



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

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SEP 08 2000

September 6, 2000

The Honorable Judith Robson
Senate Co-Chair, Joint Committee on Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53702

The Honorable Glenn Grothman
Assembly Co-Chair, Joint Committee on Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

Attached please find additional information regarding the effect of the Division of Vocational Rehabilitation (DVR) moratorium on new enrollments of *Medicaid Purchase Plan* participants, in response to your request dated August 3, 2000.

We are concerned that the moratorium may limit access to the *Medicaid Purchase Plan* for those individuals who may need DVR's assistance in developing an employment plan. The moratorium may also limit the number of enrollees in the *Pathways to Independence* demonstration project. However, DVR and DHFS staff worked diligently in the days leading up to the moratorium to prepare plans for as many current and potential *Pathways* participants as possible.

The information attached describes:

- Basic program, eligibility and enrollment processes for the *Medicaid Purchase Plan*
- Potential reduction of consumer access to employment services
- Department efforts to lessen the effects of the DVR moratorium on persons with disabilities who are working or interested in work

We sincerely appreciate your continued interest in the issues facing working persons with disabilities in Wisconsin. Should you have further questions regarding the *Medicaid Purchase Plan*, please contact Judith Frye in the Center for Delivery Systems Development at (608) 266-9043.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Leean', written over a horizontal line.

Joe Leean
Secretary

Issue Paper: Initial Estimate on the Potential Effect of DVR Restrictive Enrollment

Purpose

To outline any potential effect on people with disabilities who want to participate in the *Medicaid Purchase Plan* (MAPP) resulting from the Division of Vocational Rehabilitation's (DVR) enrollment moratorium.

Background

MAPP is an opportunity for working people with disabilities to buy health care coverage through the Wisconsin Medicaid program. Individuals may pay a monthly premium for this health care coverage, based on income.

To be eligible for MAPP, individuals must be:

- determined disabled by the Disability Determination Bureau (DDB); and
- working, or enrolled in a Department-certified (DHFS) Health and Employment Counseling program (HEC).

Potential Effect on MAPP

Based on the program eligibility criteria, the DVR enrollment moratorium may affect the extent to which people with disabilities can access:

- 1) a Health and Employment Counseling program and
- 2) other necessary services to achieve employment.

There is no requirement for MAPP participants to be affiliated with DVR. However, if a consumer does not have access to vocational services—including a HEC program and other necessary employment services—the ability of individuals with disabilities to return to the workforce may be limited, even with health care coverage available through the *Medicaid Purchase Plan*.

1) Limited Access to Health and Employment Counseling Programs

If an individual is not yet working, s/he may enroll in a "Health and Employment Counseling program" to meet the employment requirement for MAPP eligibility. A HEC program is the combination of services an individual obtains—from a provider/agency of the consumer's choice—to help that consumer achieve employment.

Minimum services required in a HEC program include benefits counseling, employment barrier identification and networking with community resources.

How HEC Works

An interested MAPP applicant must complete an Employment Plan and submit it for review to a HEC "screener". Once the screener has reviewed the plan and submitted a recommendation to DHFS, the consumer is considered "enrolled" in a HEC. See page 4 for an illustration of the MAPP/HEC Application Process.

Approximately 134 people at 34 agencies¹ statewide are DHFS-certified HEC screeners. About 33% of these screeners are DVR counselors. HEC screeners are not required to serve consumers who are not current clients of that screening agency.

Individuals statewide without local access to a HEC screener may use a DHFS-funded toll-free telephone number to receive screening services from a remote location.

How Will Consumers Know about HEC Programs?

The *Medicaid Purchase Plan* is administered through the counties, with local Medicaid application stations processing MAPP applications. Each county agency has received an Operations Memo detailing the requirements of HEC. Each county worker has received a list of all current DHFS-certified HEC screeners across the state (including name, address and telephone number) with which to refer interested consumers.

Table 1. Current Enrollment: MAPP/HEC*

Medicaid Purchase Plan	361
Health & Employment Counseling Program	8 (~2% of MAPP enrollment)

*Numbers reflect enrollment as of August 25, 2000.

Beyond MAPP and the Health and Employment Counseling program, the DVR enrollment moratorium may affect the success of other return to work efforts by people with disabilities.

2) Limited Access to Other Necessary Services to Achieve Employment
a. DVR Employment Services

DVR is the major provider of vocational rehabilitation services to people with disabilities statewide. The DVR enrollment moratorium required that clients complete an Individual Plan for Employment (IPE) by August 21 to be eligible for DVR services. The enrollment moratorium has created three groups of consumers:

- **Cases in Open Status.** Approximately 17,500 individuals are currently in open status and thereby have access to DVR services to the extent DVR funding is available.
- **Cases in Closed Status.** Data from August 25 indicate DVR has reduced its enrollment numbers approximately 23% by closing cases without a completed IPE by August 21. Potential causes for these closures may reflect either the consumer's or the DVR counselor's inability to meet the time constraints imposed by the IPE deadline. It is also possible that a percentage of cases did not complete IPEs because the consumer was not actively pursuing employment or in need of vocational services.
- **Cases Added to the DVR Waiting List.** Those individuals interested in DVR services, who did not complete an IPE by August 21 but would likely have become eligible for DVR service during the moratorium, will be placed on a DVR waiting list. The availability of alternative vocational services and the extent to which individuals may access these services through programs other than DVR will likely vary by disability group. For example, the HIV/AIDS population may have greater opportunity to access service programs funded through grant monies; whereas the mental health population, who may be relying on Community Support Programs with limited enrollment capacities, may have less opportunity.

¹ For the purpose of this paper, all DVR offices statewide are counted as one agency.

b. Pathways to Independence Program

The Department of Health and Family Services is currently involved in several efforts coordinating and promoting the employment of people with disabilities who want to work. Included in these efforts is the *Pathways to Independence* program—a research and demonstration project proposed by the Governor and administered jointly through DHFS and the Department of Workforce Development (specifically, DVR). Individuals must have an open case status at DVR to receive *Pathways* services, which include:

- benefits counseling;
- a comprehensive assistance network for community supports; and
- person-centered vocational modeling.

Consumers with significant² disabilities who may need employment services to meet their employment goals are ideal candidates for the *Pathways* program. DVR clients participating in *Pathways* were also required to have a completed Individual Plan for Employment (IPE) as of August 21 to be eligible for services.

Directions given by DVR managers to field staff regarding the planned moratorium urged them to give priority to current and already referred *Pathways* participants to ensure that IPEs were completed.

Based on information from completed IPEs as of August 25, as many as 510 DVR-open status participants, including 277 current participants, may be appropriate for *Pathways* services. Availability for *Pathways* as of October 1 is estimated at 500 to 530 slots. Since it will take some time to enroll the additional 200⁺ individuals now identified as potential *Pathways* participants, *Pathways* administrators anticipate that there are sufficient participants to keep the program at service capacity until January 1. By that time, however, DVR may need to re-open at least some categories in order to enable *Pathways* participants to fill available slots.

Data from August 25 also show that no more than 9 *Pathways* enrollees failed to complete an IPE by the deadline. These individuals will be placed on the DVR waiting list if they wish to re-apply for DVR services.

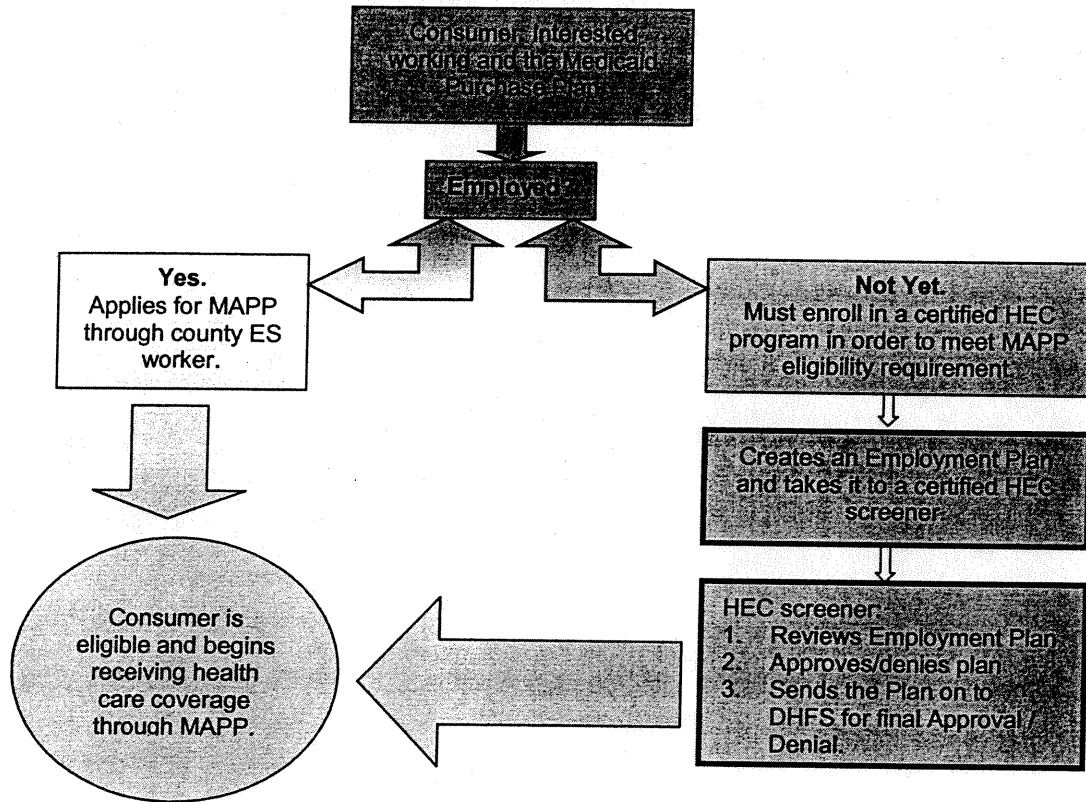
Department Efforts to Address the Effect on Consumer Access

DHFS is pursuing several efforts to lessen the effect of the DVR moratorium on consumer access for the *Medicaid Purchase Plan* and *Pathways to Independence*. For example:

- To date, DHFS has conducted 7 training sessions to certify HEC screeners. On August 17, approximately 20 additional DVR counselors were certified statewide to aid in the screening of current DVR cases for HEC. The Department will conduct an open training for other providers in the fall (October/November) to meet HEC screening demands.
- *Pathways* staff have examined provider caseloads to identify any current or potential consumers who may benefit from *Pathways* services. DHFS worked with providers and central office DVR staff to ensure open case status and completion of IPEs by August 21 as discussed earlier.

² “Significant” refers to a disabling condition that meets both the DVR Order of Selection and the definition of disability as determined in Wisconsin by the Disability Determination Bureau.

MAPP and HEC Application Process



SENATOR JUDITH B. ROBSON
CO-CHAIR
PO Box 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
PO Box 8952
MADISON, WI 53708-8952
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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified May 2000

Date 9/20/00 Location 201 SE
Moved by Robson, Seconded by Welch

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule HFS 103 (Medicaid Purchase Plan) by 48 days, at the request of the Department of Health and Family Services.

amended to include letter to DHFS & DWD (see attached)

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			✓
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON
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REPRESENTATIVE GLENN GROTHMAN
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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

September 20, 2000

BY INTER-D

Secretary Joe Leean
Department of Health and Family Services
1 West Wilson Street
Madison, WI

Re: Emergency Rule HFS 103 (relating to Medicaid Purchase Plan)

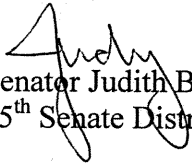
Dear Secretary Leean:


We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on September 20, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule HFS 103, relating to the Medicaid Purchase Plan.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule HFS 103 for 48 days. The committee approved the motion on a 9 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

SEP 11 2000



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lekan, Secretary

September 8, 2000

The Honorable Judy Robson, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Dear Senator Robson:

The Department of Health and Family Services has an emergency rulemaking order in effect that will expire before the emergency rules are replaced by permanent rules unless the effective period of the emergency order is extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective period of the emergency orders by **48 days** as indicated below. The emergency rules are as follows:

Medicaid Purchase Plan. The emergency rulemaking order amending and creating Medical Assistance rules for what is known as the "Medicaid Purchase Plan" was published and effective on March 15, 2000. Your committee approved the extension of this rule on July 25, 2000 for a period of 60 days. That first extension **will expire on October 14, 2000**, unless extended a second time. The Department's rulemaking order created rules specifying the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wisconsin Act 9, operates. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medicaid, the name given to Medical Assistance in Wisconsin, on a sliding-fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

As of August 31, 2000, 377 persons receive health care coverage under the Plan.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home and community-based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan had to be in effect before the Medicaid Purchase Plan could begin. The program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion no later than January 1, 2000, or 3 months after full federal approval, whichever was later. The Department received full federal approval on January 7, 2000. The Department published the rules by emergency order with an effective date of March 15, 2000 to meet the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The emergency rules:

Senator Robson
September 6, 2000
Page 2

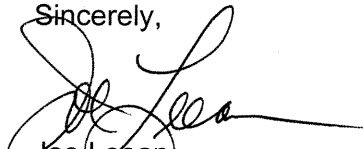
- provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non-financial and financial conditions of eligibility for persons under the Medicaid Purchase Plan;
- define whose income is used when determining eligibility and the monthly premium amount;
- explain statutory conditions for continuing eligibility;
- explain how the monthly premium amount is calculated;
- describe the processes associated with the independence account; and
- set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible person or an ineligible family member of an eligible member for the Medicaid Purchase Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

Replacement permanent rules were sent to the Legislative Council for review on April 28, 2000 and taken to four public hearings during the period June 15-20, 2000. The proposed permanent rules differ from those in the emergency rulemaking order insofar as they provide definitions, explain program components, and describe the means for determining continuing eligibility for the *Health and Employment Counseling* program. The *Health and Employment Counseling* program is a program that enables an individual to participate in the Medicaid Purchase Plan prior to achieving employment (see s. HFS 103.03 (1) (g) 1. b.). At the time the emergency rules were published, the Department had not determined the details of the *Health and Employment Counseling* program. A copy of the proposed permanent rules indicating changes from the emergency rules is attached to this letter. All of the changes appear in sections 3 and 4 of the permanent rulemaking order.

The Department intends to send the Legislative Report on the proposed permanent rules to the Presiding Officers of the Senate and Assembly by September 11, 2000. Consequently, the Department will not be able to file the rules until at least October 11 for a December 1, 2000, effective date. Therefore, I request an extension of the effective period of the emergency rules by **48 days**, through November 30, 2000. If the effective period of the emergency rules is not extended, in the interim, the Department will not have the authority to continue the implementation of the MA Purchase Plan.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about the rules, you may contact Melissa Wittman of the Department's Office of Strategic Finance at 264-9964.

Sincerely,



Joe Lekan
Secretary

Attachments

cc Representative Grothman

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING AND CREATING RULES

FINDING OF EMERGENCY

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

This order creates rules that specify the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wisconsin Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in Wisconsin, on a sliding-fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home and community-based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan must be in effect before the Medicaid Purchase Plan may begin. The program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later. Full federal approval was received on January 7, 2000. The Department is publishing the rules by emergency order with an effective date of March 15, 2000 to meet the expected program implementation date and the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non-financial and financial conditions of eligibility for individuals under the Medicaid Purchase Plan; define whose income is used when determining eligibility and the monthly premium amount; explain statutory conditions for continuing eligibility; explain how the monthly premium amount is calculated; describe the processes associated with the independence account; and set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible individual or an ineligible family member of an eligible member for the Medicaid Purchase Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

ORDER

Pursuant to the authority vested in the Department of Health and Family Services by ss. 49.45 (10) and 49.472 (3) (h), (4) (a) (intro.) and 2. a., Stats., as created by 1999 Wisconsin Act 9, and ss. 227.11 (2) and 227.24 (1), Stats., the Department of Health and Family Services hereby amends and creates rules interpreting s. 49.472, Stats., as created by 1999 Wisconsin Act 9 as follows:

SECTION 1. HFS 102.04 (3) (d) is amended to read:

HFS 102.04 (3) (d) Within 365 days after the date eligibility was last determined for SSI-related persons and persons eligible for the medicaid purchase plan except that when a person is determined to be permanently disabled no further determination shall be made of that disability unless the county agency becomes aware of information that would affect the determination of permanent disability; and

SECTION 2. HFS 103.01 (1) (a) is amended to read:

HFS 103.03 (1) (a) Eligibility for medical assistance shall be determined pursuant to ss. 49.455, 49.46(1), 49.47(4) and 49.472, Stats., and this chapter, except that medical assistance shall be provided without eligibility determination to persons receiving SSI or those persons who would currently be eligible under the AFDC program that was in place on July 16, 1996 in this state pursuant to s. 49.19, Stats.

SECTION 3. HFS 101.03 (34m), (36m), (42m), (51m), (52g), (78u), (80m), (94m), (94p), (94r), (152m), (170m), (172m), (180m) and (183) are created to read:

HFS 101.03 (34m) "Cost-effectiveness" means the cost of paying premiums or purchasing health insurance for a medicaid purchase plan recipient through an employer is likely to be less than the cost of providing medical assistance.

(36m) "Date of account creation" means the date the recipient establishes an independence account with a financial institution.

(42m) "Direct deposit" means an electronic transfer of funds from the recipient's financial institution to the medicaid purchase plan or the department's fiscal agent, initiated by the completion of all registration forms deemed necessary by the department, the recipient's financial institution, or the department's fiscal agent and prepared with evidence of authorized consent for all parties involved in the transaction.

(51m) "Electronic funds transfer" means any electronic transfer of a recipient's financial holdings or a portion of these holdings as determined by the recipient to another account, initiated by the completion of all registration forms deemed necessary by the department, the recipient's financial institution, or the department's fiscal agent and prepared with evidence of authorized consent for all parties involved in the transaction.

(52g) "Employed" means the individual receives income for ongoing services and as a result of this income has incurred a potential tax liability. Any of the following may be used to verify employment:

(a) Pay stubs.

(b) Wage tax receipts.

(c) State or federal income tax returns.

(d) Self-employment bookkeeping records.

(e) Employer's wage records.

(f) Statements from employers. Employer statements may include those from personnel officers, supervisors or other employees of the company who have direct knowledge of the applicant or recipient's wages. The person making the statement must provide evidence (such as employment records, business correspondence, etc.) that they are or were employees of the company.

(g) Other agencies who receive reports of the applicant or recipient's income directly from the employer.

(78u) "Impairment related work expense" means a cost paid for by a medicaid purchase plan applicant or recipient to work that is all the following:

(a) Related to the applicant's or recipient's disability.

(b) Not a cost that any similar worker, without a disability, would also have.

(c) Not reimbursable by another source such as medicare, medical assistance, private insurance or an employer.

(d) Representative of the standard charge for the item or service in the applicant or recipient's community.

(80m) "Independence account" means an account approved by the department that consists solely of savings, dividends and gains derived from savings and income earned from paid employment after the initial date that an individual began receiving medical assistance under the medicaid purchase plan.

(94m) "Medicaid purchase plan" means the medical assistance program allowed under 42 USC 1396a (a) (10) (A) (ii) and s. 49.472, Stats.

(94p) "Medicaid review period" is the medical assistance recipient's application month plus 11 months or the medicaid eligibility review month plus 11 months.

(94r) "Medical expense" means a cost paid by a medicaid purchase plan recipient for goods or services that have been prescribed or provided by a medical practitioner licensed in Wisconsin or another state. The cost is not reimbursable by another source such as medicare, medical assistance, private insurance or an employer.

(152m) "Remedial expense" means a cost paid by a medicaid purchase plan recipient that may be considered to be related to that individual's health, employment or disability. The cost is not reimbursable by another source such as medicare, medical assistance, private insurance or an employer.

(170m) "Standard maintenance allowance" means a deduction established by the department and adjusted annually in accordance with the cost of living. The standard maintenance allowance may not be less than the sum of \$20, plus the federal supplemental security income payment level described under 42 USC 1382 (b) plus the state supplemental security income payment described

under s. 49.77 (2m), Stats.

(172m) "Substantial gainful activity level" means the income standards as described in 20 CFR 404.1572 and the Federal social security administration's program operations manual.

(180m) "Income disregard" means earned or unearned income that is not considered when calculating an applicant or recipient's monthly premium amount.

(183) "Wrap-around coverage" means the supplemental health care coverage necessary to provide any services which would be covered under medical assistance but which are not covered under the coverage offered by the employer.

SECTION 4. HFS 103.03 (1) (g) is created to read:

HFS 103.03 (1) (g) *Medicaid purchase plan eligibility*. To be non-financially eligible for the medicaid purchase plan a person shall meet the conditions described in this chapter for SSI-related persons and shall be age 18 or older and the person shall meet all of the following conditions:

1. a. The individual shall be employed; or
 - b. The individual shall be enrolled in a department-certified health and employment counseling program; or
 - c. The health of the individual participating in the medicaid purchase plan for at least 6 months shall have deteriorated to the point that he or she is unable to work or participate in the health and employment counseling program under this paragraph and the county agency on a case-specific basis has waived the requirement. The county agency may waive the requirement for an individual for up to 6 months if the person is hospitalized, injured or suffers any other health setback. The individual shall supply proof of health difficulties. The department may also provide a temporary waiver of the work requirement on a case-specific basis.
2. The person meets SSI-related non-financial eligibility requirements under s. HFS 103.03 (1) (c) as verified under s. HFS 103.03 (1) (d) and s. 49.472 (3) (c), Stats.
 3. The applicant meets the eligibility requirements described in s. HFS 103.087.

SECTION 5. HFS 103.04 (8) and (9) are created to read:

HFS 103.04 (8) **MEDICAID PURCHASE PLAN ELIGIBILITY CRITERIA**. (a) An individual who meets the requirements of ss. HFS 103.03(1) (g) and (2) to (9) and the income and asset limits described in this subsection is eligible for the medicaid purchase plan.

(b) The individual's total net family income is less than 250% of the federal poverty line as determined by the individual's family size. Net income is calculated using the standard SSI disregards and exemptions. The income disregards are the following:

1. Sixty-five dollars and one-half of the family's remaining earned income. If the family does not have any unearned income, \$85 and one-half of the family's remaining earned income.
2. Twenty dollars of any unearned income.
3. Impairment-related work expenses.

(c) The individual has non-exempt assets less than the asset limit described under s. 49.472 (3) (b), Stats.

(d) If the individual leaves the medicaid purchase plan and subsequently re-enrolls in the program, the individual's independence account and any interest, gains, or dividends from that account are disregarded for purposes of subsequent eligibility determinations.

(9) SPECIAL MEDICAID PURCHASE PLAN BUDGETING PROCEDURES. (a) *Medicaid purchase plan group*. Any of the following persons who reside in the home with the applicant or recipient shall be included in determining the family size of the individual applying for the medicaid purchase plan, with this family size used in calculating the individual's financial eligibility under this section:

1. The applicant.
2. The applicant's spouse.
3. Any dependent child of the applicant as described in s. 49.141, Stats.

(b) *Medicaid purchase plan fiscal test group*. The income of any person listed in par. (a) 1. or 2. shall be included when determining financial eligibility of the applicant.

(c) *Medicaid purchase plan coverage*. 1. Medical assistance under the medicaid purchase plan applies to the applicant or recipient only.

2. The monthly premium for the medicaid purchase plan is calculated using only the income of the applicant or recipient.

SECTION 6. HFS 103.06 (15) is created to read:

HFS 103.06 (15) INDEPENDENCE ACCOUNTS. (a) *Account provisions*. 1. Contributions to any of the recipient's registered independence accounts are subject to the rules described in this section and to any policies of the respective financial institution governing the account.

2. All contributions to the recipient's independence account or accounts, including interest, dividends, or other gains from the principal, shall be treated as an exempt asset for the purpose of calculating eligibility for the medicaid purchase plan.

3. The purpose of an independence account is to allow the recipient to purchase any items or services that may aid in his or her pursuit of personal or financial independence.

4. The medicaid purchase plan recipient shall be the sole owner of any account registered as an independence account.

5. Retirement or pension accounts registered as independence accounts are not required to remain as separate holdings from the recipient's other non-exempt resources.

6. The county agency shall monitor the recipient's independence account as described in the medicaid review period for the medicaid purchase plan. The review process shall include verifying all contributions to the recipient's independence account with the financial institution holding the recipient's account.

7. The sum total a medical assistance recipient deposits in all independence accounts may not exceed 50% of the recipient's gross earned income for the medicaid review period. If a recipient's contributions to his or her independence accounts total more than 50% of his or her gross earned income within the medicaid review period, an amount equal to one-twelfth of the contributions greater than 50% of gross earned income shall be added to the recipient's monthly premium payment under s. HFS 103.087 for the next 12 months of eligibility.

(b) *Independence account registration.* 1. An individual shall register each independence account with the county agency. An individual shall re-register the independence account with the county agency if the financial institution or other information for the independence account changes.

2. A medicaid purchase plan recipient shall complete an account registration form at the time of an eligibility determination or at any time during eligibility.

3. The applicant or recipient shall report any changes in personal or financial status to the county agency as described in s. HFS 104.02 (6).

4. For all registered independence accounts that are not retirement or pension accounts, the date of account creation may be no earlier than the date a medicaid purchase plan recipient is determined eligible for medical assistance under this section. For all registered independence accounts that are not retirement or pension accounts, the funds in the independence account shall be held separate from a recipient's non-exempt assets.

SECTION 7. HFS 103.087 is created to read:

HFS 103.087 Conditions for continuation of eligibility. (1) PREMIUMS. (a) Authority.

Subject to this section and s. 49.472, Stats., an individual eligible for the medicaid purchase plan shall pay a monthly premium.

(b) *Applicability.* 1. An applicant or recipient eligible for the medicaid purchase plan whose total earned and unearned income is at or above 150% of the poverty line for the applicable household size shall pay a monthly premium and the applicant shall pay all retroactive premium amounts assessed or other premium payments due.

2. An applicant or recipient eligible for the medicaid purchase plan whose total earned and unearned income is below 150% of the poverty line for the applicable household size need not pay a monthly premium.

3. An applicant or recipient eligible for the medicaid purchase plan whose premium, calculated as described in par. (c), is greater than \$10.00 shall pay a premium for the cost of the health care coverage offered under the medicaid purchase plan.

(c) *Premium Amounts.* 1. An applicant or recipient eligible for the medicaid purchase plan shall pay a monthly premium in accordance with this subsection and the premium schedule in Table 103.087.

2. The county agency shall determine the amount of the premium an applicant shall pay according to the guidelines described in this subsection at the time of application.

3. All earned and unearned sources of income available to the applicant or recipient, except for the interest, dividends or other gains accrued from a recipient's independence account, shall be

used in the premium determination.

4. The applicant or recipient's monthly premium shall be calculated by locating the sum of the monthly adjusted unearned income plus the monthly adjusted earned income on the premium schedule in Table 103.087.

(d) *Calculating the monthly adjusted unearned income.* An applicant or recipient's monthly adjusted unearned income shall be calculated by subtracting the monthly income disregards in subdivs. 1. to 3. from 100% of the applicant or recipient's gross monthly countable unearned income.

1. The standard maintenance allowance. The allowance shall be equal to the sum of the monthly federal supplemental security income cash benefit, the monthly state supplemental cash benefit, and 20 dollars, rounded to the nearest dollar.

2. Monthly impairment related work expenses for an applicant or recipient. To be claimed as a monthly income disregard, the cost may not have been claimed by the applicant or recipient under any other medicaid purchase plan income disregard.

3. Monthly medical and remedial expenses for an applicant or recipient. To be claimed as a monthly income disregard, the cost may not have been claimed by the applicant or recipient under any other medicaid purchase plan income disregard.

4. If the applicant or recipient has monthly unearned income equal to \$0, the monthly income disregards described in subdivs. 1. to 3. apply to the applicant's or recipient's gross monthly earned income. If the applicant or recipient has monthly income disregards greater than his or her monthly unearned income, the difference shall be applied as a deduction to the applicant or recipient's monthly earned income.

(e) *Calculating monthly adjusted earned income.* An applicant or recipient's monthly adjusted earned income shall be 3 percent of the applicant or recipient's gross monthly earned income after the amount of any monthly income disregards greater than the applicant or recipient's total unearned income have been subtracted.

(f) *Calculating the total monthly premium.* 1. The sum of the amounts determined in pars. (d) and (e) shall be applied to the premium schedule in Table 103.087. If the sum of the monthly adjusted earned and monthly adjusted unearned income is greater than \$1025.00, the total monthly premium amount is the exact amount of the sum.

Table 103.087: Medicaid Purchase Plan Premium Schedule

PREMIUM SCHEDULE					
Sum of Monthly Adjusted Earned and Adjusted Unearned Income		The premium is:	Sum of Monthly Adjusted Earned and Adjusted Unearned Income		The premium is:
FROM	TO	PREMIUM	FROM	TO	PREMIUM
\$0	\$10.00	\$0.00	500.01	525.00	500.00
10.01	25.00	10.00	525.01	550.00	525.00
25.01	50.00	25.00	550.01	575.00	550.00
50.01	75.00	50.00	575.01	600.00	575.00
75.01	100.00	75.00	600.01	625.00	600.00
100.01	125.00	100.00	625.01	650.00	625.00
125.01	150.00	125.00	650.01	675.00	650.00
150.01	175.00	150.00	675.01	700.00	675.00
175.01	200.00	175.00	700.01	725.00	700.00
200.01	225.00	200.00	725.01	750.00	725.00
225.01	250.00	225.00	750.01	775.00	750.00
250.01	275.00	250.00	775.01	800.00	775.00
275.01	300.00	275.00	800.01	825.00	800.00
300.01	325.00	300.00	825.01	850.00	825.00
325.01	350.00	325.00	850.01	875.00	850.00
350.01	375.00	350.00	875.01	900.00	875.00
375.01	400.00	375.00	900.01	925.00	900.00
400.01	425.00	400.00	925.01	950.00	925.00
425.01	450.00	425.00	950.01	975.00	950.00
450.01	475.00	450.00	975.01	1000.00	975.00
475.01	500.00	475.00	1000.01	1025.00	1000.00

2. The monthly premium shall be recalculated by the county agency to reflect any changes in earned or unearned income as reported by the recipient. A recipient's premium amount may change for any of the following reasons:

- a. Termination of the recipient from the medicaid purchase plan.
- b. A change in the poverty line or SSI federal or state benefit payment rate.
- c. Changes in income, impairment related work expense costs or medical and remedial expense costs.
- d. Contributions to a recipient's independence account greater than 50% of earned income as described in s. HFS 103.06 (15).
- e. Other changes in personal or financial status that alter medical assistance eligibility.

(g) *Monthly payments.* 1. Before the county agency may certify an applicant as eligible for the medicaid purchase plan, the applicant who owes a premium under this subsection shall pay the premium amount. The premium amount owed shall include the premiums for all retroactive and current months in which the applicant owes a premium as of the date eligibility is determined.

2. An applicant may claim retroactive medicaid purchase plan eligibility for a period of up to 3 months prior to the month of application, but not prior to January 1, 2000. To be eligible for retroactive eligibility, an applicant shall pay the retroactive premium amount for each month claimed, in full, to the county agency prior to the county agency certifying the applicant's eligibility for the medicaid purchase plan.

3. Based on arrangements made by the applicant or recipient, entities other than the applicant or recipient may pay monthly premiums on behalf of the applicant or recipient. The applicant or recipient shall be ultimately responsible for his or her monthly premium payment.

4. If the county agency does not receive payment by the last day of the calendar month for which the premium is owed, the department shall terminate the recipient's eligibility for the medicaid purchase plan, effective the last calendar day of the month.

5. An applicant or recipient may pay monthly premiums in advance, but only for the months in the applicant or recipient's current medicaid review period. The applicant or recipient shall pay advance monthly premium amounts in full.

6. If no premium is required and the applicant meets all other eligibility factors, the county agency shall approve the applicant for the medicaid purchase plan.

(h) *Non-payment of medicaid purchase plan premiums.* 1. An applicant or recipient required to pay a monthly premium shall be ineligible for re-enrollment for the period specified in par. (i) 2. when the applicant or recipient fails to pay his or her monthly premium within the time specified in par. (g) 4. resulting in a finding of premium non-payment.

2. Premium non-payment shall include attempted payment with an instrument such as a check or direct deposit, that has been returned, refused or dishonored. A guaranteed form of payment such as a cashier's check or money order shall be required to replace a returned, refused or dishonored payment.

3. Failure to pay premiums due to circumstances beyond the recipient's control may not be considered non-payment, provided that all past due premiums are paid in full. Circumstances beyond the recipient's control are any of the following:

a. Problems with an electronic funds transfer or direct deposit from a financial institution to the medicaid purchase plan program.

b. Problems with an employer's wage withholding.

c. Administrative error in processing the premium.

d. Any other causes found by the county agency to be out of the control of the recipient, but not including insufficient funds.

4. At the time of application or anytime thereafter, an applicant or recipient may sign a release form identifying an emergency contact to receive copies of the individual's notice of

decision letters.

(i) *Consequences of premium non-payment.* 1. A person eligible for the medicaid purchase plan who fails to pay his or her monthly premium shall be terminated from the medicaid purchase plan and subject to restrictive re-enrollment as described under subdiv. 2.

2. A medicaid purchase plan participant who fails to make his or her monthly premium payments in the medicaid purchase plan shall be ineligible for a period of at least 6 consecutive calendar months following the date that the medicaid purchase plan eligibility ends. After 6 calendar months, the individual shall be eligible for the medicaid purchase plan only if all past premiums due are paid in full or 12 calendar months have passed since the expiration of medicaid purchase plan eligibility, whichever is sooner.

(2) COOPERATION WITH BUY-IN TO EMPLOYER-PROVIDED HEALTH CARE COVERAGE. (a) The applicant eligible for the medicaid purchase plan and the applicant's parent, if the applicant is a dependent child, shall cooperate when the department determines whether it is cost-effective to purchase coverage under the employer-provided health plan for the individual under s. HFS 108.02 (14). In this subsection, "cooperate" means provide necessary information in order to determine cost-effectiveness, sign up with the health plan when requested by the department and comply with any other requirements of the health plan.

(b) 1. Except as provided in subd. 2., a person who fails or refuses to cooperate with the department's buy-in to employer-provided health care coverage is not eligible for the medicaid purchase plan.

2. An exception to subd. 1. shall be made in cases where an individual who is otherwise eligible for medical assistance is unable to enroll in the group health plan on his or her own behalf.

Note: An example of an individual who is otherwise eligible for medical assistance but unable to enroll in the group health plan on his or her own behalf may be a child whose parent refuses to enroll the child or a spouse unable to enroll on his or her own behalf.

SECTION 8. HFS 108.02 (14) is created to read:

HFS 108.02 (14) MEDICAID PURCHASE PLAN BUY-IN TO EMPLOYER-PROVIDED HEALTH CARE COVERAGE. (a) *Authority.* The department may purchase a group health plan offered by the employer of an eligible individual or non-eligible family member if the department determines that purchasing that coverage would not be more costly than providing the medical assistance coverage described under this chapter.

(b) *Buy-in to employer-provided coverage.* 1. The department shall pay on behalf of the recipient all deductibles, coinsurance and other cost sharing obligations under the group health plan that are for services covered under the state plan, except for the nominal cost sharing amounts otherwise permitted under section 1916 of the social security act that are the responsibility of the recipient.

2. The department shall purchase coverage by making payment to one of the following:

a. The employer of the recipient.

b. The insurance company that provides the health care coverage offered by the employer.

c. The employee.

3. If a non-medical assistance eligible family member is enrolled in the group health plan in order to obtain coverage for the medical assistance eligible member, the department shall pay for premiums only and not other cost sharing expenses for the non-medical assistance eligible family member. Premium payments for non-eligible members shall be included in the determination of cost-effectiveness under par. (c).

4. If an individual's group health plan offers more services than covered under the state plan, the department may not pay any deductibles, coinsurance or other cost sharing obligations for non-covered services.

5. Medicaid purchase plan eligible individuals enrolled in a group health plan under this section shall be eligible for wrap-around coverage as described in ch. HFS 101.

(c) *Cost-effectiveness determination.* An individual's enrollment in a group health plan shall be cost-effective when the amount the department pays for premiums, coinsurance, deductibles, other cost sharing obligations, wrap-around costs and additional administrative costs is likely to be less than the medical assistance expenditures for an equivalent set of services.

SECTION 9. HFS 108.02 (15) is created to read:

HFS 108.02 (15) ESTATE RECOVERY FOR MEDICAID PURCHASE PLAN. (a) Except as provided in par. (b), estate recovery requirements of sub. (11) and ss. 46.27 (7g), 49.496, and 867.035, Stats., apply to recipients of the medicaid purchase plan.

(b) Amounts recovered in estate recovery from a recipient of the medicaid purchase plan shall be reduced by the total amount of monthly premiums paid by the recipient as a condition of eligibility for the medicaid purchase plan.

The rules contained in this order shall take effect as emergency rules on March 15, 2000.

Wisconsin Department of Health and Family Services

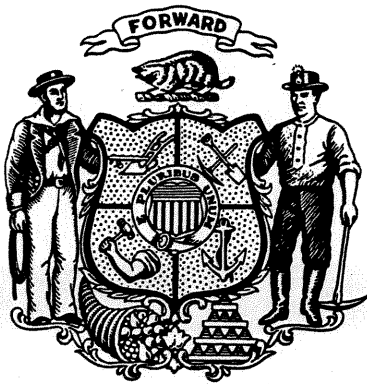
Dated: March 6, 2000

By: _____


Joseph L. Lee
Secretary

SEAL:

END



END

STATE OF WISCONSIN

EIGHTH JUDICIAL DISTRICT



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February 17, 1999

Representative Glenn Grothman, Chair
Joint Administrative Rules Committee
PO Box 8952
Madison, WI 53708-8952

Senator Judith Robson, Co-chair
Joint Administrative Rules Committee
PO Box 7882
Madison, WI 53707-7882

RE: DWD 43: Child Support Administrative Enforcement

Dear Chairpersons Grothman and Robson:

Last year, the Department of Workforce Development, through the Bureau of Child Support, solicited comments regarding the then proposed administrative rule on child support administrative enforcement from the Committee of Chief Judges' Subcommittee on Child Support. This subcommittee has been in existence since 1986 to improve communication and cooperation between state courts and the department on child support issues. Some changes made to the emergency rule DWD 43 were directly responsive to judicial concerns. We understand that a public hearing on DWD 43 is scheduled for February 25, 1999 before your committee.

The state judiciary recognizes and supports the goals of providing for children and ensuring that child support is paid by parents. There are, however, concerns about the emergency rule, expressed by members of Wisconsin's judiciary which have not been addressed in changes made to date.

§49.854(3)(ag), Stats., requires that the child support agency "hold" and "conduct" a financial record review. DWD 43.07 implements this statutory provision by requiring the child support agency to "provide the relevant financial records and information explaining how to interpret the records to the payer." The "relevant financial records" would likely include a copy of the KIDS account history and any pre-KIDS records for the period since the last judicial review or other account review. DWD 43.07 shifts the burden to the payer to review and interpret the records and to allege any error. Payers will not be able to allege an error because KIDS records are difficult, if not impossible, for a layperson to interpret. Instead, it is imperative that DWD 43.07 require a child support worker to actually meet face-to-face with the payer to interpret the financial records for the payer.

Page 2

Doing so will enhance the administrative effectiveness of this statute and improve the judicial perception of it if a review hearing is necessary to establish child support arrears. There are two main reasons for this. First, explanation of the arrearage record will likely lead to more settlement. After all, the purpose of this legislation is to collect child support administratively, that is, without trial court assistance. Also, culling out as many cases as possible through settlement will have a positive effect on workload scheduling for those cases that do require court time. Second, if a court hearing is still necessary after a child support agency has attempted to explain to and settle the matter with the payer, this can only enhance the agency's presentation of their case in court.

Failure to provide a payer with an explanation of his/her arrearage would render this statutory section virtually meaningless. §49.854(3)(ar), Stats., provides that a payer may request a direct appeal of a child support lien (that is, no requested financial records and court order review). Without a child support agency meeting with a payer and reviewing the support record, in effect every court review would be a direct appeal, thereby rendering §49.854(3)(ag), Stats., meaningless. This could not have been the legislature's intent in enacting that section.

We hope that the department's commendable effort to carry out its statutory mandate can be tempered to respond to the concerns of judges whose task it is actually to apply the law and, by doing so, achieve just results in individual cases.

Thank you for the opportunity to comment on the emergency rule.

Sincerely,



Philip M. Kirk, Chair *ga*
Chief Judges' Subcommittee on
Child Support

PMK:CJA:sw

cc: Charlene Allen
J. Denis Moran, Director of State Courts
Sheryl Gervasi

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

Last Modified January 1999

February 25, 1999
411 South, State Capitol

Moved by Grothman, Seconded by Robson

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule DWD 43 by 30 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			
4. Senator WELCH		✓	
5. Senator DARLING			
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI		✓	
9. Representative KREUSER		✓	
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

**State of Wisconsin
Department of Workforce Development**

EMERGENCY RULE

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 82 as DWD 40 to 42, and to create ch. DWD 43, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

As described in the analysis below, state and federal legislation has created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Analysis

Authority for rule. Secs. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats.

Statutes interpreted. Secs. 49.22, 49.853, 49.854, 49.858 and 767.027, Stats.

Summary. In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wisconsin Act 191 became effective May 1, 1998. The Act expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. The Act requires the promulgation of administrative rules before the Department may begin implementing several provisions in the Act. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According to the Act, past-due support constitutes a lien against all of a child support payer's real and personal property. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a court case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, and lien payments.

To enforce a lien, the Department or child support agency may use administrative enforcement actions authorized in Act 191. These administrative remedies include suspending and denying professional, occupational, recreational, and driver licenses; seizing real and personal property, including financial accounts; and intercepting judgments, settlements, and lump-sum pension payments. The Department or child support agency may initiate these administrative remedies if arrears owed by a payer in a court case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a court case must equal or exceed before the Department or child support agency may initiate that action. Generally, that threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due.

In addition to considering the arrears in a court case, when considering property seizure as an administrative remedy, the Department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the factors that must be considered when determining the value of the property, and the amount that the property value must exceed before seizure may be initiated. In general, the funds in a financial account must exceed \$500, the payer's equity in personal property must exceed \$100, and the payer's equity in real property must exceed 10 percent of the property's fair market value, before the Department or child support agency may seize the property.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last-known address of a child support payer. According to Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last-known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the Department or the child support agency is aware that the payer is subject to a

protective order or there is otherwise reason to believe that a payee or child may be harmed physically or emotionally by the payer.

The Department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. Act 191 gives the Department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the Department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply will not exceed \$25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture will equal \$500.

The Department's goal is to begin implementation of these provisions in 1999.

SECTION 1. Chs. HSS 80 to 82 are renumbered chs. DWD 40 to 42.

SECTION 2. Chapter DWD 43 is created to read:

DWD 43
CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

DWD 43.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

DWD 43.02 Applicability. This chapter applies to the department and county child support agencies under s. 59.53 (5), Stats., individuals participating in the child support program under s. 49.22, Stats., and persons subject to administrative subpoenas issued in accordance with s. 49.22 (2m)(b), Stats., or requests for information issued in accordance with s. 49.22 (2m)(a), Stats.

DWD 43.03 Definitions. In this chapter:

(1) "Account" has the meaning given in s. 49.853 (1)(a), Stats.

(2) "Administrative enforcement" means the department or a child support agency:

(a) Puts child support liens into effect by placing them on the child support lien docket and electronically delivers the docket to the county registers of deeds.

(b) Receives proceeds from the sale of property when there is a child support lien against the property, and either the payer has transferred the property or the property has been seized and sold by an entity other than the department or a child support agency.

(c) Takes any administrative enforcement action.

(3) "Administrative enforcement action" means any of the following actions taken by the Department or child support agency to enforce a lien: (a) the intercept of lump-sum pension payments in accordance with s. 49.852, Stats.; (b) the seizure of accounts at financial institutions in accordance with s. 49.854(5), Stats.; (c) the seizure of personal property in accordance with s. 49.854(6), Stats.; (d) the seizure of real property in accordance with s. 49.854(7), Stats.; (e) the intercept of judgments and settlements in accordance with s. 49.856, Stats.; and (f) the denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.858, Stats.

(4) "Alternative payment plan" or "plan" means a negotiated agreement between a child support agency and a payer, or a plan set by the court, which establishes terms for the payment of the arrearage debt.

(5) "Arrearage debt" means the sum of child support arrears, maintenance arrears, family support arrears, missed payments on past support, missed payments on lying-in costs, and

missed payments on other medical support including missed lump-sum payments for medical support in a court case.

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law against all of a payer's real and personal property when he or she owes an arrearage debt.

(8) "Department" means the Wisconsin Department of Workforce Development.

(9) "Equity" means the fair market value minus the liens on that property with priority over the child support lien.

(10) "Expected monthly amount due," for a court-ordered provision expressed only as a percentage of income, equals the identified monthly income multiplied by the percentage ordered for the provision. To determine a payer's identified monthly income, a child support agency shall use the best available information which includes, but is not limited to, the income of the payer during the period of the most recent reconciliation, income information reported by the payer's employer under s. 767.265(3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records.

(11) "Failure to comply with an administrative subpoena or a request for information" means that the subpoena respondent did not provide the requested information within seven days after receiving the administrative subpoena or request for information, or that the subpoena respondent provided false or incomplete information.

(12) "Financial institution" or "institution" has the meaning given in s. 49.853 (1)(c), Stats.

(13) "Gross income" has the meaning given in s. DWD 40.02 (13) [formerly HSS 80.02 (13)].

(14) "Lien-eligible amount" means the amount in a court case that is eligible to be placed on the lien docket.

(15) "Monthly amount due" is the sum of all court-ordered provisions for periodic payments due in one month in a court case including arrearage debts.

(16) "Monthly charge" is the sum of court-ordered provisions for monthly payments on child support, family support, maintenance, lying-in costs, past support, and other medical support in a court case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

(17) "Ownership interest" is defined as any personal financial interest.

NOTE: This definition applies to the financial record matching program under sec. 49.853(3) and (4), Stats.

(18) "Payee" has the meaning given in s. DWD 40.02 (22) [formerly HSS 80.02 (22)].

(19) "Payer" has the meaning given in s. DWD 40.02 (23) [formerly HSS 80.02 (23)].

(20) "Property" has the meaning given in s. 49.854 (1)(e), Stats.

(21) "Subpoena respondent" means the person from whom information is requested in an administrative subpoena or request for information.

(22) "Threshold" is an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien-eligible amount or lien amount must equal or exceed before administrative enforcement may be used in a court case.

DWD 43.04 Written notice of enforcement actions. (1) APPLICATION. This section applies to notices issued to the payer by the department under ss. 49.852 (2), 49.854

(3)(a) and (ag), 49.854 (5)(d), 49.854 (6)(a), (d), and (e), 49.854 (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a), (am), and (b), Stats.

(2) **USE OF MAIL.** The department or child support agency may send notices related to the administrative enforcement of a child support order by regular mail to the last-known mailing address provided by the payer under s. 767.263 (2), Stats. If the last-known mailing address for a payer is unverified, or a written notice sent to a payer at his or her last-known verified mailing address is returned, the department or child support agency shall contact the postmaster of the zip code of the address. If the postmaster verifies the unverified mailing address or provides a new verified address, the department or county child support agency shall send written notice to the mailing address provided by the postmaster. If the postmaster is unable to verify the last-known mailing address, or provide a new verified address, the department or child support agency shall send notice to the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If notice to the employer is returned, or the payer has not provided a current employer mailing address, the department or child support agency shall use diligent effort to obtain a mailing address for the payer.

NOTE: Under sec. 767.263 (2), Stats., each party to a child support order is required to provide the child support agency with his or her residential and mailing address and the address and telephone number of his or her employer. A party shall advise the child support agency of any change in such information within 10 business days after the change.

(3) **DILIGENT EFFORT.** Diligent effort means the following for each administrative enforcement action:

(a) *License suspension and denial.* To obtain and use the payer's address of record at a state licensing agency to provide notice under ss. 49.857 (3)(a), (am), and (b), Stats.

(b) Account seizure. To obtain and use the payer's address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats.

(c) Personal property seizure. To obtain and use the payer's address of record at a state agency that titles personal property to provide notice under ss. 49.854 (6)(a), (d), and (e), Stats., if the personal property subject to seizure is titled.

(d) Real property seizure. To obtain and use the payer's address of record on the tax bill for the property subject to seizure to provide notice under ss. 49.854 (7)(a), (d), and (e), Stats.

(e) Pension intercept. To obtain and use the payer's address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats.

(f) Judgment and settlement intercept. To obtain and use the payer's address of record with the judgment debtor to provide notice under s. 49.856 (3), Stats.

(4) LOCATE RESOURCES. When the department or a child support agency sends a notice and the notice is returned, the department or a child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address.

(5) NOTICE TO JOINT-PROPERTY HOLDERS. The department or child support agency shall provide notice related to the seizure of property to any joint-property holder as follows:

(a) Account seizure. Notice under s. 49.854 (5)(d), Stats., shall be sent to the address of record at the financial institution.

(b) Personal property seizure. Notice under s. 49.854 (6)(a), Stats., shall be sent to the address of record at a state agency that titles personal property if the personal property subject to seizure is titled.

(c) Real property seizure. Notice under ss. 49.854 (7)(a) and (e), Stats., shall be sent to the address of record on the tax bill for the property subject to seizure.

NOTE: Pursuant to s. 49.854 (5)(d), (6)(a), and (7)(a) and (e), Stats., the department or child support agency is required to provide a notice to any person with an ownership interest in a property subject to seizure. The joint-property holder has 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to his or her net contributions to the property.

DWD 43.05 Administrative forfeitures for noncompliance with administrative subpoenas and requests for information. (1) MAXIMUM ADMINISTRATIVE FORFEITURES. The department or a child support agency may require a subpoena respondent who fails to comply with an administrative subpoena issued in accordance with s. 49.22(2m)(b), Stats., or a request for information made under s. 49.22(2m)(a), Stats., to pay an administrative forfeiture not to exceed \$25. If the failure to comply with an administrative subpoena or request for information is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the department or child support agency may require the subpoena respondent to pay an administrative forfeiture of \$500.

(2) **WHEN IMPOSED.** The department or a child support agency shall determine when it is appropriate to impose an administrative forfeiture for failure to comply with a request for information or an administrative subpoena. In accordance with s. 49.22(2m)(a), Stats., a subpoena respondent who fails to comply with a request for information may not be subject to

administrative forfeiture if access to the requested information is prohibited or restricted by law, or if the subpoena respondent has good cause for refusing to cooperate with the request.

DWD 43.06 Liens. (1) LIEN DOCKET. (a) The department shall maintain a statewide support lien docket in accordance with s. 49.854(2)(b) and (c), Stats. The department shall be responsible for periodically updating the lien docket and providing a copy of the lien docket to the register of deeds and the child support agency in each county.

(b) The department or the child support agency shall be responsible for responding to inquiries concerning information recorded on the lien docket. The county register of deeds may refer any person who has an inquiry about the lien docket to the department or the child support agency.

(2) **WHEN ENTERED.** The department shall place a payer on the lien docket when the lien-eligible amount in one or more of the payer's court cases equals or exceeds the lien threshold. If an individual is a payer in more than one court case, each court case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) **DETERMINING THE LIEN-ELIGIBLE AMOUNT.** (a) The lien-eligible amount equals the difference between the monthly charge and the arrearage debt in a court case.

(b) Determining the monthly charge. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly charge.

2. For a court-ordered provision requiring only a fixed sum, the monthly charge shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly charge shall be the calculated using the fixed sum amount.

(4) DETERMINING WHETHER THE LIEN THRESHOLD HAS BEEN MET OR EXCEEDED. (a) The department shall place a payer on the lien docket if the lien-eligible amount in a court case equals or exceeds the monthly amount due or \$500, whichever is greater.

(b) Determining the monthly amount due. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly amount due.

2. For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

(5) LIEN AMOUNT The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the court cases in which the lien-eligible amount meets or exceeds the lien threshold. The lien amount may include court-ordered liens made pursuant to s. 767.30, Stats.

(6) PAYMENT OF LIEN. (a) Any payment toward the lien amount shall:

1. Indicate that the payment is a lien payment.

2. Specify the court case or cases in which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in (a) and be in an amount equal to the lien amount on the child support lien docket.

(c) The child support agency shall distribute any support payment made that does not meet the conditions in par. (a) or (b) in accordance with s. 767.25(6), Stats.

(d) Payments toward a court-ordered lien under s. 767.30, Stats., shall be credited toward the child support lien, if appropriate. Payments toward the child support lien shall be credited toward a court-ordered lien under s. 767.30, Stats., if appropriate.

(7) **FILING DATE.** The filing date on the lien docket is the date that a lien amount was first recorded on the docket for a payer. The filing date does not change if the lien amount is adjusted up or down within five years after the filing date.

(8) **REFILING A LIEN.** (a) At the end of the five year effective period of a lien, the department or a child support agency may refile the lien if the lien-eligible amount equals or exceeds the lien threshold. When a lien is refiled, the date on which the lien is refiled shall become the date of filing on the lien docket, and a new five-year period shall commence.

NOTE: Under sec. 49.854(12)(a), Stats., a child support lien is effective for a period of five years from the filing date.

(b) When a lien is refiled, the department or the child support agency shall send the payer a notice that the lien has been refiled.

NOTE: Upon receiving notice, the payer has the opportunity to request a financial records review and a court review under sec. 49.854(3)(ag), Stats., or a direct appeal for a court review under sec. 49.854(3)(ar), Stats.

DWD 43.07 Financial record review. (1) In accordance with s. 49.853 (3)(ag), Stats., a payer may request a financial records and court order review (financial record review) within 10 business days of the date of the notice of lien. The financial record review will determine the correctness of the financial records in a court case and will cover only the period of time after the last judicial review or other account review.

NOTE: The procedure for a financial records and court order review is specified in sec. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the relevant financial records and information explaining how to interpret the records to the payer.

NOTE: Under sec. 49.854(3)(ag), Stats., the department or child support agency may not charge the payer for providing the payment records or for performing the financial record review.

(3) Within 20 business days after receiving the relevant financial records, the payer shall provide a statement of any alleged error to the child support agency. If the payer provides a statement of alleged error within the time frame, the child support agency shall provide a written determination as to whether the lien against the payer is in the correct amount. The child support agency must provide the written determination within 60 days after the date of the payer's request for a financial record review.

DWD 43.08 Seizure of property. (1) DEPARTMENT'S INITIAL ASSUMPTION AS TO JOINTLY OWNED PROPERTY. When the department or a child support agency acts under s. 49.854, Stats., the department or the child support agency shall initially assume that a payer's ownership interest in property that is jointly owned with one or more other persons is an equal pro rata share based on the number of joint owners. The department or child support agency shall proceed on this basis unless a person requests a hearing under s. 49.854(7m), Stats., in which case the department or child support agency shall be bound by the decision of the family court commissioner or the reviewing court.

(2) **SEIZURE OF FINANCIAL ACCOUNTS.** (a) Minimum for seizure. The department or a child support agency may not seize an account under s. 49.854 (5), Stats., unless the sum of the funds in all of the payer's financial accounts, minus the \$5 levy fee under s. 49.854 (11)(a), Stats., and any early withdrawal penalty under s. 49.854 (5)(e), Stats., exceeds \$500 at the time of seizure.

(b) Amount to be seized. The department or a child support agency may only seize funds in excess of \$500 across all of a payer's accounts. If accounts are jointly-held, and the

joint-account holder has requested a hearing under s. 49.854 (7m), Stats., the department or child support agency may not seize any amount that the court determines is attributable to the contributions of the joint-account holder.

(3) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL ACCOUNTS. The department or a child support agency may not seize personal property under s. 49.854(6), Stats., unless both of the following conditions are met:

- (a) The payer's equity in the property, minus expected levy fees, exceeds \$100.
- (b) The lien exceeds \$500.

(4) VALUATION OF JOINTLY-HELD REAL AND PERSONAL PROPERTY. For the purpose of determining whether jointly-held property (other than financial accounts) that is subject to lien has sufficient value to be seized, the department or child support agency shall assume that the payer's equity in the property is the payer's proportionate share of the property's equity.

(5) SEIZURE OF REAL PROPERTY. The department or child support agency may not seize real property under s. 49.854(7), Stats., unless both of the following conditions are met:

- (a) The payer's equity in the property, minus expected levy fees, exceeds 10 percent of the property's fair market value.
- (b) The lien exceeds \$5,000.

(6) JOINTLY-HELD PROPERTY AND COURT HEARINGS. If a financial account, personal property, or real property is jointly held, a person other than the payer may request a hearing under s. 49.854(7m), Stats., for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property, and may make the

request in any county that initiated property seizure. If the joint-property holder does not request a hearing, the department or child support agency shall seize the payer's proportionate share of the property.

DWD 43.09 Notice to the payee of enforcement proceedings. If the child support agency is aware that a payer is subject to a protective order with respect to a payee or child in his or her court case, or the child support agency has reason to believe that a payee or child in a payer's court cases may be harmed physically or emotionally by the payer, the department or the child support agency shall provide written notice to said payee when an administrative enforcement action has been initiated against the payer. The notice to the payee must be provided within 5 business days of the date of the notice sent to the payer in accordance with s. 49.852(2), 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), 49.856(2), or 49.857(3)(a), Stats.

DWD 43.10 Thresholds for administrative enforcement actions. (1) LICENSE SUSPENSION. A child support agency may initiate license suspension if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case.

(2) **ACCOUNT SEIZURE.** A child support agency may initiate account seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case or \$1,000, whichever is greater.

(3) **REAL AND PERSONAL PROPERTY SEIZURE.** A child support agency may initiate real or personal property seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 600 percent of the monthly amount due in the court case.

(4) INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS. A child support agency may initiate the intercept of lump-sum pension payments, judgments, and settlements when a payer has been placed on the child support lien docket.

(5) DETERMINING THE MONTHLY AMOUNT DUE. (a) For a court-ordered provision expressed only as a percentage of income, the monthly amount due shall be calculated using the expected monthly amount due.

(b) For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

(c) For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

DWD 43.11 Alternative Payment Plans. (1) APPLICABILITY OF ALTERNATIVE PAYMENT PLANS. When the department or a child support agency enforces a lien through seizure of real property or personal property, seizure of financial accounts, or denial, suspension, nonrenewal, restriction, or suspension of licenses, the payer may negotiate an alternative payment plan with the child support agency.

(2) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER RECEIVING NOTICE OF AN ADMINISTRATIVE ENFORCEMENT ACTION. (a) The notices issued under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857(3)(a) or (am), Stats., shall inform the payer of the opportunity to negotiate an alternative payment plan, and shall notify the payer of the circumstances under which the payer may request a court hearing on mistake of fact and on the reasonableness of the plan.

NOTE: Under ss. 49.854 (5)(d), (6)(b), and (7)(b), and ss. 49.857(3)(a) and (am), notices must inform the payer of his or her opportunity to request a hearing within 20 business days after the date of the notice.

(b) A payer may submit a written request to the child support agency to negotiate an alternative payment plan within 10 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857(3)(a) or (am), Stats. The payer may submit a written request for a court hearing on the reasonableness of the plan within 20 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857 (3)(a) or (am), Stats.

(c) If the child support agency and the payer are unable to reach agreement on the terms of a plan, and the payer requested a court hearing within 20 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857 (3)(a) or (am), Stats., a hearing will be conducted. If the court determines that the plan is not reasonable, it may establish a plan by setting payments pursuant to s. 767.30 (1), Stats.

(3) **NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION ON MISTAKE OF FACT.** If a court determines that a payer owes arrears as a result of a review of mistake of fact under ss. 49.854(5)(f), 49.854(6)(c), 49.854(7)(c), or 49.857(3)(ac) or (ar), Stats., and the payer did not attempt to negotiate a plan prior to the court review, the payer may, within 10 business days of the court determination, submit a written request to the child support agency to negotiate a plan.

(4) **NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER THE RESTRICTION, LIMITATION, SUSPENSION OR REFUSAL OF A LICENSE.** Pursuant to s. 49.857 (3)(d)1., Stats., a payer may negotiate a plan with the department or child support

agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(5) **STAYING ADMINISTRATIVE ENFORCEMENT ACTIONS.** Administrative enforcement actions shall be stayed by the child support agency that initiated an action while the payer and the agency are negotiating a plan, or, if a court review of the reasonableness of the plan is requested, until the court determination has been made. To stay an administrative enforcement action means the following:

(a) License suspension and denial. The payer shall not be certified to state licensing agencies for denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses.

(b) Account seizure. Any financial accounts frozen under s. 49.854(5)(b), Stats., shall remain frozen and shall not be seized.

(c) Personal property seizure. Personal property that has been seized under s. 49.854 (6), Stats., shall be held by the department or the sheriff and shall not be sold.

(d) Real property seizure. Real property shall not be seized and sold.

(6) **SUSPENSION OF ADMINISTRATIVE ENFORCEMENT ACTIONS.** (a) When a plan has been negotiated between the payer and the child support agency, or the court has determined that a plan is reasonable or has established a plan pursuant to s. 767.30 (1), Stats., the child support agency in the county in which the plan is set shall suspend administrative enforcement actions as long as the payer complies with the plan.

(b) If a payer makes a full arrearage debt payment, prior to the completion of the administrative enforcement action, the action will be suspended.

(7) PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS. If the court determines under (2)(c) that a plan is not reasonable and does not set a plan, or the payer and child support agency are unable to negotiate a plan under (3), the child support agency may continue with the administrative enforcement action.

(8) DISCLOSURE OF INCOME AND ASSETS. The request to negotiate a plan shall include an agreement by the payer to provide the child support agency with a full disclosure of income and assets available. The payer must provide complete income and assets information to the child support agency within 5 business days of the request to negotiate a payment plan.

(9) CASE-BY-CASE BASIS. A child support agency shall negotiate a plan with a payer only on cases venued in its county.

(10) TERMS OF AN ALTERNATIVE PAYMENT PLAN. (a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrearage debt, or both, subject to the following standards:

1. Any periodic payment established under the plan, when combined with any other court-ordered payment of support, may not decrease the payer's gross income to an amount below 100% of the poverty line established under 42 U.S.C. 9902 (2) unless the payer agrees otherwise.

2. When establishing an alternative payment plan, the child support agency shall consider the factors used by the court in determining whether the use of the percentage standard is unfair to the child or any of the parties, as specified in s. 46.10(14), 767.25 , or 767.51, Stats.

(b) In a case in which it is not possible to establish a periodic payment plan without reducing a payer's gross income to below the poverty line, the child support agency is not

prohibited from negotiating a lump-sum payment with the payer, and may elect to suspend administrative enforcement action.

(c) Upon agreement by the payer, periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered under s. 767.265 (1).

(11) **DEFAULT ON AN ALTERNATIVE PAYMENT PLAN.** In the event that the payer defaults on the plan by failure either to make the full lump-sum payment within one month of the date that the payment is due, or to pay an amount equal to the amount due in one month under the plan, the child support agency shall notify the payer that an administrative enforcement action shall be implemented unless the lien is paid in full.

(12) **RENEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN.** After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the payer or child support agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes, but is not limited to, the following:

(a) A change in the payer's income or assets, including the sale or purchase of real or personal property.

(b) A change in the payer's earning capacity.

(c) Any other factor that the child support agency determines is relevant.

(13) **PAYERS WITH COURT CASES IN MULTIPLE COUNTIES.** (a) When multiple counties initiate administrative enforcement actions against the same payer, and the payer negotiates an alternative payment plan in one of the initiating counties, the plan does not preclude any other county from proceeding with its administrative enforcement action.

(b) If a county which has a lien against a payer negotiates an alternative payment plan with the payer, the county is not precluded from receiving proceeds from the sale of the payer's real or personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other counties.

EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)