emergency rule is inappropriate, and does not constitute the spirit of the intent by government to allow for such a request.

Further, the fact that the department, “does not have rules providing for discovery in a Class 1 or Class 3 contested case,” does not suggest that the right of discovery should be denied. The department has failed to provide any rationale for taking this position. Short of a logical and reasonable argument, the right for due process should in all circumstances be retained.

Testimony to the Joint Committee for Review of Administrative Rules

January 20, 1999

RE: Emergency Rule HFS 106 and 108

Page 2

We conclude that the department's use of such an opportunity as the emergency rule to pursue their objective is another technique to avoid addressing the central issues:

- ◆ How does the department decide which providers to audit?
- ◆ What criteria does the department use to decide whether to educate a provider or to demand that the provider return funds?
- ◆ Are all providers subject to the same criteria, or are certain providers targeted?
- ◆ Do decision trees or similar formulas exist that assist in the selection of providers for audit or denial.

Specifically, it has been brought to our attention that the department may be making massive recoupment demands of providers surrounding the issue of "inadequate daily documentation of services." The demand for repayment for such a reason falls under those classes that the emergency rule will impact upon. We wish our elected representatives to be aware that the daily documentation issue continues to remain an issue of interpretation and appears to change often. Very important decisions that adversely effect providers are being based on this audit function. We hope very much that we can resolve the issue of daily documentation soon, but our immediate concern is to at least preserve the rights of providers to discovery in these class cases, so that due process can be exercised.

To conclude, no evidence for support of the department's position has been forwarded; there is an inappropriate use of the emergency rule provision in this case; every opportunity to defend against a threat to due process should be exercised by our elected representatives and the public; and further exploration of core issues and concerns should be undertaken as directed by the legislature.

NO DUE PROCESS RESULTS IN NO ACCOUNTABILITY
PLEASE SUSPEND THIS EMERGENCY RULE REQUEST!
THANK YOU!

Respectfully Submitted,

Michael J. Steinhauer, OTR, MPH, FAOTA
Executive Director

Teri Black, COTA
Legislative Committee Chair

Jan Stevens, OTR
Reimbursement Committee Chair



TO: Senator Judy Robson, Co-Chair
Representative Glenn Grothman, Co-Chair

FROM: Kathy Andersen, Associate Director
Government Relations

DATE: January 20, 2000

RE: Emergency Rule HFS 106 & 108

The State Medical Society of Wisconsin urges the committee to suspend Emergency Rule HFS 106 and 108. The SMS is extremely concerned about the broader public policy implications of the department's proposal and we believe this issue should be resolved through the regular rulemaking process, thereby allowing an appropriate opportunity for review and comment.

Providers should be entitled to discovery in all investigation proceedings, be it fraud or audit. Medicaid audit proceedings may have significant consequences for providers and therefore, providers should be entitled to discovery information needed to support their cases. There is a vast imbalance of knowledge that could jeopardize providers' ability to prove their case. When the department has broad access to documents in a provider's office and the provider does not have a right to discovery, as the department proposes, it drastically impairs providers' ability to exercise their right to appeal an administrative ruling.

This emergency rule could have a dramatic chilling effect on provider participation in the Medicaid program. As the BadgerCare program expands Medicaid enrollment by tens of thousands of people and as providers continue to lose money treating these enrollees, the threat of unfair audit proceedings could be the final straw causing providers to withdraw from treating Medicaid patients.

The pattern of how the department has tried to implement changes to the Medicaid program raises significant questions. DHFS sought to avoid public scrutiny by attempting to remove existing Medicaid due process rights in the biennial budget and are hoping to again avoid public scrutiny by circumventing the regular administrative rule making process.

There may be many ways to limit discovery to insure that the process is reasonable and fair for both parties. However, the department is attempting to quash reasonable efforts to achieve fairness by alleging that an emergency exists. We urge committee members to suspend Emergency Rule 106 and 108 so that there may be full public debate regarding how best to implement or expand a responsible and fair Medicaid audit and fraud program.

Grimm, Maggie

From: Craig Shirley [lash@spacestar.net]
Sent: Thursday, January 20, 2000 5:08 AM
To: rep.grothman@legis.state.wi.us
Subject: Medical assistance rule change request

Rep. Glenn Grothman

1-20-00
State Capitol, RM 15 North
Box 8592
Madison, WI

RE: Concern over the request by the Medical Assistance auditing bureau to provide their department with protection from "the right of disclosure".

Note: I would like to request that this statement be distributed to the committee members prior to the meeting today.

Dear Mr. Grothman,

As a practicing Dentist in Wisconsin, I have been a provider for Wisconsin Medical Assistance for 20 years. It has been my experience that WMA has proven again and again to be punitive, disrespectful, and dictatorial towards their providers. Most Dentists will not work with WMA because of their attitude. Complaints and concerns fall on deaf ears. The paperwork, the constant rule changes, and the lack of provider support is crushing. It is my opinion that WMA would love to see ALL providers for dental services provide as little service as possible.

I have been aware that over the last 4-5 years, their "Audit Bureau" has been targeting different groups of healthcare providers for audit of their paperwork and billing procedures. There is an aura of a "holy war" in these inquisitions, and I believe honest people are getting "burned at the stake".

Where actual evidence of "fraud" exists, the accused has the right to a fair trial outside the bureau's jurisdiction.

However, where the auditors determine that there was no fraud, but that there were simple "billing errors", or that rules were not followed to the letter, the provider is instructed that all money must be returned. This could be something as simple as a treatment note that was not signed. Human error is not tolerated.

The Bureau claims total power of determination. The provider's only right is to appear before a mediator who also happens to be on their payroll, and has little power to aid the provider.

Lawyers for the providers are routinely turned down on their request for information gathered in the audit. They are told that the Bureau does not have to cooperate in any way.

The Bureau answers to no one. Absolute power leads to abuse of power.

When it became known recently that the Bureau might be subject to cooperate with the right of discovery of the providers, they apparently decided to change the rules to give them immunity.

Our constitution was set up on the principal of "checks and balances". It is my opinion that WMA has long since overstepped this principal, and feel responsible to NO one.

Honest providers of valuable services are no longer providing MA services, or even going out of business because of this "out of control" department. In my experience, children with terrible toothaches and infections are not receiving services.

WMA can not be allowed to grab more power and autonomy.

In fact, the opposite should be happening. They need to be held accountable just like any other governmental body under the constitution, and should, in fact, be scrutinized for violating basic citizen rights. This whole system may need to be taken apart and rebuilt.

Please vote "no" on this proposed rule change.

Dr. Craig W. Shirley
1810 Crestview Dr.
Hudson, WI 54016
715-386-9572



REPRESENTATIVE GARY E. SHERMAN
74th Assembly District

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715-774-3113

January 20, 2000

Senator Judy Robson
Co-Chair, JCRAR
Room 15 S – State Capitol

Dear Senator Robson:

Attached please find a copy of testimony sent by Grace Heitsch, MD, Duluth Clinic.

I have known Dr. Heitsch for many years. She is well respected for her dedicated work with children. I would appreciate the members of the JCRAR taking the time to read her letter and insight into the work of the Special Children' Center at Hudson.

Would you please distribute Dr. Heitsch's letter to the senate members of the JCRAR.
Thank you.

Very truly yours,

Representative Gary Sherman
74th Assembly District

GS:bf

Freidig, Boots

From: Sherman, Gary
Sent: Thursday, January 20, 2000 11:36 AM
To: 'Heitsch, Grace'; Freidig, Boots
Subject: RE: Testimony for Joint Committee for Review of Administrative Rules -hearing today

-----Original Message-----

From: Heitsch, Grace [<mailto:GHeitsch@smdc.org>]
Sent: Thursday, January 20, 2000 7:19 AM
To: 'Sen Judith Robson'
Cc: 'Senator Robert Jauch'; 'Representative Gary Sherman'; 'Kathy Anderson SMS'
Subject: Testimony for Joint Committee for Review of Administrative Rules -hearing today

Senator Judy Robson and Staff;

I am writing to you as the Chair of the Joint Committee for Review of Administrative Rules; I regret that I cannot appear today for the hearing regarding the Audit of the Special Children's Center of Hudson WI. I am sending testimony to you in hopes that you can distribute it to other committee members. Thank you for considering this important issue.

<<SCC TEST.doc>>

1/20/00

To Members of the Joint Committee for Review of Administrative Rules for the State of Wisconsin;

I regret that I cannot appear in person to speak with you.

This letter is sent to express my support and satisfaction with the Special Children's Center of Hudson, Wisconsin and the truly amazing work they do for and with the children of our state.

I have worked with Nancy Lawton Shirley, OTR for seven years have worked more extensively with the Special Children's Center for the last three years. I have sent numerous families with a variety of disabilities to them for a wide variety of services. Despite the distance I am asking these families, many with several special needs children to travel (175 miles), I have not had a single family complain to me that the evaluation and guidance was not worth the trip.

I have found their work nothing but ethical and laudable. Their staff are knowledgeable. They are able to work with a wide variety of families and children with various disabilities; always 'meeting the family where they are' and designing age and culturally appropriate programs individually tailored to the needs of the child and family.

I find the reports from the Special Children's Center to be thorough, readable and informative. The teachers in our schools have often mentioned these notes as helpful and very complete.

Picture yourself a parent of a beautiful child who grows to be 'tactily defensive.' This means she cannot tolerate having her hair brushed, tantrums in the shower, refuses to wear underwear or any tight fitting clothing as they 'hurt' her. You try to send this girl to school, and she fights with

the children (they are touching her and it hurts). Your family tells you 'just need to be more firm with her' and you have the feeling that the church members all think you are a rotten parent. You've tried everything that you can read in parenting books and that the psychologists recommend, nothing helps, your life with this beautiful girl, whom you are trying to love is hell. You go to the Special Children's Center for an evaluation. You are taught a program for home care that includes a brushing program and other calming techniques. In two weeks she asks for underwear "so she can be like the other kids." By six weeks she's taking a shower, behaving at school and church and your family can't believe the miracle.

Imagine you adopted a wonderful little baby. He grows and becomes so active and hyper that he can't sit still to eat. He is a danger to himself and his siblings. The neighbors won't let their children come over to play. He can become irritable and aggressive at nothing, he fails kindergarten. He is miserable because no one will be his friend. You take him to the pediatrician and find that he has fetal alcohol syndrome. The future looks dismal. You are sent to the Special Children's Center for a 10 day intensive. Your child comes home with you a calmer more reasonable person. You continue to work with him at home under the guidance and telephone follow up of the Special Children's Center personnel; they help coordinate his home/school program. Within three months the neighbor kids are playing in your yard, in six months he is bringing home smiley faces on his papers from school. There is still a long way to go, but there is hope.

Senators and Representatives, those are not isolated stories. It is not unusual for me to have parents crying in my rooms they are so happy to have their child back, the child they knew was there, but no one else could see. I have several parents who could not afford to pay for their therapy and received scholarships from the Special Children's Center for a part of their treatment, making their child's success possible.

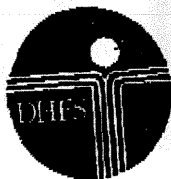
Beyond the individual care that these providers offer to children and families, they are dedicated to teaching others. Nancy Lawton Shirley has traveled to Ashland to see patients with our local OT and school staff; to teach and share her expertise. She has given talks for physicians and other providers gratis. All of the staff at the Center are approachable and available to families and teachers for telephone consults.

I have utmost respect for the work that these women do for the children of our state that no one else knows what to do with. They help children achieve function and families achieve hope in an ethical and cost effective manner. If we the people of the State of Wisconsin Shut this center down with an audit fine, from an audit which has found, not fraud, but only paperwork problems, it will be a crime against the children with special needs of the State of Wisconsin.

Sincerely;

Grace Heitsch, MD, FAAP
Duluth Clinic- Ashland
1625 Maple Ln
Ashland, WI 54806
715/682-2358
fax: 715/682-2481
voice mail: 715/685-7582
e-mail: gheitsch@smdc.org

"Human milk, best for human babies".... Grandma said that
"The miracle is not to fly in the air, or to walk on the water but to walk
on the earth".... Chinese proverb



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lesan, Secretary

December 23, 1999

Mr. Bruce Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

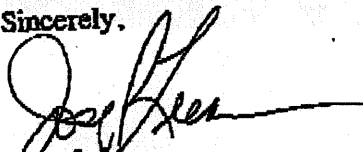
Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of chs. HFS 106 and 108, emergency administrative rules relating to discovery rights in contested case proceedings involving health care providers under the Medical Assistance Program.

The rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

The rules were published in the Wisconsin State Journal today.

Sincerely,



Joseph Lesan
Secretary

Enclosure

CERTIFICATE

STATE OF WISCONSIN

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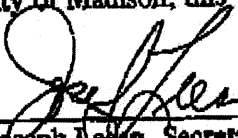
DEPARTMENT OF HEALTH AND FAMILY SERVICES

I, Joseph Lekan, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed emergency rules relating to discovery rights in contested case proceedings involving health care providers under the Medical Assistance Program were duly approved and adopted by this Department on December 16, 1999.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 16th day of December, 1999.

SEAL:



Joseph Lekan, Secretary
Department of Health and Family Services

**ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING EMERGENCY RULES**

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

In Wisconsin, contested case proceedings for which state agencies must hold administrative hearings are by statute divided into three categories. Class 1 cases involve situations in which the agency has substantial discretionary authority (such as rate setting or the grant or denial of a license) but no imposition of a sanction or penalty is involved; Class 2 contested cases involve the imposition of a sanction or penalty; and Class 3 cases are those not included in Class 1 or Class 2. Under s. 227.45(7), Stats., in a Class 2 proceeding the parties have an automatic right to take and preserve evidence prior to the hearing by using discovery procedures such as depositions and interrogatories, but in a Class 1 or Class 3 proceeding the parties generally do not have the right to use discovery unless rules of the agency specifically provide for that right.

The Department of Health and Family Services does not have rules providing for discovery in a Class 1 or Class 3 contested case. Accordingly, discovery has not been available for Class 1 or Class 3 cases except with respect to certain witnesses identified in s. 227.45 (7), Stats. The Department of Administrations's Division of Hearings and Appeals handles cases delegated from this Department. Recently, a hearing examiner in the Division of Hearings and Appeals issued an order in a Class 3 case which held that, because the Division of Hearings and Appeals has its own rules allowing discovery in all cases, those rules override the absence of any mention of discovery in the Department of Health and Family Services' rules concerning hearing rights and procedures.

This Department believes that an emergency exists. If other hearing examiners issue similar rulings, the Department of Health and Family Services would be subject to discovery in all cases. This means that in the absence of Department rules that provide otherwise, the process of litigation for Class 1 and Class 3 cases would be significantly prolonged for all parties and the additional administrative costs to the Department associated with that process (including the need to hire additional program staff, attorneys, and support staff to handle the depositions, interrogatories, and other discovery procedures) would be considerable.

There is a particularly high volume of Class 1 and Class 3 cases involving Medical Assistance program providers. Accordingly, these rules are issued to make clear that discovery remains unavailable in Class 1 and Class 3 Medical Assistance contested case proceedings involving providers.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 49.45(10) and 227.24(1), Stats., the Department of Health and Family Services hereby creates rules interpreting s. 49.45(2) and (3), Stats., as follows:

SECTION 1. INITIAL APPLICABILITY.

The rules created by this order apply to contested case proceedings filed on or after the effective date of this order and to pending contested case proceedings already in progress on the effective date of this order.

SECTION 2. HFS 106.12(9) is created to read:

HFS 106.12(9) DISCOVERY.

(a) In this subsection, "class 1 proceeding", "class 2 proceeding" and "class 3 proceeding" have the meanings given in s. 227.01(3), Stats.

(b) In any class 2 proceeding under this section, each party shall have the right prior to the hearing to take and preserve evidence as provided in s. 227.45(7), Stats., and ch. 804, Stats. In a class 1 proceeding or class 3 proceeding, no party has a right of discovery except with respect to a witness:

1. Who is beyond reach of the subpoena of the agency or hearing examiner;
2. Who is about to go out of the state, not intending to return in time for the hearing;
3. Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
4. Who is a member of the legislature, if any committee of the legislature or the house of which the witness is a member is in session, provided the witness waives his or her privilege.

(c) Nothing in this subsection prohibits a party from exercising any applicable right to obtain record access or copies of records under s. 19.35 or 49.45, Stats.

SECTION 3. HFS 108.02(9)(f) is created to read:

HFS 108.02(9)(f) *Discovery.*

1. In this paragraph, "class 1 proceeding", "class 2 proceeding" and "class 3 proceeding" have the meanings given in s. 227.01(3), Stats.
2. In any class 2 proceeding under this subsection, each party shall have the right prior to the hearing to take and preserve evidence as provided in s. 227.45(7), Stats., and ch. 804, Stats.
3. In a class 1 proceeding or class 3 proceeding under this subsection, no party has a right of discovery except with respect to a witness:
 - a. Who is beyond reach of the subpoena of the agency or hearing examiner;
 - b. Who is about to go out of the state, not intending to return in time for the hearing;
 - c. Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
 - d. Who is a member of the legislature, if any committee of the legislature or the house of which the witness is a member is in session, provided the witness waives his or her privilege.
4. Nothing in this subsection prohibits a party from exercising any applicable right to obtain record access or copies of records under s. 19.35 or 49.45, Stats.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Wisconsin Department of Health and
Family Services

Dated: December 16, 1999

By:



Joseph L. Lean
Secretary

SEAL:



**STATE OF WISCONSIN
CRIME VICTIM RIGHTS BOARD**

**Kenneth Kratz, Chair
Penny Beerntsen
Charles McGee
Wendy Gehl
Nancy Stewart**

Jennifer Belich, Program Assistant

**Mail Address
Crime Victim Rights Board
P.O. Box 7951
Madison, WI 53707-7951
Telephone: 414/525-1698**

**WebSite
<http://www.doj.state.wi.us/cvs/cvrb.htm>**

January 7, 2000

Senator Judith Robson
Senate Co-Chair
Joint Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman
Assembly Co-Chair
Joint Committee for Review of Administrative Rules
P.O. Box 8952
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

By this letter, the Crime Victims Rights Board requests a 60-day extension of its emergency rule, CVRB 1, which was published on September 17, 1999 and will expire on February 14, 2000. This extension is needed to enable the Board to continue to address the threat to public welfare posed by violations of the rights of crime victims. The Crime Victims Rights Board was created by 1997 Wisconsin Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, § 9m, adopted in 1993. The Board's process, as authorized by Wis. Stat. § 950.09, represents the only remedy available to victims of crime who have not been provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. Since the publication of CVRB 1 as an emergency rule, the Board has received several complaints alleging violations of the rights of crime victims. Unless CVRB 1 remains in effect, the Board will be unable to fulfill its obligations to these complainants under Wis. Stat. § 950.09.

The Board received the Legislative Council Clearinghouse Report on CVRB 1 on November 16, 1999. The Board's next regularly scheduled meeting, at which it will consider the report, is January 27, 2000. The Board anticipates making revisions to the rule in light of the report and holding a public hearing in late February. For these reasons, the Board requests a 60 day extension of CVRB 1.

A copy of CVRB 1 is attached to this letter. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Ken Kratz" followed by a small mark that appears to be "ket".

Kenneth R. Kratz
Chairperson, Crime Victims Rights Board

KRK:ket

Enclosure

c: Senate President Fred A. Risser
Assembly Speaker Scott R. Jensen
Crime Victims Rights Board (w/o encl.)

CRIME VICTIMS RIGHTS BOARD
EMERGENCY ADMINISTRATIVE RULES

CVRB 1.01 Purpose. The purpose of this chapter is to establish procedures for the review of complaints made to the crime victims' rights board. This chapter interprets the provisions of ss. 950.09 and 950.095, Stats., and also interprets the provisions of ch. 227, Stats., concerning the conduct of proceedings under this chapter.

CVRB 1.02 Definitions. In this chapter:

- (1) "Board" means the crime victims' rights board.
- (2) "Chairperson" means the chairperson of the board.
- (3) "Complainant" means the individual filing a complaint with the board.
- (4) "Complaint" means a written, sworn complaint made to the board regarding a violation of the rights of a crime victim.
- (5) "Department" means the department of justice.
- (6) "Involved party" means an individual who participated in the mediation process as provided in s. 950.08(3), Stats.
- (7) "Mediator" means an employe of the department who has sought to mediate or has actually mediated a complaint made to the department as provided in s. 950.08(3), Stats.
- (8) "Party" means the complainant, the respondent, or both.
- (9) "Probable cause" means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.
- (10) "Respondent" means the individual identified in the complaint as the subject of the complaint.
- (11) "Victim" has the meaning given in s. 950.02(4)(a), Stats.

CVRB 1.03 Delegation of responsibilities. The board may delegate its responsibilities in ss. CVRB 1.05 to 1.07 to an appropriate designee.

CVRB 1.04 Filing. (1) All written statements of a party's position submitted to the board, including but not limited to the complaint and the answer, shall be signed by the person preparing the statement. A party shall verify that the contents of each filing

submitted by that party or on that party's behalf are true and correct to the best of the party's knowledge and shall sign the filing.

(2) All complaints shall be prepared on a complaint form obtained from the mediator. The completed complaint shall be returned to the board at the address provided on the form.

(3) A complaint may be filed by any involved party. The board may not take any action provided by s. 950.09(2), Stats., other than seeking equitable relief as provided by s. 950.09(2)(c), Stats., unless the complaint is filed by a victim or a victim has signed the complaint indicating that he or she consents to the filing of the complaint by the involved party.

(4) The board may consider issuing a report or recommendation as provided by s. 950.09(3), Stats., in response to a complaint filed by an involved party without endorsement by a victim. The board may consider a complaint filed under this subsection, and may issue a report or recommendation as provided by s. 950.09(3), Stats., without making a probable cause determination.

(5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than three years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09(3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than three years before a complaint was filed with the board or the board was otherwise notified of the conduct.

CVRB 1.05 Probable cause determination. (1) Upon receipt of the complaint, the board shall contact the mediator and request verification that the substance of the complaint has been presented to the department and that the department has completed its action as required by ss. 950.08(3) and 950.09(2), Stats.

(2) If the substance of the complaint has not been presented to the department, the board shall advise the complainant of the complainant's obligation to present the substance of the complaint to the department before filing a complaint with the board.

(3) If the department has not completed its action as provided in s. 950.08(3), Stats., the board shall return the complaint form to the complainant and shall advise the complainant that the board cannot review the complaint until the department has completed its action.

(4) If the department has completed its action as provided in s. 950.08(3), Stats., the mediator shall provide the board with information on the mediation process and its outcome. This information may take the form of a memorandum, other written documentation, or both.

(5) A complaint that names an employee of the department as a respondent need not be presented to the department before being presented to the board.

(6) The board shall provide a copy of the complaint, with a cover letter, to the respondent and invite the respondent to submit an answer to the complaint. The board shall provide a copy of this letter to the complainant. If the respondent submits an answer, the board shall provide a copy of the answer to the complainant.

(7) The board shall determine probable cause at its next regularly scheduled meeting or at a meeting called by the chairperson. Upon a vote of the board, the board may deliberate and vote on the probable cause determination in closed session.

(8) In making the probable cause determination, the board may consider all relevant information, including but not limited to:

(a) the complaint

(b) the answer

(c) the information provided by the mediator pursuant to sub. (3) of this section.

(9) The board shall notify the parties and the mediator of its probable cause determination.

(a) If the board finds probable cause, the board shall advise the parties of their right to request a hearing on the complaint.

(b) A finding of no probable cause is a final decision of the board. If the board finds no probable cause, the board shall provide notice to the parties of the right to seek judicial review pursuant to ch. 227, Stats.

CVRB 1.06 Investigations. (1) The board may conduct an investigation of any complaint which meets the probable cause standards under this chapter. The board may request responses to written questions, participation in a personal or telephonic interview with the board, and written documentation. The board may consider a party's refusal to cooperate with the board's investigation in making its determination on the complaint.

(2) The board may request a party to sign a limited release to enable the board to obtain records for which a release is required. A party who is asked to sign a release may request a protective order from the board limiting the disclosure of any such records outside the board's process.

(3) Following its investigation and prior to the hearing, the board shall provide copies to the parties of any documentation obtained during its investigation that is not subject to a protective order prohibiting such distribution.

CVRB 1.07 Hearings. (1) A hearing may be requested by any party or by the board. A party may appear in person or by telephone at the hearing, or may submit a written statement of position on the complaint in place of a personal appearance.

(2) A party who chooses not to appear at the hearing shall notify the board not later than two weeks prior to the hearing of this intent. A party who chooses to submit a written statement shall submit that statement to the board not later than one week prior to the scheduled hearing date.

(3) One month prior to the hearing, or at another date determined by the board, the parties may provide the board with the following:

(a) a list of witnesses whom the party wishes to have the board subpoena for the hearing. Subpoenas may also be issued in accordance with s. 227.45(6m), Stats.

(b) a list of questions for the board to ask another party or witness at the hearing.

(4) The board, or its designee, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing.

(5) The parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, and to present evidence. Questioning of a party by another party is not favored and may be limited by the board consistent with s. 227.45(6), Stats.

(6) The board may set reasonable time limits for testimony and may limit the number of witnesses called by a party. No party may require the mediator to testify as a witness at the hearing.

(7) Proof of a violation of the rights of a crime victim shall be made by clear and convincing evidence. "Clear and convincing evidence" means evidence which satisfies and convinces the board, because of its greater weight, that a violation occurred.

(8) A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence. Testimony will not be transcribed unless a party requests a transcript and pays any costs required to prepare the transcript. The board shall prepare a transcript, at its own expense, in the event a party seeks judicial review of the board's decision.

(9) The board may vote to hold the hearing in closed session pursuant to s. 19.85(1)(f), Stats. Parties and their counsel or another advocate, including a family member, shall be permitted to be present during the entire hearing.

(10) Witnesses subpoenaed at the request of a party or the board shall be entitled to compensation from the board for attendance and travel as provided in ch. 885, Stats.

CVRB 1.08 Decisions. (1) At the close of the hearing, the board shall meet for purposes of deliberating on the complaint. Upon a vote of the board, the board may deliberate in closed session as provided by s. 19.85(1)(a), Stats.

(2) Within 30 days of the close of the hearing, or by another date established by the board, the board's legal counsel shall prepare a written proposed decision for the board, including findings of fact, conclusions of law, and remedy, and shall provide the proposed decision to the board.

(3) The board shall consider the proposed decision at its next regularly scheduled meeting or at a meeting called by the chairperson. The board may amend any portion of the recommended decision prior to approving the final decision. Upon a vote of the board, the board may conduct its discussion of the final decision in closed session as provided by s. 19.85(1)(a), Stats.

(4) The board shall provide the final decision to the parties along with a notice of the right to request rehearing or seek judicial review under ch. 227, Stats.

(5) If no hearing has been held, the board shall make its final decision under the process provided in sub. (2) and (3) of this section.

CVRB 1.09 Rehearing. (1) A party aggrieved by the final decision may file a written request for rehearing with the board within 20 days of the date the final decision is provided to the parties.

(2) The request for rehearing shall include a detailed statement of the grounds for the request, including the material error of fact or law, or newly discovered evidence, that in the party's view warrants a rehearing. If the request is based on newly discovered evidence, the party shall state why the evidence could not have been previously discovered through reasonably diligent effort.

(3) The board may grant a rehearing on the basis of one or more of the following:

(a) A material error of law.

(b) A material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the original decision which could not have been previously discovered through reasonably diligent efforts by the parties.

(4) The board shall determine whether to grant the request for rehearing at its next regularly scheduled meeting or at a meeting called by the chairperson. If the board grants rehearing, it shall follow the procedures in s. CVRB 1.07 in conducting the rehearing.

CVRB 1.10 Judicial Review. Judicial review of the board's final decision is governed by ss. 227.52 to 227.59, Stats.

CVRB 1.11 Miscellaneous provisions. (1) RELIEF FROM DEADLINES. The board may grant a party's request for reasonable extension of the deadlines set forth in this chapter.

(2) NON-RETALIATION. In this subsection, "person" means any individual, corporation, association, business enterprise or other legal entity either public or private. "Person" also includes the state, any political subdivision of the state, and any department or agency of the state or its subdivisions.

(a) No person may discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with the board.

(b) No person may discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with the board.

(c) An individual who believes a violation of this subdivision has been committed may file a complaint with the equal rights division of the department of workforce development or the personnel commission as provided in ss. 111.39 and 230.45, Stats.

(3) COERCION PROHIBITED. Any form of coercion to discourage or prevent an involved party, or a representative acting on behalf of that involved party, from exercising any of the rights under these rules or ch. 950, Stats. is prohibited.

(4) REPRESENTATION. A party may be represented throughout these proceedings, including at hearing, by counsel or by another advocate.

1/20/00

To Members of the Joint Committee for Review of Administrative Rules for the State of Wisconsin;

I regret that I cannot appear in person to speak with you.

This letter is sent to express my support and satisfaction with the Special Children's Center of Hudson, Wisconsin and the truly amazing work they do for and with the children of our state.

I have worked with Nancy Lawton Shirley, OTR for seven years have worked more extensively with the Special Children's Center for the last three years. I have sent numerous families with a variety of disabilities to them for a wide variety of services. Despite the distance I am asking these families, many with several special needs children to travel (175 miles), I have not had a single family complain to me that the evaluation and guidance was not worth the trip.

I have found their work nothing but ethical and laudable. Their staff are knowledgeable. They are able to work with a wide variety of families and children with various disabilities; always 'meeting the family where they are' and designing age and culturally appropriate programs individually tailored to the needs of the child and family.

I find the reports from the Special Children's Center to be thorough, readable and informative. The teachers in our schools have often mentioned these notes as helpful and very complete.

Picture yourself a parent of a beautiful child who grows to be 'tactily defensive.' This means she cannot tolerate having her hair brushed, tantrums in the shower, refuses to wear underwear or any tight fitting clothing as they 'hurt' her. You try to send this girl to school, and she fights with the children (they are touching her and it hurts). Your family tells you 'just need to be more firm with her' and you have the feeling that the church members all think you are a rotten parent. You've tried everything that you can read in parenting books and that the psychologists recommend, nothing helps, your life with this beautiful girl, whom you are trying to love is hell. You go to the Special Children's Center for an evaluation. You are taught a program for home care that includes a brushing program and other calming techniques. In two weeks she asks for underwear

“so she can be like the other kids.” By six weeks she’s taking a shower, behaving at school and church and your family can’t believe the miracle.

Imagine you adopted a wonderful little baby. He grows and becomes so active and hyper that he can’t sit still to eat. He is a danger to himself and his siblings. The neighbors won’t let their children come over to play. He can become irritable and aggressive at nothing, he fails kindergarten. He is miserable because no one will be his friend. You take him to the pediatrician and find that he has fetal alcohol syndrome. The future looks dismal. You are sent to the Special Children’s Center for a 10 day intensive. Your child comes home with you a calmer more reasonable person. You continue to work with him at home under the guidance and telephone follow up of the Special Children’s Center personnel; they help coordinate his home/school program. Within three months the neighbor kids are playing in your yard, in six months he is bringing home smiley faces on his papers from school. There is still a long way to go, but there is hope.

Senators and Representatives, those are not isolated stories. It is not unusual for me to have parents crying in my rooms they are so happy to have their child back, the child they knew was there, but no one else could see. I have several parents who could not afford to pay for their therapy and received scholarships from the Special Children’s Center for a part of their treatment, making their child’s success possible.

Beyond the individual care that these providers offer to children and families, they are dedicated to teaching others. Nancy Lawton Shirley has traveled to Ashland to see patients with our local OT and school staff; to teach and share her expertise. She has given talks for physicians and other providers gratis. All of the staff at the Center are approachable and available to families and teachers for telephone consults.

I have utmost respect for the work that these women do for the children of our state that no one else knows what to do with. They help children achieve function and families achieve hope in an ethical and cost effective manner. If we the people of the State of Wisconsin Shut this center down with an audit fine, from an audit which has found, not fraud, but only paperwork problems, it will be a crime against the children with special needs of the State of Wisconsin.

Sincerely;

Grace Heitsch, MD, FAAP
voice mail: 715/685-7582
e-mail: gheitsch@smdc.org

Flury, Kelley

From: Craig Shirley [lash@spacestar.net]
Sent: Thursday, January 20, 2000 5:22 AM
To: sen.robson@legis.state.wi.us
Subject: FW: Medical assistance rule change request

From: "Craig Shirley" <lash@spacestar.net>
To: rep.grothman@legis.state.wi.us
Subject: Medical assistance rule change request
Date: Thu, Jan 20, 2000, 11:08 AM

Rep. Glenn Grothman
1-20-00
State Capitol, RM 15 North
Box 8592
Madison, WI

RE: Concern over the request by the Medical Assistance auditing bureau to provide their department with protection from "the right of disclosure".

Note: I would like to request that this statement be distributed to the committee members prior to the meeting today.

Dear Mr. Grothman,

As a practicing Dentist in Wisconsin, I have been a provider for Wisconsin Medical Assistance for 20 years. It has been my experience that WMA has proven again and again to be punitive, disrespectful, and dictatorial towards their providers. Most Dentists will not work with WMA because of their attitude. Complaints and concerns fall on deaf ears. The paperwork, the constant rule changes, and the lack of provider support is crushing. It is my opinion that WMA would love to see ALL providers for dental services provide as little service as possible.

I have been aware that over the last 4-5 years, their "Audit Bureau" has been targeting different groups of healthcare providers for audit of their paperwork and billing procedures. There is an aura of a "holy war" in these inquisitions, and I believe honest people are getting "burned at the stake".

Where actual evidence of "fraud" exists, the accused has the right to a fair trial outside the bureau's jurisdiction.

However, where the auditors determine that there was no fraud, but that there were simple "billing errors", or that rules were not followed to the letter, the provider is instructed that all money must be returned. This could be something as simple as a treatment note that was not signed. Human error is not tolerated.

The Bureau claims total power of determination. The provider's only right is to appear before a mediator who also happens to be on their payroll, and has little power to aid the provider.

Lawyers for the providers are routinely turned down on their request for information gathered in the audit. They are told that the Bureau does not have to cooperate in any way.

The Bureau answers to no one. Absolute power leads to abuse of power.

When it became known recently that the Bureau might be subject to cooperate with the right of discovery of the providers, they apparently decided to change the rules to give them immunity.

Our constitution was set up on the principal of "checks and balances". it is my opinion that WMA has long since overstepped this principal, and feel responsible to NO one.

Honest providers of valuable services are no longer providing MA services, or even going out of business because of this "out of control" department. In my experience, children with terrible toothaches and infections are not receiving services.

WMA can not be allowed to grab more power and autonomy.

In fact, the opposite should be happening. They need to be held accountable just like any other governmental body under the constitution, and should, in fact, be scrutinized for violating basic citizen rights. This whole system may need to be taken apart and rebuilt.

Please vote "no" on this proposed rule change.

Dr. Craig W. Shirley
1810 Crestview Dr.
Hudson, WI 54016
715-386-9572