



1999 ASSEMBLY BILL 824

March 7, 2000 - Introduced by JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Referred to Joint committee for review of Administrative Rules.

1 **AN ACT** *to create* 227.45 (8) of the statutes; **relating to:** the right to discovery
2 in class 3 administrative proceedings regarding recoupment of medical
3 assistance payments.

Analysis by the Legislative Reference Bureau

Under current law, in any class 1 or class 3 administrative proceeding, an agency may by rule permit the taking and preservation of evidence. In those proceedings the taking and preservation of evidence shall be permitted with respect to a witness who is beyond the reach of a subpoena of the agency, is about to leave the state or is so sick or aged as to make it probable that the witness will be unable to attend the hearing. Currently, the department of health and family services has promulgated an emergency rule regarding the taking and preserving of evidence in class 3 administrative proceedings involving recoupment of overpayments from medical assistance providers.

This bill allows the parties in class 3 administrative proceedings involving recoupment of overpayments from medical assistance providers to take and preserve evidence for the administrative proceeding. The bill allows the hearing examiner, for good cause, to make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense during discovery.

This bill is introduced as required by section 227.19 (5) (e), stats., in support of the suspension by the joint committee for review of administrative rules on January 20, 2000, of HFS 106.12 (9) and 108.02 (9) (f), the emergency rules promulgated by

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the department of health and family services that prohibit the parties in class 3 administrative proceedings involving recoupment of overpayments from medical assistance providers from taking and preserving evidence for the administrative proceeding.

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

1 **SECTION 1.** 227.45 (8) of the statutes is created to read:

2 **227.45 (8)** In a class 3 proceeding in which the department of health and family
3 services is attempting under s. 49.45 (2) (a) 10. to recover money improperly or
4 erroneously paid or overpayments made to a provider, each party shall have the
5 right, before the date set for hearing, to take and preserve evidence as provided in
6 ch. 804. Upon motion by a party or by the person from whom discovery is sought in
7 the proceeding, and for good cause shown, the hearing examiner may make any order
8 in accordance with s. 804.01 which justice requires to protect a party or person from
9 annoyance, embarrassment, oppression or undue burden or expense.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to administrative proceedings begun on the effective
12 date of this subsection.

13 **(END)**