

CHAPTER 49

PUBLIC ASSISTANCE

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GENERAL RELIEF

49.001 Public assistance recipients' bill of rights. The department and all public assistance and relief-granting agencies shall respect rights for recipients of public assistance. The rights shall include all rights guaranteed by the U.S. constitution and the constitution of this state, and in addition shall include:

(1) The right to be treated with respect by state agents.

(2) The right to confidentiality of agency records and files on the recipient. Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes.

(3) The right to access to agency records and files relating to the recipient, except that the agency may withhold information obtained under a promise of confidentiality.

(4) The right to a speedy determination of the recipient's status or eligibility for public assistance, to notice of any proposed change in such status or eligibility, and, in the case of assistance granted under s. 49.19, 49.46 or 49.47, to a speedy appeals process for resolving contested determinations.

History: 1977 c. 29.

49.002 Legislative declaration. It is declared to be legislative policy that all recipients of general relief shall have maximum exposure to job training and job opportunities through the Wisconsin state employment service as well as other government agencies. Refusal of a bona fide offer of employment or training without good cause, or acceptance and subsequent inadequate performance through wilful neglect, shall necessitate that local, municipal or county welfare officials discontinue general relief payments to such individual. Any Wisconsin taxpayer shall have standing in the circuit court for the purpose of obtaining an injunction to enforce the policy set forth in this section. All personnel shall do their best to get individuals off general relief and into self-supporting productive jobs.

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

49.01 Definitions. As used in this chapter:

(1) "Relief" means such services, commodities or money as are reasonable and necessary under the circumstances to provide food, housing, clothing, fuel, light, water, medicine, medical, dental, and surgical treatment (including

hospital care), optometrical services, nursing, transportation, and funeral expenses, and include wages for work relief. The food furnished shall be of a kind and quantity sufficient to provide a nourishing diet. The housing provided shall be adequate for health and decency. Where there are children of school age the relief furnished shall include necessities for which no other provision is made by law. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts, as will in the discretion of the relief official or agency meet the needs of the recipient and protect the public.

(2) "Work relief" means any moneys paid to dependent persons entitled to relief who have been required by any municipality or county to work on any work relief project.

(3) "Work relief project" means any undertaking performed in whole or in part by persons receiving work relief.

(4) "Dependent person" or "dependent" means a person without the present available money or income or property or credit, or other means by which the same can be presently obtained, sufficient to provide the necessary commodities and services specified in sub. (1). Credit received under s. 71.09 (7) is not income or resources for purposes of determining dependency or the amount of relief provided.

(5) "Municipality" means any town, city or village.

(7) "Eligible" or "eligibility" means a dependent person who has continuously resided for one whole year in this state immediately prior to an application for relief except that temporary assistance including medical care may be granted during the initial year to meet an emergency situation pending the negotiations for the return of the applicant and family to the former place of residence or legal settlement outside this state or to meet a medical emergency developing during the initial one year period of residence. Such temporary assistance shall not extend beyond 30 days unless a medical emergency requires further extension. Notwithstanding the foregoing, whenever anyone leaves this state, and was at the time of his departure eligible as to residential requirements to receive general assistance under this section other than emergency aid, such person upon returning within one year to this state, shall be eligible to receive such general assistance in this state without limitation on the period of relief to be granted so long as the need continues.

(9) "Federal Title XVI" means Title XVI of the federal social security act.

(10) "Essential person" means any person defined as an essential person under federal Title XVI.

(11) "Accommodated person" means any person in a hospital or in a skilled nursing facility or intermediate care facility, as defined in Title XIX of the social security act, who would have been eligible for benefits under s. 49.177 or 49.19 or federal Title XVI if he were not in such a hospital or facility, and any person in such an institution who can be found eligible for Title XIX under the social security act.

(12) "Public medical institution" has the meaning designated in Title XIX of the federal social security act.

History: 1973 c. 147, 333; 1979 c. 34.

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

AFDC recipient may qualify as "dependent" under (4). *State ex rel. Tiner v. Milwaukee County*, 81 W (2d) 277, 260 NW (2d) 393.

Sub. (1) is not broad enough to include attorneys' fees incurred by eligible dependent person to prosecute or defend divorce action. 61 Atty. Gen. 330.

See note to Art. I, s. 1, citing *Lavine v. Milne*, 424 US 577. Constitutional law: residency requirements. 53 MLR 439.

49.02 Relief administration. (1) Every municipality shall furnish relief only to all eligible dependent persons therein and shall establish or designate an official or agency to administer the same.

(2) Every county may furnish relief only to all eligible dependent persons within the county but not having a legal settlement therein, and if it elects to do so, it shall establish or designate an official or agency to administer the same.

(3) When the settlement of an eligible dependent person is unknown or in doubt relief may be initially administered by the municipality in which such person is found in need, but the matter shall be promptly investigated and reported or referred as the case may be to the county in which the municipality is situated.

(4) Nothing in this section shall prevent any county or municipality from entering into a joint or co-operative agreement under section 66.30.

(5) The municipality or county shall be liable for the hospitalization of and care rendered by a physician and surgeon to a person entitled to relief under this chapter, without previously authorizing the same, when, in the reasonable opinion of a physician, immediate and indispensable care or hospitalization is required, and prior authorization therefor cannot be obtained without delay likely to injure the patient. There shall be no liability for such care or hospitalization beyond what is reasonably required by the circumstances of the case, and liability shall not attach unless, within 7 days

after furnishing the first care or hospitalization of the patient, written notices by the attending physician and by the hospital be mailed or delivered to the official or agency designated in accordance with this section, reciting the name and address of the patient, so far as known, and the nature of the illness or injury, and the probable duration of necessary treatment and hospitalization. Any municipality giving care or hospitalization as provided in this section to a person who has settlement in some other municipality may recover from such other municipality as provided in s. 49.11.

(6) Officials and agencies administering relief shall assist dependent persons to regain a condition of self-support through every proper means at their disposal and shall give such service and counsel to those likely to become dependent as may prevent such dependency.

(7) Whenever the authorities charged with the administration of this section have reason to believe that a person receiving relief is engaging in conduct or behavior prohibited in ch. 944 or s. 940.225, they shall promptly notify the law enforcement officials of the county thereof, including facts relating to such person's alleged misconduct or illegal behavior.

History: 1975 c. 184 s. 13.

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

Rule requiring surrender of automobile license plates and title, as a prerequisite to temporary assistance, violates (1) and (2). *State ex rel. Sell v. Milw. County*, 65 W (2d) 219, 222 NW (2d) 592.

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

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

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

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

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

49.03 Optional county systems. (1) The county board may, by a resolution adopted by an affirmative vote of a majority of all its members:

(a) Provide that the county shall bear the expense of maintaining all eligible dependents therein and thereupon the county shall relieve all eligible dependents in the county; and all powers conferred and duties imposed by this chapter upon municipalities shall be exercised and performed by the county; or

(b) Abolish all distinction between eligible county dependents and eligible municipal dependents as to medical, surgical, dental, hospital and nursing care and optometrical services; and

have the entire expense of such care a county charge.

(2) The county board by a resolution adopted by an affirmative vote of majority of all its members may repeal any resolution adopted under sub. (1).

49.04 State dependents. (1) From the appropriation under s. 20.435 (4) (e), the state shall reimburse the counties for such temporary assistance as may be needed pursuant to s. 49.01 (7) for all dependent persons who do not have a settlement within any county in this state and who have resided in the state less than one year, but expenses for medical care shall be paid only in those cases in which application for benefits under ss. 49.46 and 49.47 has been made during the first 30-day period and ineligibility for such benefits has been established.

(2) The department shall make suitable rules and regulations governing the administration of temporary assistance under s. 49.01 (7) including the notification of reimbursement charges, the relief to be provided, the presentation of claims for reimbursement and other matters necessary to the provision of relief to such state dependent persons receiving temporary assistance. The observance of such rules and regulations by a county shall be a condition for reimbursement.

(3) The presentation of a claim for reimbursement shall be accompanied by a verified copy of the sworn statement required by s. 49.11 (1), and an affidavit that diligent effort was made to ascertain the facts relating to the dependent's legal settlement and period of residence in the state, and reciting such other facts as the department requires. Any claim for relief furnished after June 30, 1953, shall be filed with the department on the following June 30 or not to exceed 30 days thereafter. If the department is satisfied as to the correctness of the claim it shall certify the same to the department of administration for payment to the county entitled thereto; provided that if the total amount payable to all counties exceeds the amount available under the appropriation made in s. 20.435 (4) (e) the department shall prorate the amount available among the counties according to the amounts due them. Any necessary audit adjustments for any current or prior fiscal years may be included in subsequent certifications.

(4) Any county aggrieved by the disallowance of its claim for reimbursement hereunder may petition the department for a hearing which shall be accorded after due notice. The department may of its own motion order such investigation and hearing as it deems necessary. Such hearing shall be governed by ch. 227.

History: 1971 c. 125.

The state must continue to pay counties for 30 days' temporary assistance even though the one-year residency requirement is no longer constitutional. *State ex rel. Milwaukee County v. Schmidt*, 50 W (2d) 303, 184 NW (2d) 183.

49.046 Relief of needy Indian persons.

(1) From the appropriation made in s. 20.435 (1) (o) and (4) (e) the department shall grant relief to needy Indian persons not eligible for aid under s. 49.177, 49.19, 49.46 or 49.47 and residing on tax-free lands or in Menominee county, except that a person who fails to comply with s. 49.047 may be denied aid under this section. The department shall appoint the elected tribal governing body administering federal assistance on the lands or the Menominee county department of social services to administer relief under this section. If no elected tribal governing body administers federal assistance on the lands, if the local elected tribal governing body so chooses or if the elected tribal governing body fails or refuses to administer the program in accordance with rules adopted under this section, the department may appoint an appropriate Indian organization in the county or municipality in which the needy Indian persons reside or a county department of public welfare or social services to administer relief under this section. Before appointing another agency because the tribal governing body fails or refuses to administer the program in accordance with departmental rules, the department shall notify the body of the rules the body has violated. The department shall give the tribal governing body a reasonable opportunity to correct the violations and shall assist the body in correcting the violations. If the violations are not corrected, the department may appoint another agency to administer the program after notifying the tribal governing body of the appointment and providing the body with a hearing before the department secretary. Any agency so appointed shall make all reports required under this section. Reimbursement for the costs of administering relief under this section shall be made from the appropriation under s. 20.435 (4) (de). The department shall establish rules governing allowable costs of administration. The department may enter into suitable agreements with any appropriate agency of the federal government for provision of relief to needy Indian persons. Administration of relief under this section by any elected tribal governing body or other Indian organization does not confer jurisdiction over any tribe or Indian organization upon this state.

(2) The department shall supervise the administration of programs for the relief of needy Indian persons. The department, after consulting with all elected tribal governing bodies, shall adopt rules establishing eligibility requirements

and the uniform administration of the eligibility requirements and the amounts of aid under this section. Grants to a person under this section shall be equal to what would be granted under ss. 49.19 (11) (a), 49.45 and 49.46 if the person were eligible for grants under s. 49.19.

(3) Any person whose application for aid under this section is not acted upon with reasonable promptness after the filing of the application or is denied in whole or in part, whose award is modified or canceled or who believes the award to be insufficient may petition the department for a fair hearing and review in the manner provided under s. 49.50 (8). The procedures described in s. 49.50 (8) apply to the fair hearing and review under this subsection, except that the rights and duties of counties and county officers that administer public assistance apply to any elected tribal governing bodies and elected tribal governing body officers that administer programs for relief of needy Indian persons. In all proceedings for judicial review arising from the administration of relief under this section, the department is the respondent. If any elected tribal governing body or tribal officer fails to comply with a departmental decision issued under s. 49.50 (8) (b), the department may execute the order.

History: 1973 c. 147, 330, 333; 1975 c. 41; 1977 c. 29, 418; 1979 c. 32; 1979 c. 34 s. 2102 (20) (a); 1979 c. 221.

49.047 Work experience program. (1)

The purpose of the work experience program is to provide a useful work experience, and when possible, work training opportunities which may lead to gainful employment for the persons receiving relief under s. 49.046.

(2) In this section, "work experience program" means a program authorized and sponsored by the body appointed to administer relief under s. 49.046 for eligible recipients of relief under s. 49.046.

(3) A body appointed by the department to administer relief under s. 49.046 shall operate a work experience program authorized and sponsored by the appointed body for eligible recipients of relief under s. 49.046.

(4) Recipients of relief under s. 49.046 shall participate in a work experience program. Non-participation shall be cause for terminating assistance. The department, after consultation with all elected tribal governing bodies, shall by rule provide exceptions to this policy.

(5) A body appointed by the department to administer relief under s. 49.046 shall authorize work experience programs for the performance of any work not prohibited by law. Such programs shall not be operated so as to supplant regular employees of the administering entity or

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other municipal, county or state governmental units.

(6) Section 49.05 does not apply to this section.

History: 1977 c 418.

49.05 Work relief. (1) Any municipality or county required by law to administer relief may require persons entitled to relief to labor on any work relief project authorized and sponsored by the municipality or county, at work which they are capable of performing. When a work relief project requires the employment of skilled tradesmen, and the number of such tradesmen listed on the relief rolls of the municipality or county sponsoring the project is not sufficient to meet the requirements of the project, the municipality or county may hire tradesmen who are not receiving public relief, and they shall be paid at the prevailing wage for such labor in the municipality or county.

(2) The basis of payment of persons granted work relief shall be determined by the unit of government responsible for the person's relief.

(3) Municipalities or counties may authorize work relief projects for the performance of any work not prohibited by law, provided that such projects are not operated so as to supplant regular employes of the municipality or county or the other municipal or county units hereinafter mentioned. Municipalities or counties may, by mutual agreement, assign persons entitled to work relief to work on work relief projects operated by the state or by other municipalities, counties, school districts, drainage districts, utility districts, metropolitan sewerage areas or other governmental units. Such agreements may or may not provide for full or partial work relief reimbursement to the municipality or county loaning such persons by the municipality or county or unit to which such persons are loaned.

(4) Municipalities or counties granting work relief shall be directly liable to persons granted work relief for any benefits legally recoverable under the worker's compensation law of Wisconsin, but may contract with another governmental unit, for whose benefit such work relief project is primarily designed, to share such liability or wholly assume the same, and such other governmental unit is hereby authorized to make such contracts of sharing or total assumption of liability.

(5) Municipalities or counties may authorize the sale of products made on any work relief project to governmental units, and to religious, charitable or educational institutions.

(6) Municipalities or counties may operate work relief projects which will serve to rehabilitate disabled persons so as to enable such persons to qualify for employment in public or private industry.

(7) The value of work relief labor shall be deemed to offset the payments made therefor and such payments shall not be recoverable under s. 49.11.

History: 1975 c. 147 s. 54.

49.055 Emergency fuel and utilities assistance.

(1) Within the limits of the appropriation under s. 20.435 (4) (dL), the department shall distribute funds for each fiscal year only to counties that choose to provide assistance on or before November 15 of that year for fuel and utilities emergencies. Funds shall be distributed on the basis of population only to those counties that provide 10% county matching funds. The county may include the cost of administering the fuel and utilities emergency assistance program as part or all of the 10% match. Within 30 days of July 29, 1979, counties shall deposit in the state treasury all funds received under this section for fiscal years 1977-78 and 1978-79 but not expended for loans to households under sub. (2). All funds distributed to counties for each fiscal year under this section on or after July 1, 1979, but not expended for loans to households under sub. (2), shall be deposited in the state treasury by July 31 of the next fiscal year.

(2) Funds shall be distributed by the county agency designated by the county board of supervisors and shall be granted in the form of a loan not to exceed \$250 per household per year for fuel and utilities bills.

(3) As a condition of eligibility for assistance, applicants must agree to participate in a utility budget payment plan, if such plan is available.

(4) Loans shall be paid to only those households with an annual income at or below 175% of the nonfarm federal poverty line for the continental United States, as defined by the U.S. department of labor under 42 USC 2971d, in effect on October 25, 1979.

(5) Receipt of assistance under a federal emergency fuel assistance program shall constitute a condition of ineligibility for assistance under this section.

(6) Any county collecting a loan under this section after June 30, 1979, may retain 30% of the amount collected and shall deposit the remaining 70% in the state treasury on a quarterly basis.

(7) Each agency distributing loans under this section shall record the name and address of any homeowner receiving assistance under this

section or submit the information to the utility providing energy to the recipient, for the purpose of initiating energy audits and weatherization. If the recipient is a renter, the agency shall record the recipient's address and the name and address of the owner, if known, or submit the information to the utility providing energy to the recipient for the purpose of initiating energy audits and weatherization.

History: 1977 c. 29, 418; 1979 c. 34, 48

49.06 Home and insurance exempt. No person shall be denied relief on the ground that he has an equity in the home in which he lives or a cash or loan value not in excess of \$300 in a policy of insurance. No applicant for relief shall be required to assign such equity or insurance policy as a condition for receiving relief. Where persons are not in fact dependent, as defined by this chapter, but who, if they converted their limited holdings, real or personal, would, by reason of a fallen market or by reason of economic or other conditions, be required to suffer a substantial loss, then and in that event such persons shall be permitted, by proper assignments to the county or municipality, to render themselves qualified to receive relief. The county or municipal agency may sell, lease or transfer the property, or defend and prosecute all actions concerning it, and pay all just claims against it, and do all other things necessary for the protection, preservation and management of the property.

49.08 Recovery of relief paid. (1) If any person at the time of receiving relief under this chapter or as an inmate of any county or municipal institution in which the state is not chargeable with all or a part of the inmate's maintenance or as a tuberculosis patient provided for in ch. 149 and s. 58.06, or at any time thereafter, is the owner of property, the authorities charged with the care of the dependent, or the board in charge of the institution, may sue for the value of the relief from such person or the person's estate; but except as hereinafter provided the 10-year statute of limitations may be pleaded in defense in any such action to recover relief. Where the relief recipient is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.01 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse, surviving spouse or child is dependent on such property for support. The court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for such community or as fixed by the authorities of such community in charge of

public assistance. The records kept by the municipality or institution are prima facie evidence of the value of the relief furnished. This section shall not apply to any person who receives care for pulmonary tuberculosis as provided in s. 149.04.

History: 1975 c. 94; 1975 c. 413 s. 18; 1979 c. 102 s. 237.

Dependent of relief applicant incurs no liability to repay any portion of relief granted under the application. Claims against the recipient's estate are not limited to recovery of relief granted less than 10 years prior to death. In re Estate of Bundy, 81 W (2d) 32, 259 NW (2d) 701.

49.085 No action against members of the Menominee Indian tribe in certain cases.

No action shall be commenced under s. 46.10 or 49.08 or any other provision of law for the recovery from assets distributed to members of the Menominee Indian tribe and others by the United States pursuant to P.L. 83-399, as amended, for the value of relief or old-age assistance under s. 49.20, 1971 stats., as affected by chapter 90, laws of 1973, and the value of maintenance in state institutions under ch. 46, furnished prior to termination date (as defined in s. 70.057, 1967 stats.) to any legally enrolled member of the Menominee Indian tribe, his or her dependents, or lawful distributees of such member under section 3, said P.L. 83-399, as amended. For purposes of this section, "legally enrolled members of the Menominee Indian tribe" shall include only those persons whose names appear on "Final Roll-Menominee Indian Tribe of Wisconsin" as proclaimed by the secretary of the interior November 26, 1957, and published at pages 9951 et seq. of the federal register, Thursday, December 12, 1957.

History: 1973 c. 147, 243.

49.10 Legal settlement; how determined.

(1) A wife has the settlement of her husband, if he has any within the state, but if he has none, she has none. A wife living separate from her husband shall, if criminal proceedings have been instituted under s. 52.05, or support proceedings commenced under s. 52.10, begin to acquire legal settlement in her own right as of the date of instituting the criminal proceedings or commencing the support proceedings.

(2) (a) Legitimate minor children have the settlement status of their father if living, or of the mother if their father is deceased, or if their mother has acquired settlement in her own right under sub. (1) and has actual custody of the children; if the parents are divorced, the children have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal custody is made, the children have the settlement status of the parent having actual custody but if custody

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is awarded to other than a parent, such children have no settlement.

(b) Illegitimate children have the settlement of their mother; and if her settlement is lost, theirs is lost.

(c) If parental rights are terminated, notwithstanding any disposition of custody in the same or companion proceedings, the child has no settlement.

(3) (a) Any person, except as otherwise provided in this section, without a settlement in any municipality in a county (which is not operating on the county system), who voluntarily resides in that county one whole year without the receipt of aid, public or private, as a dependent person, gains a settlement in the county. That which interrupts residence toward the gaining or losing of settlement in a municipality likewise interrupts residence toward the gaining or losing of a county settlement. Every such settlement continues until it is lost by acquiring a new one in this state or by so residing for one whole year elsewhere than the county of settlement or by so residing one whole year in a municipality within the county of settlement, and the residence which went toward gaining the county settlement shall, if voluntarily in the municipality, be included toward the gaining of settlement in the municipality.

(b) Any person who has a settlement in any municipality in a county (which is not operating on the county system) who resides elsewhere than said municipality for one whole year so as to lose his settlement in the municipality, but does not gain a settlement in another municipality in the county, and does not reside outside the county for one whole year, so as to lose settlement, has a settlement in the county.

(c) Time spent by any person while residing on land owned, operated or controlled by another municipality or county, shall not be included as a part of the year necessary to acquire a settlement in the town, city, village or county, wherein such lands are located, but shall be included as a part of the year necessary to acquire a settlement in such other municipality or county.

(4) Every person (except as otherwise provided in this section) who voluntarily resides in any municipality or county operating on the county system one whole year without receiving aid, either public or private, as a dependent person, gains a legal settlement therein. Residence by a person within this state under the following circumstances shall not be considered as voluntary and shall be considered as interrupted, and no settlement status shall be changed:

(a) While supported as a dependent person by other than a spouse, parent or child.

(b) While employed on any governmental program as a needy person.

(c) While an inmate or under the control and supervision of any public institution or an inmate of a private institution.

(d) While residing or while employed on any Indian reservation land which is not subject to taxation by the municipality or county wherein such land is located.

(e) While under confinement or on probation or parole under the state or federal criminal statutes.

(f) While supported in whole or in part in any institution or foster home as a public charge.

(5) Time spent in the armed forces on active duty exceeding 30 days in the aggregate per year shall not be included as part of the year necessary to change settlement status.

(6) Marriage emancipates minors so that they may acquire legal settlement in their own right.

(7) Every settlement continues until it is lost by voluntarily acquiring a new one in this state or by voluntarily residing for one whole year elsewhere than the municipality or county in which such settlement exists; and upon voluntarily acquiring a new settlement or upon voluntarily residing one whole year elsewhere than the municipality or county of settlement, all former settlements are lost.

(8) Where a divorce has been granted, the date from which a new settlement may be acquired by a married woman is the day on which the divorce is granted and not the termination of the period when the divorce judgment becomes final.

(9) When any territory is organized into or attached to any municipality, every person having a settlement in such territory, and who actually dwells or has his home, or if absent, has his last dwelling place or home therein, thereafter has a settlement in such new municipality or the one to which such territory is so attached. The organization into or attachment to any municipality of any territory shall not prevent any person from acquiring a legal settlement therein within the time and by the means by which he would have gained it there if no new municipality had been organized or such territory had not been attached.

(10) This section shall not affect any commitments to institutions, payments or decisions made or actions, proceedings or petitions pending or causes of action existing on the basis of legal settlement before January 1, 1960.

(11) When this section is applied to any county operating under the county system of

administering public assistance the term "municipality" as used herein means such county unless the context clearly requires otherwise.

(12) In addition to the definitions in s. 49.01, the following definitions apply to this section:

(a) "Settlement status" includes persons with or without a legal settlement in this state.

(b) "Legitimate child" includes children born or conceived in wedlock or legitimated pursuant to law or legally adopted.

(c) "Residence" is the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain.

(d) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian if incompetent.

(e) "Confinement" means legal detention of a person after imposition of sentence in any prison, jail, house of correction, prison camp or similar correctional facility, and includes the provisions of s. 56.08.

(f) "Institution" means a facility within this state for congregate care or correction and includes the following:

1. Public. Waupun correctional institution; the correctional institutions authorized under s. 46.05; Fox Lake correctional institution; Green Bay correctional institution; Dodge correctional institution; Taycheedah correctional institution; Oakhill correctional institution; Lincoln Hills school; Ethan Allen school; county jails or houses of correction; centers for the developmentally disabled; Mendota and Winnebago mental health institutes; central state hospital; Wisconsin school for the visually handicapped; Wisconsin school for the deaf; federal, state, county or municipal hospitals, asylums, infirmaries, tuberculosis sanatoriums or homes for the aged; veterans' hospitals, domiciliaries and homes.

2. Private. Private or denominational centers, schools or homes for neglected, dependent or delinquent children; foster homes (licensed); nursing homes (licensed); lodge, society or benevolent homes; tuberculosis sanatoriums; mental hospitals.

History: 1975 c. 39; 1975 c. 189 s. 99 (1), (2); 1975 c. 224; 1977 c. 29; 1977 c. 418 ss. 332, 924 (18) (d); 1979 c. 110 s. 60 (13); 1979 c. 221

49.105 Legal settlement in Menominee county. Every person who on termination date as defined in s. 70.057 [Stats. 1967] would have legal settlement in Menominee county as determined under s. 49.10 but for the exception contained in s. 49.10 (4) for time spent while residing or while employed on an Indian reservation, shall be deemed to have legal settlement in Menominee county on termination date.

49.11 Legal settlement, collection from.

(1) **LEGAL SETTLEMENT COLLECTION FROM SWORN STATEMENT OF SETTLEMENT.** When relief is furnished to a dependent person, either that person, if able, or some other person who has knowledge of the facts, shall make a sworn statement of facts relating to residence and settlement, which shall be incorporated into the nonresident notice.

(2) **RIGHT TO COLLECT FROM PLACE OF SETTLEMENT.** The county or municipality in which the relief recipient has settlement shall be chargeable with relief furnished, except that no county or municipality may be charged for relief furnished to any recipient who has not resided within such county or municipality during the previous 24 months. If the relief recipient has no settlement in this state, or if he or she has not resided in the county or municipality of legal settlement during the previous 24 months, then the county where the relief is furnished shall be chargeable with such relief. The state shall reimburse for relief charges when the person has no settlement and until such person has had residence in this state for a period of one year, under s. 49.04. All notices of claims to the department or to counties or municipalities of legal settlement for reimbursement for general relief provided by other counties or municipalities, in or outside the county of legal settlement, shall be accompanied by a sworn statement of the relief granting agency. The statement shall certify that the relief recipient has been informed of the benefits and eligibility requirements under the federally funded medical and public assistance program and that such recipient has been determined to be ineligible by the relief granting agency if the recipient is clearly ineligible or, otherwise, by the appropriate county agency, along with an explanation of the reasons for such ineligibility, or that an application for medical or public assistance is pending or approved.

(a) *When the furnishing municipality is without the county of settlement.* 1. When the relief recipient claims to have settlement outside of the county in which relief is furnished, the relief furnished shall be a charge against the county in which the relief is furnished. Such charge shall be audited by a committee designated for such purpose by the county board and shall be paid by the county of the municipality furnishing the relief within 60 days of the receipt of the voucher or claim. Thereafter such county may recover from the county of settlement, and the latter county may, except when operating under the county system of relief, recover from the municipality of settlement.

2. If the county wherein the aid is furnished fails to pay the charge to the granting municipality within 60 days after it is filed with its clerk, the municipality may proceed against said county under this section to recover for such relief furnished.

(b) *When furnishing municipality is within county of settlement.* When operating under the municipal system and the relief recipient claims to have settlement in a municipality within the same county, the relief furnished shall be a charge against such municipality and may be recovered by the furnishing municipality directly.

(c) *When county settlement or no settlement.* When the relief recipient claims to have county settlement or no settlement, the charges for the relief furnished may be recovered by the furnishing municipality directly from the county where the relief is furnished, and if such recipient has no settlement and has not resided in this state for at least one year, the county may recover from the state under s. 49.04.

(3) **DEFENSES AVAILABLE.** Any municipality or county may assert the following defenses in a proceeding under this section for reimbursement:

(a) That the settlement is not in the municipality or county as claimed.

(b) That the relief recipient was not a dependent person as defined in s. 49.01 (4) and was not in need of the relief furnished.

(c) That the notices required to be served or filed were defective to the prejudice of the municipality or county.

(d) That the limitations as prescribed in this section had expired.

(4) **PROCEDURES FOR RECOVERY.** When the municipality furnishing relief is not the municipality of settlement, a nonresident notice shall be served upon the municipality of claimed settlement. Such nonresident notice shall be on a standard form prescribed by the department and shall contain the name of the municipality or county furnishing relief; the name, residence and birth dates of the persons receiving relief and of all the members of the household; the name of the county or municipality in which settlement is claimed and the facts upon which such claim is based; the date on which relief was first furnished; and a copy of the sworn statement as described in sub. (1). The effect of this nonresident notice shall lapse when there is no general relief furnished to the person or the person's family for a period of 6 months. The effect of the nonresident notice may be reinstated, at any time, by notice, on forms prescribed by the department, by certified mail by the furnishing municipality or county to the

municipality or county chargeable, within 30 days after the new relief is furnished, after such lapse of 6 months, and forwarded in the same manner as the original nonresident notice.

(a) *Reply to nonresident notice.* The municipality or county of claimed settlement shall deny or acknowledge settlement within 20 days after receipt of the nonresident notice, and if denied, such denial shall contain all the facts upon which the denial is based. Failure to deny settlement shall be considered as an acknowledgment of settlement as claimed until such denial is filed.

(b) *Transmittal of notices, replies and claims.* 1. When settlement is claimed in a county or a municipality in other than the furnishing county, the nonresident notice shall be completed by the furnishing municipality or county, and transmitted to the county clerk of the county where the relief was furnished, except in counties on the county system where the county clerk is the initiating agent, who shall transmit said notice to the county clerk of the county in which settlement is claimed. In counties operating under the municipal system of relief, the county clerk shall forward such nonresident notice to the clerk of the municipality of claimed settlement.

2. Denials or acknowledgments of responsibility shall be mailed directly to the municipality or county furnishing relief with copies being sent to all forwarding agencies.

3. When verified claims are received by the county clerk from the municipality furnishing relief and payment to the municipality is made under sub. (2) (a) 1, such clerk shall, within 75 days from the date of receipt of the claim, forward a verified claim, on forms prescribed by the department, to the clerk of the county where settlement is claimed. In counties operating under the municipal system, the county clerk shall forward such claim to the clerk of the municipality of claimed settlement within 7 days after the receipt thereof. When operating under the county system of relief, verified claims received from the county relief agency under par. (e) 3 shall be forwarded within 75 days from the date such claim is received, on forms prescribed by the department, to the clerk of the county where a settlement is claimed.

4. Allowances or disallowances shall be sent to the clerk of the furnishing county with a copy to the clerk of the county of claimed settlement. The municipality or county of claimed settlement shall, upon receipt of the claim for reimbursement, either allow or disallow such claim. Failure to allow such claim for the period hereinafter indicated shall be deemed a disallowance thereof.

(c) *Transmittal of notice, replies and claims between units in same county.* When the furnishing municipality and the municipality of claimed settlement are within the same county, all nonresident notices, denials or acknowledgments, claims and allowances or disallowances shall be filed directly with the clerks of the respective municipalities.

(d) *Transmittal of notice, replies and claims when person has no settlement or county settlement.* When claim is made that responsibility rests with the furnishing municipality's county because the recipient has no settlement or has a county settlement, all filing shall be done directly with the county clerk and the municipal clerk. When settlement is claimed as county settlement in a county other than the county of the furnishing municipality the transmittal shall be in the same manner as if such county of claimed settlement were operating under a county system of relief.

(e) *Time and limitations for filing.* 1. All filings and mailings shall be done by certified or registered mail. The nonresident notice and statement concerning residence shall be initially filed and transmitted within 20 days of the date of furnishing relief. The forwarding agents shall forward such notices within 7 days of the receipt thereof.

2. The acknowledgment or denial of settlement shall be transmitted within 20 days of the receipt of the nonresident notice.

3. Claims for reimbursement shall be filed with the county clerk of the furnishing county within one year of the date on which the relief is furnished.

4. Disallowance or allowance of claims by the municipality or county of claimed settlement shall be transmitted within 60 days of receipt of the claim for reimbursement, and failure to allow or disallow within such period shall be deemed a disallowance.

(f) *Penalty for failure to timely file.* 1. Failure timely to initiate or transmit a nonresident notice or an acknowledgment or denial shall be a bar to recovery or a right to deny recovery until such notices are received. If the furnishing municipality or county claims settlement of a relief recipient to be in a municipality in a county operating under a municipal system, and later discovers that settlement is in another municipality within the same county, an amended nonresident notice may be filed, and if done within 40 days of the date on which relief is furnished, such notice shall revert to the date on which such relief was first furnished.

2. Failure to timely initiate and transmit a claim for reimbursement shall be a complete bar to recovery on such claim not timely filed.

(5) **GENERAL LIMITATIONS.** In addition to the other limitations and penalties hereinbefore stated, recovery of relief granted shall be barred unless a proceeding is commenced before the department:

(a) Within 6 months after receiving written notice of a disallowance of a claim.

(b) Within one year after disallowance by failure to allow a claim.

(c) Under any other circumstances within 2 years of the date relief is first furnished under the nonresident notice which is the basis for the claim, including claims against the state.

(6) **WHO MAY SUE.** (a) *County.* Upon receipt of notice of the disallowance of the claim of any county, its clerk shall notify the district attorney of the county, who may institute a proceeding in the name of the county for the recovery of the disallowed portion of the claim, and in such action the county shall not be required to give bond.

(b) *Municipality.* Upon receipt of notice of disallowance of the claim of any municipality against another municipality within the same county the clerk receiving such notice shall notify the governing body of his or her municipality which may institute a proceeding under sub. (7).

(7) **PROCEDURE.** (a) *Jurisdiction and practice.* The department is vested with exclusive original jurisdiction to hear all proceedings brought under this section on claims that have been disallowed or which have not been acted upon as required by statute. A county which has furnished relief or paid a municipality for the relief furnished shall be plaintiff, except where the suit is between municipalities within the same county or where a municipality is suing its own county for failure to pay, and shall join as parties defendant all municipalities or counties which may be liable. The parties have a right to be represented at any hearing, by an attorney or any other authorized agent approved by the department, and to present pertinent testimony and argument. The department shall appoint examiners to conduct such hearings and the department or examiner may issue subpoenas for such purpose. The department may promulgate such rules not inconsistent with ch. 49 or 227 as will enable it to perform its duties hereunder. The department shall, by order, determine the ultimate liability of all parties in the proceeding and may grant to the prevailing party and against the losing party witness fees of \$5 per day and 5 cents per mile for travel.

(b) *Pleadings and hearing.* Such proceedings shall be commenced by complaint which shall be entitled "Before the department of health and social services of Wisconsin". The complaint

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shall contain the names of the parties and matters and prayers as in complaints generally. The complaint, with sufficient copies, may be served by registered or certified mail upon the department, which shall then note such service upon the original complaint and so notify the claimant. The department shall immediately transmit a copy by registered or certified mail to the defendant county or municipality, which shall have 20 days from the time of the mailing of such copy by registered or certified mail to serve an answer, with sufficient copies, upon the department. The department shall acknowledge such service and mail a copy of the answer to the claimant. The department shall notify the parties of the time and place of hearing thereon and may continue or adjourn such hearing for a reasonable period. The department shall make its findings and order and transmit copies thereof to the parties by registered or certified mail as soon as possible after such hearing.

(c) *Judicial review.* The order is subject to review under ch. 227.

(d) *Service by mail.* The mailing within such 20 days, of any notice herein provided shall be by registered or certified mail with return receipt requested.

(e) *State special charge.* When a matter is finally determined on appeal, or if no appeal is taken within the prescribed time, the amount owing by a county or municipality shall be certified by the department to the department of administration and shall thereafter be collected as are other special state charges against counties and municipalities, with interest at the rate of 6% per year to be computed to March 22 following. The state treasurer shall remit such amount to the prevailing county or municipality, as soon as possible after March 1 of each year, upon order of the department of administration.

(8) **MUNICIPAL RELIEF DIRECTORS.** If a municipality has a full-time relief director, the relief director may perform the functions of the municipal clerk under this section. If the relief director performs the functions of the municipal clerk, the municipal clerk shall forward filings or mailings received under this section to the relief director. If the relief director does not perform the functions of the municipal clerk under this section, but does receive filings or mailings, the relief director shall forward the filings or mailings to the municipal clerk.

History: 1977 c. 29, 187; 1979 c. 110 s. 60 (13); 1979 c. 221.

49.12 Penalties; evidence. (1) Any person who, with intent to secure public assistance under ch. 49, whether for himself or for some other person, wilfully makes any false representations may, if the value of such assistance so

secured does not exceed \$100, be imprisoned not more than 6 months, if the value of such assistance exceeds \$100 but does not exceed \$500, be imprisoned not more than one year, if the value of such assistance exceeds \$500, be imprisoned not more than 5 years, and if the value of such assistance exceeds \$2,500, be punished as prescribed under s. 943.20 (3) (c).

(2) Any person who wilfully does any act designed to interfere with the proper administration of public assistance shall be fined not less than \$10 nor more than \$100 or be punished by imprisonment for not less than 10 nor more than 60 days. The acceptance of any supplies or articles furnished to any person as general relief in exchange for or in payment for any intoxicating liquor or fermented malt beverage shall be deemed to be a violation of this subsection, but violations of this subsection shall not be limited to such acts.

(3) Any dependent person who sells or exchanges supplies or articles furnished him as assistance or who disposes of such supplies or articles in any other way than as directed, with intent thereby to defraud the county or municipality furnishing him assistance, and any person who purchases any article knowing it to have been furnished to another person as assistance shall be punished as provided in sub. (2).

(4) Any person who without legal authority sends or brings, causes to be sent or brought, or advises any dependent person to go to any municipality for the purpose of making him a charge upon such municipality shall be punished as provided in sub. (2).

(5) Any person in charge of public assistance or any of his assistants who receives or solicits any commission or derives or seeks to obtain any personal financial gain through any purchase, sale, disbursement or contract for supplies or other property used in the administration of public assistance shall be punished as provided in s. 946.13.

(6) Where a person is originally eligible for assistance and receives any income or assets or both thereafter and fails to notify the officer or agency granting such assistance of the receipt of such assets within 10 days after such receipt and continues to receive aid, such failure to so notify the proper officer or agency of receipt of such assets or income or both shall be considered a fraud and the penalties in sub. (1) shall apply.

(7) Any dependent person who uses money, checks, vouchers or any other thing of value furnished him as relief for purposes other than as directed by the county or municipality furnishing such relief shall be punished as provided in sub. (2).

(8) Any person who makes any statement in a written application for aid under this chapter shall be considered to have made an admission as to the existence, correctness or validity of any fact stated, which shall be taken as prima facie evidence against the party making it in any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter.

(9) If any person obtains for himself, or any other person or dependents or both, assistance under this chapter on the basis of facts stated to the authorities charged with the responsibility of furnishing assistance and fails to notify said authorities within 10 days of any change in the facts as originally stated and continues to receive assistance based on the originally stated facts such failure to notify shall be considered a fraud and the penalties in sub. (1) shall apply. The negotiation of a check received in payment of such assistance by the recipient after any change in such facts which would render him ineligible for such assistance shall be prima facie evidence of fraud in any such case.

(10) Any person who accepts a relief voucher granted as relief and fails to tender the commodities authorized by the relief authorities to the relief recipient but in lieu thereof refunds to the relief recipient cash or substitutes any intoxicating liquor or malt beverage or cigarettes not authorized by the relief voucher shall be considered to have committed a fraud and the penalties provided in sub. (1) shall apply to said person.

(11) "Public assistance" as used in this section includes assistance obtained through the food stamp program.

History: 1971 c. 182; 1977 c. 303.

Sub. (9) is not unconstitutionally vague. *Weber v. State*, 59 W (2d) 371, 208 NW (2d) 396.

A welfare fraud involving a sum between \$100 and \$500 constitutes a felony, because it authorizes imprisonment in such event for not more than one year and the section was amended after enactment of the new criminal code. *Zastrow v. State*, 62 W (2d) 381, 215 NW (2d) 426.

Welfare fraud under (9) is a continuing offense. *John v. State*, 96 W (2d) 183, 291 NW (2d) 502 (1980).

49.13 Verification of public assistance applications. (1) Any person who applies for any public assistance shall execute the application or self-declaration in the presence of the welfare worker or other person processing the application. This subsection does not apply to any superintendent of a mental health institute, director of a center for the developmentally disabled, superintendent of a state treatment facility or superintendent of a state correctional facility who applies for public assistance on behalf of a patient.

(2) At the time of application, the agency administering the public assistance program

shall provide the applicant with a form authorizing waiver of fees under s. 69.24 for copies of birth certificates if the applicant is required to provide a birth certificate or social security number as part of the application. The waiver applies to all persons in the applicant's household required to provide birth certificates or social security numbers. The agency shall provide written information to the applicant explaining the use of the waiver form.

History: 1971 c. 334; 1979 c. 221.

49.14 County home; establishment. (1) Each county may establish a county home for the relief and support of dependent persons pursuant to s. 46.17.

(2) In all counties whose population is less than 250,000 such county home shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) No county in which a county home is established shall contract to conduct the same or to support and maintain the inmates thereof; and all agreements in violation of this subsection are void.

(4) The trustees or any person employed by the county board pursuant to subs. (1) and (2), may administer oaths concerning any matter submitted to him or them, in connection with their functions.

(5) The uniform accounting system established by s. 50.03 (10) shall be used by each county home and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75.

49.15 County home; commitments; admissions. (1) Any person upon his or her application to the board of trustees may be admitted to the county home upon such terms as may be prescribed by the board. If such person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the municipality of his or her legal settlement or the county if he or she has no settlement, but no municipality or county may be bound without the written approval of its relief officer or agency, except as provided in sub. (2).

(2) The actual cost for care and maintenance rendered a relief recipient who has legal settlement in another county shall be a proper relief charge and a liability against the place of settlement and recoverable pursuant to s. 49.11.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons committed or admitted to the county home, and may repeal any resolution adopted under this subsection.

History: 1977 c. 428.

49.16 County hospital; establishment.

(1) Each county may establish a county hospital for the treatment of dependent persons, pursuant to s. 46.17, and other persons authorized under s. 46.21 (2) (b).

(2) In counties with a population of 250,000 or more such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) The uniform accounting system established by s. 50.03 (10) shall be used by each county hospital and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75.

49.17 County hospitals; admissions. (1)

Any person upon application to the board of trustees may be admitted to the county hospital upon such terms as may be prescribed by the board. If such person or his relatives are unable to pay for his care and maintenance he may be admitted as a charge of the municipality of his legal settlement or the county if he has no settlement, but no municipality or county shall be bound without the written approval of its relief officer or agency, except as provided in sub. (2).

(2) The actual cost for hospitalization and treatment rendered a relief recipient who has legal settlement in another county shall be a proper relief charge and a liability against the place of settlement and recoverable pursuant to s. 49.11.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons admitted to the county hospital, and may repeal any resolution adopted under this subsection.

49.171 County infirmaries; establishment.

(1) Each county, or any 2 or more counties jointly, may establish, pursuant to s. 46.17 or 46.20 a county infirmary for the treatment, care and maintenance of the aged infirm.

(2) In counties with a population of 500,000 or more, such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) As used in ss. 49.171 to 49.173:

(a) An aged infirm person is a person over the age of 65 years so incapacitated mentally by the degenerative processes of old age, or so incapacitated physically, as to require continuing infirmary care.

(b) A county infirmary is a county institution created pursuant to sub. (1) or (2) under the

general supervision and inspection of the department pursuant to ss. 46.16 and 46.17 as to adequacy of equipment and staff to treat, care for and maintain the physical and mental needs of aged infirm persons.

(4) The uniform accounting system established by s. 50.03 (10) shall be used by each county infirmary and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75.

49.172 County infirmaries, admissions; standards. (1)

The following standards shall apply to admissions to a county infirmary:

(a) The primary standard shall be need of infirmary care, rather than ability to pay for such care, and no person shall be excluded from an infirmary solely because of his ability or inability to pay for his care.

(b) The person admitted must be an aged infirm individual, and it must be reasonably apparent that unless admitted he will be without care adequate for his needs.

(c) Except as provided in par. (d), any person who has resided in this state for at least one year, and who meets the other standards for admission, is eligible for admission, and no person shall be excluded solely on the ground that he has no legal settlement in the county or counties which operate the infirmary. The time spent by any person in a county infirmary either as a voluntary or a committed patient shall not be included as time necessary to acquire or lose a legal settlement in any municipality.

(d) An applicant who has removed his residence to Wisconsin from a state which requires that one who has removed his residence from Wisconsin to such state, reside in the latter more than one year before being eligible for a similar type of care, shall be required to reside in this state for a like period before becoming eligible for admission.

(2) The board of trustees of a county infirmary (subject to regulations approved by the county board) shall establish rules and regulations governing the admission and discharge of voluntary patients.

(3) If it appears to the satisfaction of the circuit court for the county in which an infirmary is located, upon petition for commitment, that a person meets the standards under sub. (1), it may, after affording the person an opportunity to be heard in person or by someone on his or her behalf, commit the person to a county infirmary. The power to commit includes persons who entered an infirmary voluntarily. The court may also, on petition and after a hearing, order the discharge of any patient, upon a showing that the patient is no longer in need of

infirmiry care, or that the patient can be adequately cared for elsewhere.

(4) The board of trustees on receipt of an application for voluntary admission, or the circuit court on the filing of a petition for commitment, shall appoint a person licensed to practice medicine and surgery in this state to examine personally the applicant or the subject of the petition and to advise the board or court whether such person meets the standard prescribed by sub. (1) (a).

(5) The department shall prescribe and prepare the forms to be used for the voluntary admission or commitment of patients.

(6) The circuit court in the case of a commitment, and the board of trustees in the case of a voluntary admission, shall pass on the economic status of the patient at the time of commitment or admission, and in all cases in which the patient has legal settlement in another county shall notify the county of legal settlement of the fact of such commitment or admission.

History: 1977 c. 449 ss. 130, 497

49.173 County infirmaries; cost of treatment, care and maintenance of patients.

(1) In the first instance the county or counties operating an infirmiry shall defray the actual per capita cost of treatment, care and maintenance. To the extent that a patient is a public charge, such county or counties shall be reimbursed for such expenditures on the following basis as determined from annual infirmiry reports filed with the department under s. 46.18 (8), (9) and (10):

(a) By the state, 100% of the actual cost for each patient who has no legal settlement in this state;

(b) By the state, 50% of such cost for every other patient;

(c) If a patient has a legal settlement in some other county of this state, 50% of such cost, by the county of his legal settlement. The procedure for making such reimbursement shall be as provided by s. 46.106.

(2) To the extent that a patient is not a public charge, such cost shall be charged and paid in advance for each calendar month, and payment may be enforced by the board of trustees.

(3) The department may at any time examine any patient, the cost of whose care is charged in whole or part to the state, to determine if he is still in need of infirmiry care. If the department determines such care is no longer needed, the state's liability for such cost ceases upon notice to the infirmiry.

(4) Beginning with the fiscal year ending June 30, 1952, the records and accounts of each county infirmiry shall be audited annually.

Such audits shall be made by the department of revenue as provided in s. 73.10 (5) and (6) as soon as practicable following the close of the infirmiry's fiscal year. In addition to other findings, such audits shall ascertain compliance with the mandatory uniform cost record-keeping system requirements of s. 46.18 (8), (9) and (10), and verify the actual per capita cost of maintenance, care and treatment of patients. Any resulting adjustments to settlements already made under ss. 49.173 and 46.106 shall be carried into the next such settlement.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523.

49.174 Fees and expenses of proceedings. The fees of examining physicians, witnesses and guardians ad litem and other expenses of proceedings under ss. 49.171 to 49.173 shall be governed by s. 51.20 (18).

History: 1975 c. 430 s. 80; 1977 c. 428 s. 115.

49.175 Residential care institution; establishment. (1) Any county or combination of counties may establish and staff a county residential care institution for the reception and care of dependent persons which shall be governed by the county board. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent person.

(2) Residential care institutions may be established and staffed by private vendors for the reception and care of dependent persons. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent persons.

(3) Any county operated or private residential care facility not certifiable as a Title XIX facility shall be licensed and governed under s. 50.03 by the department before receiving or caring for any dependent persons. State aid shall be provided according to subs. (4) and (5) for those patients presently in private facilities who were receiving a public assistance grant under s. 49.18, 49.20 or 49.61, 1971 stats., as of December 31, 1973, or for those patients who were in county-operated facilities on that date.

(4) The cost of care of such patients shall be determined by multiplying the per day patient rate for such facility as determined by applying the formula under s. 49.45 (6m) (a) 1, except that interest on capital expenditures which are reimbursable under s. 51.91 shall be excluded, times the number of days of care of such patients in the time period being considered. Any amounts received by the facility from the patient or resident shall be deducted from the costs determined under this subsection. This section shall not be construed to require that as a condition of reimbursement any facility must

meet any skilled or intermediate care standards established by the department.

(5) Beginning January 1, 1974, the state shall pay 50% of the costs determined under sub. (4) if the patient has legal settlement in this state and the county of legal settlement shall pay 50% of such costs. For private residential care facilities the county of legal settlement shall pay the facility 100% of such costs under sub. (4) and shall bill the state for its 50% share under this section. State payment shall be 100% of such costs if the patient does not have legal settlement in the state. Beginning January 1, 1975, the state shall pay 100% of such costs. State payments shall be made from the appropriation under s. 20.435 (4) (d).

(6) Liability, and the collection and enforcement thereof, for care, services and supplies provided under this section, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

History: 1971 c. 216; 1973 c. 90, 333; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1977 c. 418 s. 929 (55).

49.177 State supplemental payments.

(1) DEFINITION. In this section "secretary" means the secretary of the U.S. department of health, education and welfare or the secretary of any other federal agency subsequently charged with the administration of federal Title XVI.

(2) ELIGIBILITY. (a) Persons enumerated in subds. 1 to 4 under this paragraph who meet the resource limitations of federal Title XVI are entitled to receive supplemental payments in an amount determined by the department and approved or amended by the joint committee on finance. Prior approval of a modification in the amount of supplemental payments will be deemed to be given, if within 21 calendar days after the department files a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Payment modifications approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect.

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s. 49.18, 49.20 or 49.61, 1971 stats., as affected by chapter 90, laws of 1973.

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section.

4. Any essential person.

(3) MINIMUM SUPPLEMENTAL PAYMENT IN CERTAIN CASES. The total monthly benefits received under this section and federal Title XVI by a person or couple described in sub. (2) (a) 1 shall not be less than the total state cash assistance payment amount plus gross earned and unearned income, received by such person or couple for December of 1973.

(3m) COST OF LIVING ADJUSTMENT. (a) Any person receiving state supplemental payments under this section, but who does not reside in a nursing home, is eligible for a cost of living adjustment under this subsection.

(b) As a cost of living adjustment, the department shall increase state supplemental payments provided under this section to any person eligible under par. (a) by 7.5% for the period from October 1, 1979 to June 30, 1980. Aid shall increase by 7.5% for the period from July 1, 1980 to June 30, 1981.

(4) OPTIONAL FEDERAL ADMINISTRATION. (a) The department may enter into an agreement with the secretary under which the secretary will provide supplemental payments to all eligible persons on behalf of the state or any of its subdivisions. Under the agreement the department shall pay to the secretary an amount specified in accordance with agreed procedures. The department may make advance payments to the secretary if the agreement so provides.

(b) The department may enter into an agreement with the secretary under which the secretary may determine eligibility for medical assistance in the case of aged, blind or disabled individuals under the state plan approved under Title XIX of the social security act.

(c) Agreements made under this subsection or modifications to such agreements require prior approval or amendment by the joint committee on finance. Prior approval will be deemed to be given if within 21 calendar days following the department filing a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Agreements or modifications to such agreements approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the

decision of the joint committee on finance shall take effect.

History: 1973 c. 90, 147; 1975 c. 39, 199, 224; 1977 c. 29; 1979 c. 34.

49.178 Institutions subject to chapter 150. Any institution created under the authority of s. 49.14, 49.16, 49.171 or 49.175 is subject to ch. 150.

History: 1977 c. 29

AID TO DEPENDENT CHILDREN

49.19 Aid to families with dependent children. (1) (a) In this section, "dependent child" means a child under the age of 18, who:

1. Has been deprived of parental support or care by reason of the death, continued absence from the home, unemployment or incapacity of a parent; and

2. a. Is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousins, nephews or nieces in a residence maintained by one or more of these relatives as the child's or their own home, or living in a residence maintained by one or more of these relatives as the child's or their own home because the parents of the child have been found unfit to have care and custody of the child; or

b. Is living in a foster home licensed under s. 48.62 if a license is required under that section, or a child-caring institution licensed under s. 48.60 and has been placed in the foster home or institution by a county agency under ch. 48 or by the department.

(b) Any individual may apply for aid to families with dependent children and shall have opportunity to do so. Application for aid shall be made on forms prescribed by the department. Any person having knowledge that any child is dependent upon the public for proper support or that the interest of the public requires that such child be granted aid may bring the facts to the notice of an agency administering such aid in the county in which the child resides.

(c) "Aid to families with dependent children" means money payments with respect to, or vendor payments as prescribed by the department, or medical care in behalf of or any type of remedial care recognized under subs. (1) to (10) or s. 49.46 or necessary burial expenses as defined in sub. (5) in behalf of a dependent child or dependent children including such aid to meet the needs of the relative with whom any dependent child is living and the spouse of the relative if living with the relative and if the relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or payments made

to another individual not a relative enumerated under par. (a), pursuant to federal regulations, when such individual has been appointed by a court of competent jurisdiction as a legal representative of the dependent child or when such individual who may be a caseworker has been designated by the county welfare or social services department to receive payment of the aid or cash payments to recipients who are engaged in an approved work relief or training project. The rate of payment for skilled nursing care provided under this section shall be determined by the county under guidelines established by the department pursuant to s. 49.45 (6m). Payment for limited care shall not exceed 90% of the applicable Title XIX skilled care rate. Payment for personal care shall not exceed 80% of the applicable Title XIX skilled care rate.

(2) (a) A prompt investigation of the circumstances of the child shall be made (which shall include a visit to its home) before granting aid. A report upon such investigation shall be made in writing and become a part of the record in the case. Every applicant shall be promptly notified in writing of the disposition of his application. Aid shall be furnished with reasonable promptness to any eligible individual.

(b) The department of health and social services shall conduct a pilot program encompassing screening, assessment, job development and job placement of recipients. The program shall be intensive in nature and shall be structured to develop jobs for employable AFDC recipients and to effect their job placement as expeditiously as possible. Initial priorities shall be assigned to the following categories of recipients:

1. Adults who have been recipients for one or more years and who have no children under age 5.

2. Adults who are members of recipient families which have 2 or more adults included in the grant.

3. Adults who have been recipients for 5 or more years.

(p) Any person who has conveyed, transferred or disposed of any property within 2 years prior to the date of making application for benefits under this section without receiving adequate and full consideration in money or money's worth shall, unless shown to the contrary, be presumed to have made the transfer, conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive the benefits thereafter until the value of the property is expended by or on behalf of the person for his or her maintenance needs, including needs for medical care. The department shall promulgate rules for the administration of this paragraph. This paragraph

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shall apply to the extent permitted under federal law.

(2m) Recipients of aid under this section shall provide accurate reports of any change in circumstances which may affect their eligibility or the amount of assistance within the minimum time required by appropriate federal regulations.

(3) (a) After the investigation and report and a finding of eligibility, aid as defined in sub. (1) shall be granted by the county welfare or social services department as the best interest of the child requires. No such aid shall be furnished any person for any period during which that person is receiving supplemental security income or to any person who fails to provide such social security account numbers as required by federal law.

(b) If the county agency finds a person eligible for aid under this section, such agency shall on a form to be prescribed by the department, direct the payment of such aid by order upon the county clerk or county treasurer of the county. Payment of aid shall be made monthly, except that the director of the county agency may, in his discretion for the purpose of protecting the public, direct that the monthly allowance be paid in 2 or more instalments.

(4) The aid shall be granted only upon the following conditions:

(a) There must be a dependent child who is living with the person charged with its care and custody and dependent upon the public for proper support and who is under the age of 18 years. Aid may also be granted for minors other than to those specified, but not for a child 18 years of age or older.

(b) The person applying for aid has allowed the county agent 15 to 30 days to process his application and, if not already a resident of the county, has notified the agency of his intent to establish residence in the county. Payments of aid to eligible individuals will not be retroactive beyond the first of the month in which eligibility is established.

(bm) The person applying for aid shall document, to the department's satisfaction, actual income as claimed in the application, and shall reveal all assets.

(c) The person having the care and custody of the dependent child must be fit and proper to have the child. Aid shall not be denied by the county agency on the grounds that a person is not fit and proper to have the care and custody of the child until the agency obtains a finding substantiating that fact from a court assigned to exercise jurisdiction under ch. 48 or other court of competent jurisdiction; but in appropriate cases it is the responsibility of the county agency

to petition under ch. 48 or refer the case to a proper child protection agency.

(d) Aid may be granted to the mother or stepmother of a dependent child if she is without a husband unless she:

1. Is the wife of a husband who is incapacitated for gainful work by mental or physical disability; or

2. Is the wife of a husband who is incarcerated; or

3. Is the wife of a husband who has been committed to the department pursuant to ch. 975, irrespective of the probable period of such commitment; or

4. Is the wife of a husband who has continuously abandoned or failed to support her, if the husband has been legally charged with abandonment under s. 52.05 or with failure to support under s. 52.055 or in proceedings commenced under s. 52.10; or

5. Has been divorced and is without a husband or legally separated from her husband and is unable through use of the provisions of law to compel her former husband to adequately support the child for whom aid is sought; or

6. Has commenced an action for divorce or legal separation and obtained a temporary order for support under s. 767.23 which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

7. Has obtained an order under s. 767.08 from the court to compel support, which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

8. Is incapacitated and the county agency believes she is the proper payee.

(dm) Aid may be paid to parents of a dependent child if the parents are unable to supply the needs of the child because of the unemployment of a parent who meets the federal requirements as to past employment and current unemployment. Aid to dependent children of unemployed parents may be granted only if federal aid for this purpose is available to the state. No aid may be granted if the unemployed parent:

1. Refuses to register for the work incentive program under s. 49.50 (7), unless the parent is exempt under federal regulations;

2. Refuses to register with the department of industry, labor and human relations, if the parent is exempt from registering for the work incentive program because of remoteness from a work incentive project;

3. Refuses to maintain a current registration with the work incentive program or job service division, if required to do so under subd. 1 or 2;

4. Qualifies for unemployment compensation but refuses to apply for or accept unemployment compensation; or

5. Fails to meet any applicable federal or state work, work registration or training requirement. The department shall, by rule, list the applicable requirements under this subdivision.

(e) The ownership of a home and the lands used or operated in connection therewith or, in lieu thereof, a housetrailer, if such home or housetrailer is used as the person's abode, by a person having the care and custody of any dependent child shall not prevent the granting of aid if the cost of maintenance of said home or housetrailer does not exceed the rental which the family would be obliged to pay for living quarters.

(em) The ownership of one vehicle registered under ch. 341 or 350 by an AFDC group may not prevent the granting of aid. Ownership of a 2nd vehicle shall be permitted only if the department determines it is necessary for purposes of employment or to obtain medical care. For purposes of this paragraph and of par. (es), an "AFDC group" consists of those persons listed on the application form for whom aid is being requested.

(es) In the determination of eligibility for aid under this subchapter all income of the AFDC group as defined under par. (em) shall be considered except an amount equal to expenses incurred in the earning of income and any other amount which must be disregarded under federal law and regulations. The work-related expense deduction shall be set at the greater of 18% of gross income or the amount of actual expenditures.

(f) Whenever better provisions, public or private, can be made for the care of such dependent child, aid under this section shall cease. Prompt notice shall be given to the appropriate law enforcement officials of the county of the furnishing of aid under this section in respect of a child who has been deserted or abandoned by a parent.

(g) Aid shall be granted under this section to a pregnant woman who is otherwise eligible from the time that pregnancy is confirmed. The eligible pregnant woman shall count as one person in determining family size for grant determination and shall receive \$1 per month from the time pregnancy is confirmed to the sixth month of pregnancy as aid under this section, in addition to other aid available under this section. Beginning with the seventh month of pregnancy, the pregnant woman and the unborn child shall each count as one person in determining family size for grant determination.

(h) 1. As a condition of eligibility for assistance under this section, the person charged with

the care and custody of the dependent child or children shall:

a. Fully cooperate in efforts directed at establishing the paternity of a child born out of wedlock and obtaining support payments or any other payments or property to which such person and the dependent child or children may have rights. Such cooperation shall be in accordance with federal law, rules and regulations applicable to paternity establishment and collection of support payments.

b. Notwithstanding other provisions of the statutes, be deemed to have assigned to the state, by applying for aid under this section, any rights to support from any other person that the parent and the dependent child or children may have, including rights to unpaid amounts accrued at the time such application for aid is made as well as any rights to amounts accruing during the time for which aid is paid under this section.

c. Notice of the requirements of this subdivision shall be provided applicants for aid under this section at the time of application.

2. If the person charged with the care and custody of the dependent child or children does not comply with the requirements of subd. 1, such person shall be ineligible for assistance under this section. In such instances, aid payments made on behalf of the dependent child or children shall be made in the form of protective payments.

(j) A putative father of a dependent child may not be considered eligible for aid under this section until he has been adjudicated to be the child's father in a paternity proceeding under ch. 767, he has legitimated the child as provided in s. 767.60 or until he has adopted the child under ch. 48.

NOTE: Par. (j) is shown as amended by chapter 352, laws of 1979, effective July 1, 1981. Chapter 352 deleted the reference to "ch. 52" and substituted "ch. 767, he has legitimated the child as provided in s. 767.60".

(5) (a) The aid shall be sufficient to enable the person having the care and custody of such children to care properly for them. The amount granted shall be determined by a budget for the family in which all income as well as expenses shall be considered, except:

1. All earned income of each dependent child included in the grant who is: a) a full-time student or b) a part-time student who is not a full-time employe. For purposes of this subdivision a student is an individual attending a school, college, university or a course of vocational or technical training designed to fit him or her for gainful employment.

2. From the earned income of any other child 14 years of age or older or any other individual living in the same home as the child and whose needs are taken into account in determining the

budget the first \$30 of the total of such earned income for such month plus one-third of the remainder of such income shall not be counted in determining the family income. The exclusion provided under this subdivision does not apply to earned income derived from a training or retraining project or in the case of any person who terminates or reduces his or her income, terminates his or her employment or refuses employment without good cause. However, the department may adjust this earned income provision by rule to conform to changes made in federal regulations when such adjustment is approved by the joint committee on finance. Requests for approval of adjustments shall be considered as are requests for supplemental appropriations under s. 13.101 (5) and (6).

2m. From the earned income of any other child 14 years of age or older or any other individual living in the same home and whose needs are taken into account in determining the budget, an amount equal to expenses incurred in the earning of income shall not be counted in determining the family income. The work-related expense deduction shall be set at the greater of 18% of gross income or the amount of actual expenditures.

3. When required by federal law, a portion of monthly child support payment collections shall be paid to the family in accordance with federal law, rules and regulations and shall not be considered as income or as a resource. Such payments shall be made by separate check.

(b) Such family budget shall be based on a standard budget, including the parents or other person who may be found eligible to receive aid under this section.

(c) The aid allowed under this subsection may be given in the form of supplies or commodities or vouchers for the same, in lieu of money, as a type of remedial care authorized under sub. (1) (c), whenever the giving of aid in such form is deemed advisable by the county welfare director dispensing such aid as a means either of attempting to rehabilitate a particular person having the care and custody of any such children or of preventing the misuse or mismanagement by such person of aid in the form of money payments.

(d) The department shall reimburse the county for the funeral and burial expenses of a dependent child or the child's parents as provided in s. 49.30. In addition, the department shall reimburse the county fully for actual cemetery charges paid under this section.

(e) No aid may continue longer than 6 months without reinvestigation, except that the first reinvestigation of eligibility shall occur within 90 days after eligibility is determined. The county welfare departments shall submit

information, at such times and in such form as the department requires, detailing the number of redeterminations completed, the number overdue and the length of time they are overdue. The department shall recertify a 10% random sample of all recipients in person every 6 months.

(f) This subsection does not prohibit such public assistance as may legitimately accrue directly to persons other than the beneficiaries of this section who may reside in the same household.

(6) The county agency may require the child's parent to do such remunerative work as in its judgment can be done without detriment to the parent's health or the neglect of the children or the home; and may prescribe the hours during which the parent may be required to work outside of the home.

(7) The county board shall annually appropriate a sum of money sufficient to carry out the provisions of this section. The county treasurer shall pay out the amounts ordered paid under this section.

(9) If the head of a family is a war veteran and is hospitalized or institutionalized because of disabilities in a county other than that of his residence or settlement at time of admission, aid shall be granted to the dependent children of such veteran by the county wherein the head of the family had his residence or settlement at the time of admission so long as he remains hospitalized or institutionalized.

(10) (a) Aid under this section may also be granted to a nonrelative who cares for a child dependent upon the public for proper support in a foster home having a license under s. 48.62, regardless of the cause or prospective period of dependency. The state shall reimburse counties pursuant to the procedure and the percentage rate of participation set forth in s. 49.52 for aid granted under this subsection except that if the child does not have legal settlement in the granting county, state reimbursement shall be at 100%. The county agency shall determine the legal settlement of the child. A child under one year of age shall be eligible for aid under this subsection irrespective of any other residence requirement for eligibility within this section.

(b) Aid under this section may also be granted on behalf of a child in the legal custody of a county agency providing child welfare services or on behalf of a child who was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason when such child is placed in a licensed child-

caring institution by the county agency. Reimbursement shall be made by the state pursuant to par. (a).

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home or child-caring institution by a licensed child welfare agency, if the child is in the legal custody of the county agency providing child welfare services or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made pursuant to an agreement with the county agency.

(d) Aid may also be paid under this section to a foster home or to a child-care institution by the state when the child is in the custody or guardianship of the state or when the child was part of the state's direct service case load and was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department.

(11) (a) 1. a. Monthly payments made under s. 20.435 (4) (d) to persons or to families with dependent children shall be based on family size and shall be at 85% of the following standards for the period from August 1, 1979 to June 30, 1980. [See Figure 49.19 (11) (a) 1. a. following]

Figure 49.19 (11) (a) 1. a.

Family size	Area I	Area II
1	233	226
2	412	400
3	486	470
4	579	562
5	665	645
6	718	696
7	778	755
8	825	800
9	865	839
10	885	857

b. Payments made from July 1, 1980, to June 30, 1981, shall be at 85% of the following standard: [See Figure 49.19 (11) (a) 1. b. following]

Figure 49.19 (11) (a) 1. b.

Family size	Area I	Area II
1	250	243
2	443	430
3	522	506
4	622	603
5	715	694
6	772	749
7	837	812
8	887	860
9	930	902
10	951	922

c. Grants shall vary in 2 areas which shall be groups of counties designated by the department based on variation in shelter cost.

2. A monthly allowance of \$25 per person for each additional member in the family above 10 shall be made in addition to that specified under subd. 1.

3. In determining family size only those who are eligible for assistance shall be included.

(b) The department shall implement a program of emergency assistance to needy persons in cases of fire, flood or natural disaster. Eligibility shall not exceed the limitations for federal participation defined by federal regulations, including 45 CFR 233.120. The aid granted shall not exceed \$150 per family member.

(12) Monthly payments in foster care shall be provided according to the following age-related rates beginning January 1, 1980: \$129 for children aged 4 and under; \$167 for children aged 5 to 11; \$188 for children aged 12 to 14 and \$215 for children aged 15 to 17. In addition to these grants for basic maintenance, supplemental payments for special needs and initial clothing allowances shall be made according to rules which the department shall promulgate. Beginning January 1, 1981, the age-related rates shall be: \$139 for children aged 4 and under; \$180 for children aged 5 to 11; \$202 for children aged 12 to 14 and \$231 for children aged 15 to 17.

(13) When an agency proposes action to terminate, discontinue, suspend or reduce assistance to a recipient under this section such agency shall provide at least the 10-day minimum notice required under federal Title IV.

History: 1971 c. 125, 215, 217; 1973 c. 90, 147, 186, 328, 333; 1975 c. 39, 82, 94, 224, 307, 422; 1977 c. 29, 203, 271, 418, 449; 1979 c. 32 s. 92 (4); 1979 c. 34, 206, 221, 352.

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

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

An AFDC budget must be computed on the basis of actual income. 60 Atty Gen. 431

Sub. (6) has not been affected by amendments to the work incentive program, nor does it violate equal protection provisions of the Fourteenth Amendment. 62 Atty. Gen. 120

Section 49.50 (10) sanctions the use of a self-declaration application system for the AFDC program as to economic eligibility. Other factors of eligibility must be verified through a home visit, investigation and report as required by (2) and (3), before assistance may be granted. 63 Atty. Gen. 32.

"Dependent child" under AFDC does not include unborn children. *Burns v. Alcalá*, 420 US 575.

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

Various provisions of sub. (4) (d) are invalid as inconsistent with the Social Security Act. *Doe v. Schmidt*, 330 F Supp. 159.

Unconstitutional conditions on welfare eligibility. *Redlich*, 1970 WLR 450.

Procedural due process and the welfare recipient: A statistical study of AFDC fair hearings in Wisconsin. *Hammer and Hartley*, 1978 WLR 145.

49.195 Recovery of aid to families with dependent children. (1)

If any parent at the time of receiving aid under s. 49.19 or at any time thereafter acquires property by gift, inheritance, sale of assets, court judgment or settlement of any damage claim, the county granting such aid may sue the parent to recover the value of that portion of the aid which does not exceed the amount of the property so acquired. During the life of the parent, the 10-year statute of limitations may be pleaded in defense against any suit for recovery under this section; and if such property is his or her homestead it shall be exempt from execution on the judgment of recovery until his or her death or sale of the property, whichever occurs first. Notwithstanding the foregoing restrictions and limitations, where the aid recipient is deceased a claim may be filed against any property in his or her estate and the statute of limitations specified in s. 859.01 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse or child is dependent on the property for support, and the court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records kept by the county are prima facie evidence of the value of the aid furnished. Liability under this section shall extend to any stepparent whose family receives aid under s. 49.19 during the period he or she is a member of the same household, but his or her liability is limited to such period. This section does not apply to medical and health assistance payments for which recovery is prohibited or restricted by federal law or regulation.

(2) Amounts may be recovered pursuant to this section for aid granted both prior to and after August 31, 1969; and any amounts so recovered shall be paid to the United States, this

state and its political subdivisions in the proportion in which they contributed to the payment of the aid granted, in the same manner as amounts recovered for old-age assistance are paid.

(3) (a) Notwithstanding the restrictions and limitation specified in s. 49.41, a policy for recovery of overpayment to families receiving aid under s. 49.19 shall be instituted by the department. Recovery shall be made of overpayments which occur:

1. Due to a recipient's failure to report a change in income or other circumstances.

2. During the course of a recipient's appeal of an agency decision regarding eligibility or grant size.

3. Due to agency error.

(b) The department may not make a recovery which is contrary to any applicable federal regulation or which would reduce a recipient's total income to an amount equal to \$10 less than the recipient's payment level under s. 49.19.

(c) A recovery under this section shall be limited to overpayments occurring within the 12-month period immediately prior to the date of discovery.

(d) The department shall continue to recover overpayments from persons who are no longer receiving aid under s. 49.19.

History: 1977 c. 29.

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

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

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

This section does not authorize recovery against parent who acquired property by winning lottery. *Kenosha County Dept. of Soc. Services v. Nelsen*, 95 W (2d) 409, 290 NW (2d) 544 (Ct. App. 1980).

49.20 Aid to 18-year-old students. (1)

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

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

(a) Is 18 years of age;

(b) Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;

(c) Received aid under s. 49.19, but not under s. 49.19 (10) (a), immediately prior to his or her 18th birthday; and

(d) Is living in a home situation specified in s. 49.19 (1) (a), but not including a foster home.

(3) **PAYMENT.** Aid under this section shall be paid from the appropriation under s. 20.435 (4) (d) and shall be in an amount equal to that to which the person would be entitled under s. 49.19 if he or she were 17 years of age, except that if the person's family became ineligible for aid under s. 49.19 on the person's 18th birthday, the amount paid shall equal the amount of aid granted to a single person under s. 49.19.

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

History: 1977 c. 418.

49.30 Funeral expenses. On the death of a recipient of benefits under 42 USC 1381 to 1385, in effect on May 8, 1980 or s. 49.177 or 49.46, if the estate of the deceased is insufficient to pay the funeral and burial expenses and the actual cemetery charges, the expenses and charges shall be paid under this section by the county responsible for the burial of the recipient to those persons as the county agency directs. For purposes of state reimbursement, the funeral and burial expenses for the deceased may not exceed \$600 except in unusual circumstances approved by the department. The state shall reimburse the county the lesser of \$600 or the funeral and burial expenses not paid by the estate of the deceased and other persons. In addition, the state shall reimburse the county fully for actual cemetery charges paid under this section.

History: 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 206.

49.41 Assistance grants exempt from levy. All grants of aid to families with dependent children, payments made for social services, and benefits under s. 49.177 or federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and shall be inalienable.

History: 1973 c. 147.

MEDICAL ASSISTANCE

49.43 Definitions. As used in this subchapter unless the context indicates otherwise:

(1) "Charge" means the customary, usual and reasonable demand for payment as established prospectively, concurrently or retrospectively by the department for services, care or commodities which does not exceed the general level of charges by others who render such service or care, or provide such commodities,

under similar or comparable circumstances within the community in which the charge is incurred.

(1m) "Cost" means the reasonable cost of services, care or commodities as determined by the principles of reimbursement used under 42 USC 1395 to 1395rr, in effect on April 30, 1980.

(2) "Hospital" means an institution, approved by the appropriate state agency, providing 24-hour continuous nursing service to patients confined therein; which provides standard dietary, nursing, diagnostic and therapeutic facilities; and whose professional staff is composed only of physicians and surgeons, or of physicians and surgeons and doctors of dental surgery.

(3) "Physician" means a person licensed to practice medicine and surgery, and includes graduates of osteopathic colleges holding an unlimited license to practice medicine and surgery.

(4) "Dentist" means a person licensed to practice dentistry.

(5) "Skilled nursing home" means a facility or distinct part thereof, which:

(a) Is licensed or approved under state law for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care;

(b) Employs sufficient registered nursing practitioners for supervision of those giving nursing care to patients; and

(c) Qualifies as a "skilled nursing facility" within the meaning of Title XIX of the social security act.

(6) "Podiatrist" means a person licensed to practice podiatry as defined in s. 448.01 (8).

(7) "Intermediate care facility" means either of the following:

(a) An institution or distinct part thereof, which is:

1. Licensed or approved under state law to provide, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designated to provide but who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(b) A public institution, or distinct part thereof, which is:

1. Licensed or approved under state law for the mentally retarded or persons with related conditions, the primary purpose of which is to

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provide health or rehabilitative services for mentally retarded individuals according to rules promulgated by the department; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(8) "Inpatient psychiatric hospital services for individuals 21 years of age or for individuals under 22 years of age who are receiving such service immediately prior to reaching age 21" has the same meaning as provided in section 1905 (h) of the federal social security act.

(9) "Medical assistance" means any services or items under ss. 49.45 to 49.47, 49.49 and 49.495, or any payment or reimbursement made for such services or items.

(10) "Proprietary home health agency" has the meaning specified in s. 141.15 (1) (a).

(11) "Provider" means a person, corporation, partnership, unincorporated business or professional association and any agent or employe thereof who provides medical assistance under ss. 49.45 to 49.47, 49.49 and 49.495.

History: 1977 c. 29 ss. 583m, 591; 1977 c. 418 s. 929 (18); 1979 c. 221

49.45 Medical assistance; administration. (1) **PURPOSE.** To provide appropriate health care for eligible persons and obtain the most benefits available under Title XIX of the federal social security act, the department shall administer medical assistance, rehabilitative and other services to help eligible individuals and families attain or retain capability for independence or self-care as hereinafter provided.

(2) **DUTIES.** (a) The department shall:

1. Exercise responsibility relating to fiscal matters, the eligibility for benefits under standards set forth in ss. 49.46 and 49.47 and general supervision of the medical assistance program;

2. Employ necessary personnel under the classified service for the efficient and economical performance of the program and shall supply residents of this state with information concerning the program and procedures;

3. Determine the eligibility of persons for medical assistance, rehabilitative and social services pursuant to ss. 49.46 and 49.47 and rules and policies adopted by the department and may designate this function to the county agency administering the social security aid program;

4. Certify all proper charges and claims for administrative services to the department of administration for payment and the department of administration shall draw its warrant forthwith;

5. Cooperate with the division for handicapped children of the department of public instruction to carry out the provisions of Title XIX;

6. Appoint such advisory committees as are necessary and proper; and

7. Co-operate with the federal authorities for the purpose of providing the assistance and services available under Title XIX to obtain the best financial reimbursement available to the state from federal funds.

8. Periodically report to the joint committee on finance concerning projected expenditures and alternative reimbursement and cost control policies in the medical assistance program.

9. Periodically set forth conditions of participation and reimbursement in a contract with provider of service under this section.

10. After reasonable notice and opportunity for hearing, recover money improperly or erroneously paid, or overpayments to a provider either by offsetting or adjusting amounts owed the provider under the program, crediting against a provider's future claims for reimbursement for other services or items furnished by the provider under the program, or by requiring the provider to make direct payment to the department or its fiscal intermediary.

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

12. Decertify or suspend a provider from the medical assistance program, if after giving reasonable notice and opportunity for hearing, the department finds that the provider has violated federal or state law or administrative rule and such violations are by law, regulation or rule grounds for decertification or suspension. No payment may be made under the medical assistance program with respect to any service or item furnished by the provider subsequent to decertification or during the period of suspension.

13. Impose additional sanctions for noncompliance with the terms of provider agreements under subd. 9 or certification criteria established under subd. 11.

14. Assure due process in implementing subsd. 12 and 13 by providing written notice, a fair hearing and a written decision.

15. Routinely provide notification to persons eligible for medical assistance under ss. 49.46 and 49.47, or such persons' guardians, of the department's access to provider records.

16. Notify the joint committee on finance and appropriate standing committees in each house of the legislature prior to renewing, extending or amending the claims processing contract under the medical assistance program.

(b) The department may:

1. Designate other functions, responsibilities and services as may be appropriate to be performed by the county welfare agency in each county;

2. Contract with any organization whether or not organized for profit to administer, in full or in part, the benefits under the medical assistance program including prepaid health care. The department shall accept bids on contracts for administrative services and services evaluating the medical assistance program as provided in ch. 16, but may accept the contract deemed most advantageous for claims processing services; or contract with any insurer authorized under the insurance code of this state to insure the program in full or in part and on behalf of the department. The department shall report each December 31 to the governor, the joint committee on finance and the standing committees on health and social services regarding the effectiveness of the management information system for monitoring and analyzing medical assistance expenditures;

3. Audit all claims filed by any contractor making the payment of benefits paid under ss. 49.46 and 49.47 and make proper fiscal adjustments.

4. Audit claims filed by any provider of medical assistance, and as part of that audit, request of any such provider, and review, medical records of individuals who have received benefits under the medical assistance program, or under s. 49.046.

(3) PAYMENT. (a) Reimbursement shall be made to each county agency for the administrative services performed in the medical assistance program on the basis of s. 49.52.

(b) 1. The contractor, if any, administering benefits or providing prepaid health care under s. 49.46 or 49.47 shall be entitled to payment from the department for benefits so paid or prepaid health care so provided or made available when a certification of eligibility is properly on file with the contractor in addition to the payment of administrative expense incurred pursuant to the contract and as provided in sub. (2) (a) 4, but the contractor shall not be reimbursed for benefits erroneously paid where no certification is on file.

2. The contractor, if any, insuring benefits under s. 49.46 or 49.47 shall be entitled to receive a premium, in an amount and on terms agreed, for such benefits for the persons eligible to receive them and for its services as insurer.

(c) Payment for services provided under this section shall be made directly to the hospital, skilled and intermediate nursing homes, prepaid health care group, other organization or individual providing such services or to an organization which provides such services or arranges for their availability on a prepayment basis.

(d) No payment may be made for inpatient hospital services, skilled nursing home services, intermediate care facility services, tuberculosis

institution services or inpatient mental institution services, unless the facility providing such services has in operation a utilization review program and meets federal regulations governing such utilization review program.

(e) 1. The department may prospectively determine reimbursement to hospitals for allowable services, care or commodities provided a recipient or may determine reimbursement pursuant to a contract under s. 146.60.

2. In establishing a hospital's reimbursement rate under subd. 1, the department may only consider the budgeted fiscal year costs of the hospital which are allowable under 42 USC ss. 1395 to 1395rr, in effect on April 30, 1980.

3. A hospital whose reimbursement is determined on the basis of prospective rates established under subd. 1 shall annually prepare and submit to the department a cost report reflecting the hospital's actual allowable costs during the hospital's fiscal year.

4. Total reimbursement for an entire hospital for allowable services, care or commodities provided recipients during the hospital's fiscal year is the lower of the hospital's charges for the services or the actual allowable costs to the hospital of providing the services.

5. If total reimbursement paid to a hospital for services rendered during its fiscal year is greater than the lower of the hospital's charges or actual allowable costs, the hospital shall promptly repay the difference to the department.

6. If total reimbursement paid to a hospital for services rendered during the hospital's fiscal year is less than the lower of the hospital's charges or actual allowable costs, the department shall promptly pay the hospital the difference.

(f) 1. Providers of services under this section shall maintain records as required by the department for verification of provider claims for reimbursement. The department may audit such records to verify actual provision of services and the appropriateness and accuracy of claims.

2. The department may deny any provider claim for reimbursement which cannot be verified under subd. 1 or may recover the value of any payment made to a provider which cannot be so verified. The measure of recovery will be the full value of any claim if it is determined upon audit that actual provision of the service cannot be verified from the provider's records or that the service provided was not included in s. 49.46 (2). In cases of mathematical inaccuracies in computations or statements of claims, the measure of recovery will be limited to the amount of the error.

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3. Contractors under sub. (2) (b) shall maintain records as required by the department for audit purposes. Contractors shall provide the department access to the records upon request of the department, and the department may audit the records.

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

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

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

was served may enforce the subpoena in accordance with s. 885.12.

3. The failure or refusal of a person to purge himself or herself of contempt found under s. 885.12 and perform the act as required by law shall constitute grounds for decertification or suspension of that person from participation in the medical assistance program and no payment may be made for services rendered by that person subsequent to decertification or during the period of suspension.

(i) The department may not reimburse a provider for certain elective surgical procedures without a 2nd opinion from another provider. Second opinions are required for selected elective surgical procedures for which 2nd opinions disagree with the original opinions at demonstrably high rates. The department shall notify the providers of the surgical procedures for which a 2nd opinion is required. The requirement for 2nd opinions under this paragraph ends on June 30, 1982. On or before January 1, 1982, the department shall report to the joint committee on finance and the appropriate standing committees in each house of the legislature on the effect of the 2nd opinion program.

(4) INFORMATION RESTRICTED. The use or disclosure of any information concerning applicants and recipients of medical assistance not connected with the administration of this section is prohibited.

(5) APPEAL. Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in his behalf have not been properly determined may file an appeal with the department pursuant to s. 49.50(8).

(6m) PAYMENT TO NURSING HOMES. (a) 1. Reimbursement for nursing home care made under s. 20.435 (1) (b) and (o) shall, except as provided in subd. 3, be determined according to a prospective reimbursement system established annually by the department and approved by the joint committee on finance and the governor. The department, joint committee on finance and the governor shall take into account and comply with applicable federal regulations.

2. The reimbursement system shall take effect after approval by the joint committee on finance and the governor. After action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to submit approval or disapproval in writing to the department and the joint committee on finance. If no action is communicated by the governor within 10 days, not including Sundays, the decision of the joint committee on finance shall take effect.

3. The reimbursement rate for nursing homes reimbursed under s. 20.435 (1) (b) and (o)

may be suspended or modified by the joint committee on finance and the governor as may be necessary to conform to the requirements of federal Title XIX

(b) Such charges for ancillary materials and services as would be incurred by a prudent buyer may be included as an adjustment to the rate determined by par. (a) when so determined by the department. The department may promulgate rules setting forth conditions and limitations to this paragraph.

(c) As a condition of reimbursement under this section a nursing home shall:

1. Meet the staffing standard requirements for direct patient services including the supplement contained under par. (a) 1, for which reimbursement is made, and to maintain such records as prescribed by the department to document that such level of care was actually provided.

2. Provide at the time of a patient's admission to a home, for the development and implementation of a rehabilitation plan including the development of an alternate care plan for the patient.

3. Provide, upon request, cost information relating to the overall financial operation of the facility, including, but not limited to wages and hours worked, costs of food, housekeeping, maintenance and administration.

4. Agree to admit patients 7 days of the week.

(d) The department shall:

1. Take into account all pertinent federal regulations in establishing reimbursement under this section;

2. Terminate reimbursement to a home for such a patient, unless a utilization review team established pursuant to federal regulations upon review of the patient's needs and the implementation of a rehabilitation plan for that patient determines that the patient's need for care and services can only be provided in a nursing home and determines the appropriate level of care.

3. Establish, maintain, and periodically update a patient needs evaluation system to be used in determining the need and level of care at a nursing home, which shall include the social and rehabilitative needs of the patient, provide levels of care to correspond to the actual staff time required to provide such care, and define the contents of the services to be provided.

4. Periodically audit all nursing homes and intermediate care facilities receiving funds under this paragraph, and recover payments made where the home is not meeting the conditions under which the reimbursement was made as specified in par. (c) 1 and 2. Erroneous information provided under par. (c) 3 shall constitute grounds for recovery.

(e) The department shall establish an appeals mechanism within the department to review petitions from nursing homes providing skilled, intermediate, limited, personal and residential care, for modifications to any reimbursement rate under this subsection. Upon review, the secretary of health and social services shall grant the modifications, which may exceed maximums under this section but may not exceed any applicable federal maximums. The department may, upon the presentation of facts, grant modifications of a home's care rate where demonstrated substantial inequities exist. The department shall develop specific criteria and standards for granting rate modifications, and shall take into account the following, without limitation because of enumeration, in granting the modifications:

1. The efficiency and effectiveness of the facility if compared with facilities providing similar services and if valid cost variations are considered.

2. The effect of rate modifications upon compliance with federal upper limit regulations and other pertinent federal regulations governing Title XIX of the social security act.

3. The need for additional revenue to correct licensure and certification deficiencies.

4. The relationship between total revenue and total costs for all patients.

5. The existence and effectiveness of specialized programs for the chronically mentally ill.

6. Exceptional patient needs.

7. Demonstrated experience in providing high quality patient care.

(g) Reimbursement under this section to skilled nursing facilities subject to this paragraph may not include the cost of care reimbursable under Title XVIII of the social security act for persons eligible for Title XVIII benefits. Title XIX recipients are not liable for these costs. The department may, by rule, require Title XVIII certification, in whole or in part, of skilled nursing facilities.

(h) The department may require by rule that all claims for payment of services provided nursing home residents under this chapter be submitted or countersigned by the respective nursing home administrator. The department may specify those categories of services for which reimbursement will be made only if the services are rendered or authorized in writing by a primary health care provider designated by the recipient for the particular category of services.

(7) PERSONAL FUNDS. (a) To assure that patients in a public medical institution or any accommodated person, having a monthly income exceeding the payment rates established under s. 1611 (e) of federal Title XVI, has certain income available for personal needs,

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such individuals may retain unearned income in the amount of \$35 prior to August 1, 1979 and \$45 on and after that date. Income in excess of that allowed shall be applied toward the cost of care in the facility.

(b) Where a facility participating in the medical assistance program has been delegated in writing by a resident within that facility to manage and control the personal funds of the resident including but not limited to those funds identified in par. (a) the facility shall establish for the resident a personal fund account. All deposits and withdrawals of funds shall be documented by the facility to indicate the amount and date of deposit and amount, date and purpose of withdrawal. Such documentation shall be maintained in the resident's records.

(c) Upon the removal of a resident from the facility as a result of death or permanent transfer, the facility shall transfer the balance of the resident's trust account to the personal representative of the resident's estate, the legal guardian of the resident or if appropriate to the resident personally. A copy of the trust account records shall be transferred with the funds. No facility or any of its employees or representatives may benefit from the distribution of a deceased resident's personal funds unless they are specifically named in the resident's will or constitute an heir at law.

(d) 1. The department shall accept from any person a verified complaint concerning any violation of this subsection. The department shall forward to the accused within 10 days a copy of such complaint. The department, upon such investigation as it deems necessary, may dismiss the complaint or may find probable cause to believe that a violation of this subsection has occurred.

2. If the department finds probable cause to believe that a violation of this subsection has occurred, it may assess a forfeiture of not less than \$25 nor more than \$500 for each occurrence, and in addition may order that any amount illegally charged against a resident's account be restored. The department shall immediately inform the complainant and respondent of any such decision and the amount of forfeiture or repayment, if any. If the department is not notified in writing that a party wishes to contest a decision within 15 working days after the parties are informed of such decision, the department's determination shall be deemed final and may not be appealed to a court.

3. The department shall inform the nursing home administrators examining board of all decisions made under this paragraph.

4. The department's determination of serious misconduct under this subsection shall be cause

for terminating the facility's participation in the state-funded portion of the medical assistance program under ss. 49.45 to 49.47.

(e) Nursing homes shall adopt a uniform accounting system prescribed by the department for purposes of managing residents personal fund accounts.

(8) REIMBURSEMENT BASED ON REASONABLE ACTUAL COSTS. Reimbursement under s. 20.435 (1) (b) and (o) for services of home health agencies certified as required under 42 USC 1396 to 1396k, in effect on April 30, 1980, shall be based upon reasonable actual costs as determined by the department. Personal care services performed by a home health agency may be reimbursed under a separate rate as determined by the department.

(9) FREE CHOICE. Any person eligible for medical assistance under ss. 49.46 and 49.47 may be entitled to use the physician, chiropractor, podiatrist, dentist, pharmacist, hospital, skilled nursing home or other licensed, registered or certified provider of health care of his or her choice, except that free choice of skilled nursing home shall be limited by the department so as to provide only care which is necessary to meet the medical and nursing needs of the patient. If evidence of program abuse by a recipient is discovered, the department may require a recipient to designate, in any or all categories of health care providers, a primary health care provider of his or her choice. After such a designation is made, the recipient may not receive services from other health care providers in the same category as the primary health care provider unless such service is rendered in an emergency or through written referral by the primary health care provider. Alternate designations by the recipient may be made in accordance with guidelines established by the department. Nothing in this subsection shall vitiate the legal responsibility of the physician, chiropractor, podiatrist, dentist, pharmacist, skilled nursing home or hospital to patients. All contract and tort relationships with patients shall remain, notwithstanding a written referral under this section, as though dealings are direct between the physician, chiropractor, podiatrist, dentist, pharmacist, skilled nursing home or hospital and the patient. No physician, chiropractor, podiatrist, pharmacist or dentist may be required to practice exclusively in the medical assistance program.

(9m) REFERRALS. The department may, consistent with s. 49.45 (9), specify services for which reimbursement will be made only if the services are provided in accordance with a referral, in writing, which specifies the services to be rendered and the duration of such services. The

referral form shall describe the referred services as required by the department.

(9a) DISCLOSURE. Any person who is an employe of, or an owner, partner, stockholder or investor in, any legal entity providing services which are reimbursed under this section, shall notify the department, on forms provided by the department for that purpose, if such person is an employe of, or an owner, partner, stockholder or investor in, any other legal entity providing services which are reimbursed under this section.

(10) RULE-MAKING POWERS. The department is authorized to make such rules as are consistent with its duties in administering medical assistance.

(11) PENALTY. Any person who receives or assists another in receiving assistance under this section, to which he is not entitled, shall be subject to the penalties under s. 49.12.

(13) FINANCIAL REPORTS. (a) The department may require service providers to prepare and submit cost reports or financial reports for purposes of rate certification under Title XIX, cost verification, fee schedule determination or research and study purposes. These financial reports may include independently audited financial statements which shall include balance sheets and statements of revenues and expenses. The department may withhold reimbursement or may decrease or not increase reimbursement rates if a provider does not submit the reports required under this paragraph or if the costs on which the reimbursement rates are based cannot be verified from the provider's cost or financial reports or records from which the reports are derived.

(b) The department may require any provider who fails to submit a cost report or financial report under par. (a) within the period specified by the department to forfeit not less than \$10 nor more than \$100 for each day the provider fails to submit the report.

(14) CHARGES IMPOSED FORBIDDEN, EXCEPTIONS. No provider may impose upon a recipient charges in addition to payments received for services under this section or impose direct charges upon a recipient in lieu of obtaining payment under this section except under the following conditions:

(a) Benefits or services are not provided under s. 49.46 (2) and the recipient is advised of this fact prior to receiving the service.

(b) If an applicant is determined to be eligible retroactively under s. 49.46 (1) (b) and a provider bills the applicant directly for services and benefits rendered during the retroactive period, the provider shall, upon notification of the applicant's retroactive eligibility, submit

claims for reimbursement under this section for covered services or benefits rendered during the retroactive period. Upon receipt of payment, the provider shall reimburse the applicant or other person who has made prior payment to the provider. No provider may be required to reimburse the applicant or other person in excess of the amount reimbursed under this section.

(15) COMMUNITY CARE ORGANIZATION PROJECT GUARANTEE. Upon termination of the community care organization demonstration projects in Barron, LaCrosse and Milwaukee counties, any client who was receiving services through any of those projects may continue to receive the full range of community care organization services. The cost of the services shall continue to be paid by medical assistance.

(16) CERTIFICATION. Until January 1, 1984, the department may continue to certify as a medical assistance provider for the same number of beds any community-based residential facility which does not serve persons who are developmentally disabled or who have a primary diagnosis of chronic mental illness if the facility is licensed under s. 50.03 and is certified as a medical assistance provider on April 30, 1980. After January 1, 1984, the department may continue to certify the facility as a medical assistance provider only if the facility is licensed as a nursing home under s. 50.03. The department may not certify as a medical assistance provider any community-based residential facility which is not certified as a medical assistance provider on April 30, 1980 and which does not serve persons who are developmentally disabled or who have a primary diagnosis of chronic mental illness, unless the facility is licensed as a nursing home under s. 50.03.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355.

NOTE: In sub. (16), the revisor has substituted "April 30, 1980", the general effective date of chapter 221, laws of 1979, for "the effective date of this act (1979)" in 2 places under authority of s. 13.93 (1) (c). The first date was in language not affected by a veto. The second date was included in language vetoed, but later overruled by the legislature and published on June 11, 1980. In both instances, the reference was to "this act", which is chapter 221. Also, the second date appears to refer to the same time of certification as the first date.

A contract between the trustees of a nursing home and a medical clinic for exclusive medical services under the medical assistance act for residents of such home violates public policy of this state. 59 Atty. Gen. 68.

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

1. Any person included in the grant of aid to families with dependent children.

2. Any person under 21 years of age who is, or except for age or school attendance requirements would be a dependent child under s. 49.19.

3. Any essential person.

4. Any person receiving benefits under s. 49.177 or federal Title XVI.

(b) Any person shall be considered a recipient of aid for 3 months prior to the month of application if the proper agency determines eligibility existed during such prior month.

(c) Medical assistance shall be provided to a person or family for 4 calendar months following the month in which the person or family becomes ineligible for aid to families with dependent children because of increased income from employment if:

1. The person or family was eligible for aid to families with dependent children for at least 3 of the 6 months immediately preceding the month in which the person or family became ineligible; and

2. The person or at least one member of the family is employed.

(d) For the purposes of this section:

1. Children placed in licensed foster homes by the department and which children would be eligible for payment of aid to families with dependent children in foster homes except that such placement is not made by a county agency will be considered as recipients of aid to families with dependent children.

2. Any accommodated person or any patient in a public medical institution shall be considered a recipient for purposes of this section if such person or patient would have inadequate means to meet his need for care and services if living in his usual living arrangement.

3. Any child adopted under s. 48.48 (12) shall be considered a recipient for any medical condition which exists at the time of the adoption or develops subsequent to the adoption.

(e) If an application under s. 49.47 (3) shows that the person has income and resources within the limitations of s. 49.19, federal Title XVI or s. 49.177, or that he is an essential person, an accommodated person or a patient in a public medical institution, he shall be granted the benefits enumerated under sub. (2) whether or not he requests or receives a grant of any of such aids.

(f) Any person who has conveyed, transferred or disposed of any property within 2 years prior to the date of making application for benefits under this section without receiving adequate and full consideration in money or money's worth shall, unless shown to the contrary, be presumed to have made the transfer,

conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive the benefits thereafter until the value of the property is expended by or on behalf of the person for his or her maintenance needs, including needs for medical care. The department shall promulgate rules for the administration of this paragraph. This paragraph shall apply to the extent permitted under federal law and regulations.

(2) BENEFITS. (a) The department shall audit and pay charges made in accordance with s. 49.43 (1) for medical assistance to recipients for:

1. Inpatient hospital services other than services in an institution for mental diseases (except as otherwise provided in this subsection);

2. Hospital outpatient services;

3. Physicians', chiropractors', dentists', podiatrists', optometrists' and nurses' services;

4. Laboratory and X-ray services;

5. Eye glasses prescribed by a physician skilled in the diseases of the eye or by an optometrist;

6. Transportation to obtain medical care;

7. The following services when prescribed by a physician: skilled nursing home services, excluding services in an institution for mental diseases (except as otherwise provided in this subsection); intermediate care facility services; home health care; physical and occupational therapy and related services; medical supplies and equipment, including rental of durable equipment, drugs, prosthetic devices and other diagnostic, screening, preventive and rehabilitative and other medical services; inpatient hospital, skilled nursing facility, and intermediate care facility services for individuals 65 years of age and over when a patient in an institution for mental diseases; and inpatient psychiatric hospital services for individuals under 21 years of age or for individuals under 22 years of age who were receiving such service immediately prior to reaching age 21.

8. Early and periodic screening and diagnosis of individuals under 21 years of age and all medically necessary treatment found by such screening and diagnosis.

9. After July 1, 1980, personal care services when prescribed in accordance with federal regulation, and when offered by a certified home health agency or an approved social services agency which provides a comprehensive range of services including, but not limited to, homemakers, chore services and transportation.

10. Rural health clinic services.

(c) Medical assistance shall also include payment of any of the deductible and coinsurance portions of the above services which are not paid under Title XVIII and the monthly premiums

payable under section 1839 of the social security act.

(d) Benefits authorized under this subsection may not include payment for that part of any service payable through 3rd party liability or any federal, state, county, municipal or private benefit system to which the beneficiary is entitled. "Benefit system" does not include any public assistance program such as, but not limited to, Hill-Burton benefits under 42 USC 291c (e), in effect on April 30, 1980, or general relief.

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221.

Categorically needy person applying for assistance under this section need not comply with divestment of assets provisions under 49.47 (4) (d). *Sinclair v. H&SS Department*, 77 W (2d) 322, 253 NW (2d) 245.

States need not fund nontherapeutic abortions. *Beal v. Doe*, 432 US 438.

49.47 Medical assistance; medically indigent. (1) PURPOSE. Medical assistance as set forth herein shall be provided to persons over 65, all children under 18 and, if the child is "dependent" pursuant to s. 49.19, the relatives enumerated in s. 49.19 with whom the child is living, or blind or disabled if eligible under this section.

(2) **DEFINITIONS.** As used in this section, unless the context indicates otherwise:

(a) "Beneficiary" means a person eligible for, and a recipient of, medical assistance under this section.

(b) "Illness" means a bodily disorder, bodily injury, disease or mental disease. All illnesses existing simultaneously which are due to the same or related causes shall be considered "one illness." Successive periods of illness less than 6 months apart, which are due to the same or related causes, shall also be considered "one illness."

(c) "Spouse" means the legal husband or wife of the beneficiary, whether or not eligible for benefits under this chapter.

(3) **APPLICATION.** (a) At any time any resident of this state who believes himself medically indigent and qualified for aid under this section may make application, on forms prescribed by the department. If eligibility is questionable by reason of the information contained on the application or is incomplete, further investigation shall be made to determine eligibility.

(b) The agency shall promptly review the application and shall issue a certificate to the individual showing eligibility when eligibility has been established.

(4) **ELIGIBILITY.** (a) Any individual who meets the limitations on income and resources under pars. (b) and (c) shall be eligible for medical assistance under this section if such individual is:

1. Under 21 years of age.

2. A relative enumerated in s. 49.19 (1) (a) with whom a dependent child as defined in s. 49.19 (1) (a) is living.

3. 65 years of age or older.

4. Blind or totally and permanently disabled as defined under federal Title XVI.

(b) Eligibility exists if the applicant's property does not exceed the following:

1. A home and the land used and operated in connection therewith or in lieu thereof a mobile home if the home or mobile home is used as the person's or his or her family's place of abode.

2. Household and personal possessions, including a motor vehicle registered under ch. 341 or 350. Ownership of a 2nd vehicle may be permitted only if the department determines that it is necessary for the purpose of employment or to obtain medical care.

3. Liquid assets not exceeding \$1,500, if single, \$2,250 for a family of 2, plus \$300 for each additional legal dependent.

4. Additional tangible personal property of reasonable value, considering the number of members in the family group, used in the production of income.

(c) 1. Eligibility exists if the individual's income does not exceed the maximum standard of need used in determining eligibility for aid to families with dependent children under s. 49.19 or state supplemental aid under s. 49.177. In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled under 42 USC 1381 to 1385, in effect on July 29, 1979. "Income" does not include earned or unearned income which would be excluded in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled individual under 42 USC 1381 to 1385, in effect on July 29, 1979.

2. Whenever an applicant has excess income, no certification shall be issued until such time as the excess income above the applicable limits has been expended for medical care or for any other type of remedial care recognized under state law or for personal health insurance premiums or both.

(d) Any person who has conveyed, transferred or disposed of any property within 2 years prior to the date of making application for benefits under this section without receiving adequate and full consideration in money or money's worth shall, unless shown to the contrary, be presumed to have made such transfer, conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive such benefits thereafter until the value of such property shall have been

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expended by or in behalf of such person for his or her maintenance need, including needs for medical care. This paragraph shall apply to the extent permitted under federal law and regulations.

(e) Temporary absence of a resident from the state shall not be grounds for denying the certificate or for the cancellation of an existing certificate.

(5) **INVESTIGATION BY DEPARTMENT.** The department may make additional investigation of eligibility when there is reasonable ground for belief that an applicant may not be eligible, that the beneficiary may have received benefits to which he is not entitled, or upon the request of the secretary of the U.S. department of health, education and welfare.

(6) **BENEFITS.** (a) The department shall audit and pay charges made in accordance with s. 49.43 (1) for medical assistance to beneficiaries for those services enumerated under s. 49.46 (2), but no payment shall include care for services rendered earlier than 3 months preceding the month of application.

(b) In no event may payments be made for medical assistance rendered during a period when the beneficiary would not have been eligible for benefits under this section.

(c) Benefits shall not include any payment with respect to:

1. Care or services in any private or public institution, unless the institution has been approved by a standard-setting authority responsible by law for establishing and maintaining standards for such institution.

2. That part of any service otherwise authorized under this section which is payable through 3rd party liability or any federal, state, county, municipal or private benefit systems, to which the beneficiary may otherwise be entitled.

3. Care or services for an individual who is an inmate of a public institution, except as a patient in a medical institution or a resident in an intermediate care facility.

(7) **REDUCTION OF BENEFITS.** If the funds appropriated become or are estimated to be insufficient to make full payment of benefits provided under this section, all charges for service so authorized shall be prorated on the basis of funds available or by limiting the benefits provided.

(8) **ENROLLMENT FEE.** As long as an enrollment fee or premium is required for persons receiving benefits under Title XIX of the social security act, the department shall charge the minimum enrollment fee or premium required under federal law. The fee or premium so charged shall be related to the beneficiary's

income, in accordance with guidelines established by the secretary of the U.S. department of health, education and welfare.

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34.

Sub. (4) (d) is not in conflict with the federal requirement that only "actually available" resources be considered in determining eligibility, because: (1) The statute merely provides a procedure for determining which assets are, in fact, available to meet present needs or, but for divestment, would have been available; and (2) a contrary interpretation would allow any person regardless of financial resources to become eligible for medical assistance by dispersing his assets, a result which could not have been intended by congress when it enacted Title XIX of the Social Security Act. *Lerner v. H & SS Dept.* 70 W (2d) 670, 235 NW (2d) 478

49.48 Aid for treatment of kidney disease.

(1) **DECLARATION OF POLICY.** The legislature finds that effective means of treating kidney failure are available, including dialysis or artificial kidney treatment or transplants. It further finds that kidney disease treatment is prohibitively expensive for the overwhelming portion of the state's citizens. It further finds that public and private insurance coverage is inadequate in many cases to cover the cost of adequate treatment at the proper time in modern facilities. The legislature finds, in addition, that the incidence of the disease in the state is not so great that public aid may not be provided to alleviate this serious problem for a relatively modest investment. Therefore, it is declared to be the policy of this state to assure that all persons are protected from the destructive cost of kidney disease treatment by one means or another.

(2) **POWERS OF DEPARTMENT.** The department shall:

(a) Adopt rules setting standards for operation and certification of dialysis and renal transplantation centers and home dialysis equipment and suppliers.

(b) Adopt rules setting standards for acceptance and certification of patients into the treatment phase of the program.

(c) Adopt rules concerning reasonable cost and length of treatment programs.

(d) Aid in preparing educational programs and materials informing the public as to chronic renal disease and the prevention and treatment thereof.

(3) **AID TO KIDNEY DISEASE PATIENTS.** (a) Any permanent resident of this state who suffers from chronic renal disease may be accepted into the dialysis treatment phase of the renal disease control program if he meets standards set by rule under sub. (2).

(b) The state shall pay the cost of medical treatment specifically relating to chronic renal disease of certified patients from the date of certification, whether the treatment is rendered in an approved facility in the state or in a dialysis or transplantation center which is approved as

such by a contiguous state, provided that aid is not otherwise available as specified under par. (d). Approved facilities may include a hospital in-center dialysis unit or a non-hospital dialysis center which is closely affiliated with a home dialysis program supervised by an approved facility. Aid shall also be provided for all reasonable expenses incurred by a potential living-related donor, including evaluation, hospitalization, surgical costs and post-operative follow-up to the extent that these costs are not reimbursable under the federal medicare program or other insurance. In addition, all expenses incurred in the procurement, transportation and preservation of cadaveric donor kidneys shall be covered to the extent that these costs are not otherwise reimbursable. All donor-related costs, whether living-related or cadaveric, shall be considered as expenses chargeable to the recipient and reimbursable under this subsection.

(c) Disbursement and collection of all funds under this subsection shall be by the department or by a fiscal intermediary, in accordance with a contract with a fiscal intermediary. The costs of the fiscal intermediary under this paragraph shall be paid from the appropriation under s. 20.435 (1) (a).

(d) No aid may be granted under this subsection unless the recipient has no other form of aid available from the federal medicare program or from private health, accident, sickness, medical and hospital insurance coverage. If insufficient aid is available from other sources, the state shall pay the difference in cost to a qualified recipient. If at any time sufficient federal or private insurance aid becomes available during the treatment period, state aid shall be terminated or appropriately reduced. Any patient who is eligible for the federal medicare program shall register and pay the premium for medicare medical insurance coverage where permitted prior to becoming eligible for state aid.

(e) State aids for services provided under this section shall be equal to the allowable charges under the federal medicare program. In no case shall state rates for individual service elements exceed the federally defined allowable costs. The rate of charges for services not covered by public and private insurance shall not exceed the reasonable charges as established by medicare fee determination procedures. The state may not pay for the cost of travel, lodging or meals for persons who must travel to receive inpatient and outpatient dialysis treatment for kidney disease. This paragraph shall not apply to donor related costs as defined in par. (b).

History: 1973 c. 308; 1975 c. 39; 1977 c. 29.

49.485 Hemophilia treatment services.

(1) DEFINITIONS. In this section:

(a) "Comprehensive hemophilia treatment center" means a center, and its satellite facilities, approved by the department, which provide services, including development of the maintenance program, to persons with hemophilia and other related congenital bleeding disorders.

(b) "Council" means the council on hemophilia and related blood disorders.

NOTE: Chapter 213, laws of 1977, which created par. (b), repeals it effective April 8, 1981.

(c) "Hemophilia" means a bleeding disorder resulting from a genetically determined plasmonic clotting factor abnormality or deficiency.

(d) "Home care" means the self-infusion of a plasmonic clotting factor on an outpatient basis by the patient or the infusion of a plasmonic clotting factor to a patient on an outpatient basis by a person trained in such procedures.

(dm) "Income" means income as defined in s. 71.09 (7) (a) 1.

(e) "Maintenance program" means the individual's therapeutic and treatment regimen, including medical, dental, social and vocational rehabilitation including home health care.

(f) "Net worth" means the sum of the value of liquid assets, real property, after excluding the first \$10,000 of the full value of the home derived by dividing the assessed value by the assessment ratio of the taxation district.

(g) "Physician director" means the medical director of the comprehensive hemophilia treatment center which is directly responsible for an individual's maintenance program.

(2) ASSISTANCE PROGRAM. The department shall establish a program of financial assistance to persons suffering from hemophilia and other related congenital bleeding disorders. The program shall assist such persons to purchase the blood derivatives and supplies necessary for home care. The program shall be administered through the comprehensive hemophilia treatment centers.

(3) COUNCIL'S DUTIES. The council shall advise the department on how best to implement this section and shall perform such other functions as the department may require.

NOTE: Chapter 213, laws of 1977, which created sub. (3), repeals it effective April 8, 1981.

(4) ELIGIBILITY. Any permanent resident of this state who suffers from hemophilia or other related congenital bleeding disorder may participate in the program if that person meets the requirements of this section and the standards set by rule under this section. The department shall establish by rule eligibility standards based on net worth. The person shall enter into an agreement with the comprehensive hemophilia treatment center for a maintenance program to

be followed by that person as a condition for continued eligibility. The physician director or a designee shall, at least once in each 6-month period, review the maintenance program and verify that the person is complying with the program.

(5) **RECOVERY FROM OTHER SOURCES.** The department is responsible for payments for blood products and supplies used in home care by persons participating in the program. The department may enter into agreements with comprehensive hemophilia treatment centers under which the treatment center assumes the responsibility for recovery of the payments from a 3rd party, including any insurer.

(6) **PAYMENTS.** (a) The department shall, by rule, establish a reasonable cost for blood products and supplies used in home care as a basis of reimbursement under this section.

(b) Reimbursement shall not be made under this section for any blood products or supplies which are not purchased from or provided by a comprehensive hemophilia treatment center, or a source approved by the treatment center. Reimbursement shall not be made under this section for any portion of the costs of blood products or supplies which are payable under any other state or federal program or under any grant, contract and any other contractual arrangement.

(c) The reasonable cost, determined under par. (a), of blood products and supplies used in home care for which reimbursement is not prohibited under par. (b), shall be reimbursed under this section after deduction of the patient's liability, determined under sub. (7).

(7) **PATIENT'S LIABILITY.** (a) 1. The percentage of the patient's liability for the reasonable costs for blood products and supplies which are determined to be eligible for reimbursement under sub. (6) shall be based upon the income and the size of the person's family unit, according to standards to be established by rule by the department. Such percentage may not exceed 15%.

2. In determining income, only the income of the patient and persons responsible for the patient's support under s. 52.01 may be considered.

4. In determining family size, only persons who are related to the patient as parent, spouse, legal dependent or, if under the age of 18, as brother or sister may be considered.

5. In determining net worth, only the net worth of the patient and persons responsible for the patient's support under s. 52.01 will be considered.

(b) Individual liability shall be determined at the time of initial treatment and shall be re-determined annually or upon the patient's notification to the department of a change in family size or financial condition.

(8) **DEPARTMENT'S DUTIES.** The department shall:

(a) Extend financial assistance under this section to eligible persons suffering from hemophilia or other related congenital bleeding disorders.

(b) Employ administrative personnel to implement this section.

(c) Promulgate all rules necessary to implement this section.

History: 1977 c. 213; 1979 c. 32

49.49 Medical assistance offenses. (1)

FRAUD. (a) *Prohibited conduct.* No person, in connection with a medical assistance program, may:

1. Knowingly and wilfully make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment.

2. Knowingly and wilfully make or cause to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment.

3. Having knowledge of the occurrence of any event affecting the initial or continued right to any such benefit or payment or the initial or continued right to any such benefit or payment of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceal or fail to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and wilfully convert such benefit or payment or any part thereof to a use other than for the use and benefit of such other person.

(b) *Penalties.* Violators of this subsection may be punished as follows:

1. In the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing by that person of items or services for which medical assistance is or may be made, a person convicted of violating this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

2. In the case of such a statement, representation, concealment, failure, or conversion by any other person, a person convicted of violating this subsection may be fined not more than \$10,000

or imprisoned for not more than one year in the county jail or both.

(c) *Damages.* If any person is convicted under this subsection, the state shall have a cause of action for relief against such person in an amount 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under this section in a civil action shall be conclusive regarding the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages shall consist of the total amount of excess payments, any part of which is paid by state funds. In any such civil action the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

(2) **KICKBACKS, BRIBES AND REBATES** (a) *Solicitation or receipt of remuneration.* Any person who solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a medical assistance program, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(b) *Offer or payment of remuneration.* Whoever offers or pays any remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under a medical assistance program, may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(c) *Exceptions.* This subsection shall not apply to:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 58 if the reduction in price is properly disclosed and appropriately reflected in

the costs claimed or charges made by the provider or entity under a medical assistance program.

2. Any amount paid by an employer to an employe who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(3) **FRAUDULENT CERTIFICATION OF FACILITIES.** No person may knowingly and wilfully make or cause to be made, or induce or seek to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify either upon initial certification or upon recertification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Violators of this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

(4) **PROHIBITED CHARGES.** No person, in connection with the medical assistance program when the cost of the services provided to the patient is paid for in whole or in part by the state, may:

(a) Knowingly and wilfully charge, for any service provided to a patient under a medical assistance program, money or other consideration at a rate in excess of the rates established by the state.

(b) Knowingly and wilfully charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under a medical assistance program, any gift, money, donation or other consideration, other than a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or as a requirement for the patient's continued stay in such a facility.

(c) Violators of this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

History: 1977 c. 418; 1979 c. 89.

49.495 Jurisdiction of the department of justice. The department of justice or the district attorney may institute, manage, control and direct, in the proper county, any prosecution for violation of criminal laws affecting the medical assistance program including but not limited to laws relating to medical assistance contained in this chapter and laws affecting the health, safety and welfare of recipients of medical assistance. For this purpose the department of justice shall have and exercise all powers conferred upon district attorneys in such cases.

History: 1977 c. 418.

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49.50 State supervision. (2) RULES AND REGULATIONS, MERIT SYSTEM. The department shall adopt rules and regulations, not in conflict with law, for the efficient administration of aid to families with dependent children in agreement with the requirement for federal aid, including the establishment and maintenance of personnel standards on a merit basis. The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provisions of any law relating to county personnel; but this subsection shall not be construed to invalidate the provisions of s. 46.22 (6).

(3) PERSONNEL EXAMINATIONS. Statewide examinations to ascertain qualifications of applicants in any county department administering aid to families with dependent children shall be given by the administrator of the division of personnel of the department of employment relations. The department of employment relations shall be reimbursed for actual expenditures incurred in the performance of its functions under this section from the appropriations available to the department of health and social services for administrative expenditures.

(4) PERSONNEL LISTS. All persons who are qualified as a result of examinations shall be certified to the counties in which they reside at the time of examination; if there are no resident qualified persons for any class of positions on the list certified to the county, appointments shall be made from available lists without regard to residence within the county.

(5) COUNTY PERSONNEL SYSTEMS. Pursuant to rules established under sub. (2), the department where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the department's authority under sub. (2) to establish and maintain personnel standards including salary levels.

(6) DEPARTMENT TO ADVISE COUNTIES. The department shall advise all county officers charged with the administration of such laws of these requirements and shall render all possible assistance in securing compliance therewith, including the preparation of necessary blanks and reports. The department shall also publish such information as it deems advisable to acquaint persons entitled to public assistance and the public generally with the laws governing the same.

(7) WORK INCENTIVE PROGRAM AND RELATED SOCIAL AND VOCATIONAL REHABILITATION SERVICES. (a) The department shall ensure that all appropriate individuals so required by federal law and regulations as a condition of

eligibility for aid to families with dependent children shall register for manpower services, training and employment under the work incentive program. The department shall administer or purchase directly, or where the services would be more effectively performed through contracts with county welfare or social services departments, the health, vocational rehabilitation, counseling, child care, social and other supportive services related to individuals' preparation for, and participation in, the work incentive program and related to individuals' continuation in employment. Allowances for costs incurred by an individual participating in the program shall be paid to the individual by the department of industry, labor and human relations.

(b) The department shall pay the nonfederal share for such services enumerated in par. (a).

(c) The department shall reimburse county welfare or social services departments under s. 49.52 (1) and (2) for payments advanced by the county welfare departments to or in behalf of recipients of aid and potential aid recipients.

(d) 1. If full-time employment paying a wage or salary equal to or greater than the federal minimum wage level is available to an unemployed AFDC-U parent registered in the WIN program, the parent may be required to accept the employment as a condition of continued participation in the program if he or she has been unemployed for 15 weeks or longer, if he or she has been a certified WIN registrant for 6 weeks or longer, and if the job he or she held for the longest period of time in the 12 months prior to registration in the WIN program paid a wage or salary which, when reduced by 18% of the gross wage or by taxes and other actual work-related expenses, was less than or equal to the family's current AFDC-U grant. AFDC-U recipients accepting employment under this paragraph shall remain enrolled in the AFDC-U program and shall receive a supplement from the appropriation under s. 20.435 (4) (d) in an amount designed to equal the level of payments the family would receive if the parent were not earning wages. This paragraph is effective until July 1, 1983.

2. Notwithstanding the limits specified in subd. 1, the department may establish rules for the payment of wage supplements above the level specified in subd. 1 in cases in which a family's medical care coverage would be reduced as a result of participation in the wage supplement program.

(8) FAIR HEARING AND REVIEW. (a) Any person whose application for aid to families with dependent children is not acted upon by the county agency with reasonable promptness after the filing of the application, or is denied in whole or in part, whose award is modified or canceled,

or who believes his award to be insufficient, may petition the department for a review of such action.

(b) Upon receipt of a petition under par. (a) the department shall give the applicant or recipient reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as it deems necessary. Notice of the hearing shall be given to the applicant and to the county clerk. The county may be represented at such hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant, the county clerk and the county officer charged with administration of such assistance. The decision of the department shall have the same effect as an order of the county officer charged with the administration of such form of assistance. Such decision shall be final, but may be revoked or modified as altered conditions may require.

(c) Whenever any municipality or county receives a nonresident notice under s. 49.11 and there is reasonable basis for belief that the recipient of such relief may be eligible for assistance under s. 49.19, the municipality or county may after 60 days request the county department of social services or public welfare of the county wherein the recipient of relief is residing to investigate the possible eligibility of the relief recipient for assistance under s. 49.19. If the latter county refuses to grant such assistance, the municipality or county wherein liability for paying the relief ultimately rests may petition the department for a hearing under this section to determine eligibility of the relief recipient for such assistance. Copies of the petition shall be sent to the county wherein the dependent person may be residing or receiving relief by the county or municipality liable for ultimately paying said relief. This procedure or any subsequent decision of the department shall not bar recovery of any claim under s. 49.11 to the date of the final decision.

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

(b) Any decision of the department terminating the payment of state and federal aid shall be

transmitted to the county treasurer. After receipt of such notice the county treasurer shall not include any payments thereafter made in such case in the certified statement of the expenditures of the county for which state or federal aid is claimed.

(10) ELIGIBILITY VERIFICATION. (a) Any person applying for public assistance shall provide proof of his social security number. If he cannot provide proof of his social security number, the agency granting assistance shall verify his application declaration for assistance.

(b) In no case shall failure to provide a social security number be grounds for denial of eligibility if eligibility for assistance otherwise exists.

(c) The agency shall grant temporary eligibility for assistance pending verification under par. (a) if, on the basis of the self-declaration application, eligibility appears to exist.

(11) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make a periodic check of the amounts earned by public assistance recipients through a check of the amounts credited to the recipient's social security number. The department shall make an investigation into any discrepancy between the amounts credited to a social security number and amounts reported as income on the declaration application and take appropriate action under s. 49.12 when warranted. The department of industry, labor and human relations shall cooperate with the department in supplying this information.

History: 1971 c. 125, 145, 215, 307; 1973 c. 90, 147; 1975 c. 307; 1977 c. 196, 271, 418; 1979 c. 221.

Pursuant to 49.50 (2), Stats. 1969, the department has authority to prescribe state-wide compensation standards applicable to county welfare department employees. Under 46.22 (3) and 59.15 (2) (c), any fixing of salaries of such employees by county boards of supervisors must be within the limits of the state-wide prescribed standards. 59 Atty. Gen. 126.

Sub (5) grants authority to county boards to establish the salary levels of county welfare personnel where authority to do so is properly delegated pursuant to rules established by the department of health and social services. The requirement that federal standards must be complied with imposes a limitation on this power. 61 Atty. Gen. 434.

See note to 49.19, citing 63 Atty. Gen. 32.

Under (2), power to classify positions in a county department of social services resides solely in the state department of health and social services. 65 Atty. Gen. 123.

49.51 County administration. (2) COUNTY DEPARTMENTS OF SOCIAL SERVICES OR PUBLIC WELFARE. (a) Administration in counties having a population of 500,000 and others. In counties having a population of 500,000 or more the administration of welfare services shall be vested in a department of social services. In counties electing to be under s. 46.21, the administration of welfare services shall be vested in a department of public welfare. Each department of social services or public welfare shall be under the jurisdiction of the county board of

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public welfare as provided in s. 46.21 and in conformity with s. 49.50. The director of county institutions and departments shall appoint a director of public welfare and such director of public welfare shall appoint assistants. The county department of social services or public welfare shall have the following functions, duties and powers, and such other welfare functions as may be delegated to it:

1. To make investigations relating to relief or welfare administration and admissions to state and county institutions upon request of court, superintendent, district attorney, veterans' service commission or any other county official.

2. Furnishing services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self-support.

3. To make certification or referral of eligibles for state or federal works or other assistance programs, eligibility for which is based on need, when designated to perform such certification or referral services.

4. Making investigations which relate to welfare services upon request by the department.

5. The maintenance of administrative and reporting relationships with all pertinent state departments.

6. The administration of relief under ss. 49.02 and 49.03 in the event that the county administers relief under those sections.

7. The administration of aid to families with dependent children under s. 49.19.

8. To administer child welfare service under and subject to ss. 48.56 and 48.57, thereby administering the functions otherwise administered by county children's board and licensed child welfare agencies and the authority to accept permanent care and custody and guardianship of any child upon the order of a competent court to this effect and to place children for adoption and to give consent to the adoption of such child pursuant to the statutes regulating adoption proceedings.

9. To make such investigations as are provided for in s. 48.88 (2) (a), if the court having jurisdiction so directs.

10. To make payments in such manner as the department may determine for training of recipients, former recipients and potential recipients of aid in programs established under s. 49.50 (7).

11. To certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended, and, in addition, the county department of public welfare may certify eligibility for and distribute surplus commodities and food stuffs.

12. To provide social services for:

a. Persons eligible for or receiving benefits under the supplementary security income program under federal Title XVI, the supplemental payments program under s. 49.177 or aid to families with dependent children under s. 49.19.

(3) PURCHASE OF CARE AND SERVICES. (a) In order to ensure the availability of a full range of care and services, the county department of social services or public welfare may contract, either directly or through the state department, with public or voluntary agencies or others to purchase, in full or in part, care and services which such county departments are authorized by any statute to furnish in any manner. Such services may be purchased from the department where the department has staff to furnish the services. If the agency has adequate staff, it may sell the care and services directly to another county or state agency.

(b) A county agency may purchase development and training services from the department or from other county agencies when such services are available. A county agency may sell such development and staff training services to another county or state agency when it has adequate staff to provide such services.

(c) County agencies shall submit to the department plans and contracts for care and services to be purchased in accordance with s. 46.031 (1). The contracts shall be developed under s. 46.036. The department shall review such contracts and approve them if they are consistent with s. 46.036 and if state or federal funds are available for such purposes. The joint committee on finance may require the department to submit such contracts to the committee for review and approval. The department shall not make any payments to a county for programs included in a contract under review by the committee. If the committee requires the submittal of the contracts, approval of the contracts shall be considered as are requests for supplemental appropriations under s. 13.101 (5) and (6). The department shall reimburse each county for such approved contracts from the appropriations under s. 20.435 (2) (bb) and (c) or under s. 20.435 (2) (cd), as appropriate, according to s. 49.52.

(4) ANNUAL PROGRAM BUDGETS. The county agency shall submit annually a program plan and budget in accordance with ss. 46.031 and 46.032 for authorized services in the form and manner prescribed by the department. The approved plan and budget shall not exceed the available amount of funds.

History: 1971 c. 218; 1973 c. 90, 147, 333, 336; 1975 c. 39, 307, 421; 1977 c. 29, 271, 418; 1979 c. 34.

Counties have authority to provide the funding of services under (3) (c) on their own but are not required to do so when reimbursement is unavailable. 63 Atty. Gen. 584.

49.52 Reimbursement to counties. (1)

(a) The department shall reimburse each county for reasonable costs of income maintenance administration from s. 20.435 (4) (de) and (p) under a separate contract according to s. 46.032. The department shall reimburse each county from the appropriations under s. 20.435 (2) (bb) and (4) (d) and (p) for 100% of the cost of aid to families with dependent children granted pursuant to s. 49.19, for social services as approved by the department under ss. 46.22 (4) (j) and (5m) (c) and 49.51 (2) (a), (3) (c) and (4), and for funeral expenses paid for recipients of aid under s. 49.30, except that no reimbursement may be made for the administration of or aid granted under ss. 49.02 and 49.03. Funds received under this section may not be used to match state reimbursement for shelter care under ss. 48.22 and 48.58.

(b) The department shall distribute child support collections from the appropriation under s. 20.435 (4) (g) in accordance with state and federal law, rules and regulations.

(d) Within the limits of the appropriation under s. 20.435 (2) (bb) and of the department's allocation for county social services under s. 20.435 (2) (o), each county social service department or public welfare department established under s. 46.21 or 46.22 shall receive:

1. Prior to January 1, 1980, 50% of the 1977 contract level plus the amounts the department designates for uniform foster care rates, direct services phasedown and day care funds. In addition, the state shall match on an equal basis appropriations of a county department of county tax levy funds or federal revenue sharing funds, up to 4% of the county department's 1977 contract.

2. Beginning January 1, 1980, and ending December 31, 1980, each county department shall receive an amount equal to its 1979 grant-in-aid allocation, including the amount of state aid generated by a portion of county tax levy or federal revenue sharing funds under that contract. For the purposes of determining the 1980 grant-in-aid allocation, the 1979 grant-in-aid allocation or contract level does not include the amounts for uniform foster care rates, the phasedown of direct services, day care funds, emergency funds, amounts for the educational component of day treatment or reimbursement received for the county's excess expenditures for the care of children in child caring institutions in excess of revenues received for the care of children in child caring institutions. In addition, each county department shall receive:

a. Up to 15% of the 1979 contract level for expanded services. The department shall allocate these funds based equally on each county's

percentage of the state's average monthly medical assistance population during the period of February 1978, to July 1978, each county's ranking on an urban-rural scale, which is to be determined based on the county's percentage of population living in cities, towns or villages with populations of 2,500 or more persons, and each county's ranking as determined by the ratio of the 1977 full value of all taxable property in the county, as defined in s. 70.57, to the county's 1977 population. Affected county departments are not required to match these amounts. Funds allocated to county departments but not committed to contract by April 1, 1980, shall revert to the department for reallocation to county departments otherwise ineligible for these funds.

b. Amounts the department designates for day care funds and emergency funds.

c. An amount equal to the 1979 level of funds allocated for uniform foster care rates, but not to exceed \$4,278,200.

d. An amount the department designates to compensate county departments for case load increases resulting from the direct services phasedown, but not to exceed \$2,100,000.

e. Up to 8% of the 1979 contract level if matched by an equal portion of county tax levy or federal revenue sharing funds.

3. Beginning January 1, 1981, and ending June 30, 1981, each county department shall receive 50% of its 1979 contract level including the amount of state aid which was generated by a portion of county tax levy or federal revenue sharing funds under that contract. For the purposes of determining the grant-in-aid allocation for the period beginning January 1, 1981, and ending June 30, 1981, the 1979 grant-in-aid allocation or contract level does not include the amounts for uniform foster care rates, the phasedown of direct services, day care funds, emergency funds, amounts for the educational component of day treatment or the reimbursement received for the county's excess expenditures for the care of children in child caring institutions in excess of revenues received for the care of children in child caring institutions. In addition, each county department shall receive:

a. Up to 7.5% of the 1979 contract level for expanded services, as determined by the 3 variables outlined in subd. 2. a. Affected county departments are not required to match these amounts. Funds allocated to county departments but not committed to contract by April 1, 1981, shall revert to the department for reallocation to county departments otherwise ineligible for these funds.

b. Amounts the department designates for day care funds and emergency funds.

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c. An amount equal to one-half the 1979 level of funds allocated for uniform foster care rates, but not to exceed \$2,139,100.

d. An amount the department designates to compensate county departments for case load increases resulting from the direct services phasedown, but not to exceed \$1,050,000.

e. 7.5% of the 1979 contract level, excluding the amounts for uniform foster care rates, phasedown of direct services, day care funds and emergency funds, if matched by a portion of county tax levy or federal revenue sharing funds equal to 5% of the 1979 contract level. If matched at less than 5%, the state match will decrease proportionately.

(de) The department may allocate up to \$1,500,000 in calendar year 1980, if such funds are released by the joint committee on finance, to counties that incurred expenditures in calendar year 1979 for care for children in child caring institutions in excess of revenues for this care.

(e) The department shall distribute funds appropriated and authorized for expenditure by the joint committee on finance under s. 20.435 (2) (bb) and the department's allocation for county social services under sub. (2) (o), remaining after the application of the formula under par. (d) 2 and 3 and remaining after the distribution of funds for reimbursement under par. (de) for excess expenditures for the care of children in child caring institutions incurred by counties in calendar year 1979. The amounts so distributed may not exceed \$4,460,000 per calendar year and shall be designated for day care and emergency funds.

(f) 1. If any grant-in-aid funds allocated to match county funds are not claimed, the funds shall be redistributed for the purposes the department designates.

2. The county allocation to match aid increases shall be included in the coordinated plan and budget and approved by January 1 of the year for which funds are allocated, in order to generate state aid matching funds. All funds allocated under par. (d) 1 to 3 shall be included in the coordinated plan and budget and approved.

(g) In addition to funds allocated under par. (d) to (f), each county department of social services shall receive in its allocation funds appropriated by new legislation for new and expanded programs according to the purpose stated in such legislation.

(h) Funds allocated under par. (d) but not spent by the end of each calendar year may not be reallocated to other counties except to counties experiencing overall program deficits due to unanticipated high cost variable services, as defined by the department.

(i) Beginning January 1, 1980, the department shall reimburse counties for juvenile delinquency-related services as provided in s. 46.26 from the appropriation under s. 20.435 (2) (cd).

(2) (a) The county treasurer and county agency administrator of each county shall monthly certify under oath to the department in such manner as the department prescribes the claim of the county for state reimbursement under this section and if the department approves such claim it shall certify to the department of administration for reimbursement to the county for amounts due under this subsection and payment claimed to be made to the counties monthly. The department may make advance payments prior to the beginning of each month equal to one-twelfth of the contracted amount.

(b) To facilitate prompt reimbursement the certificate of the department may be based on the certified statements of the county officers filed under par. (a). Funds recovered from audit adjustments for any month of a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of an audit adjustment.

History: 1971 c. 125; 1971 c. 164 s. 92; 1971 c. 215; 1973 c. 90, 147, 333; 1975 c. 39, 82, 200; 1975 c. 224 s. 146; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1979 c. 34 ss. 840 to 842, 2102 (20) (a); 1979 c. 177; 1979 c. 221 ss. 392p to 399, 2202 (20).

49.53 Limitation on giving information.

(1) Except as provided under sub. (2), no person may use or disclose information concerning applicants and recipients of general relief under ss. 49.02 and 49.03, aid to families with dependent children, social services, child support and establishment of paternity services under s. 46.25, or supplemental payments under s. 49.177, for any purpose not connected with the administration of the programs. Any person violating this subsection may be fined not less than \$25 nor more than \$500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

(2) (a) Each county agency administering aid to families with dependent children and each official or agency administering general relief shall maintain a monthly report at its office showing the names and addresses of all persons receiving such aids together with the amount paid during the preceding month. Nothing in this paragraph shall be construed to authorize or require the disclosure in the report of any information (names, addresses, amounts of aid or otherwise) pertaining to adoptions, aid furnished to or in behalf of unmarried mothers under s. 49.19 (4) (d) and (g), or aid furnished

for the care of children in foster homes under s. 49.19 (10).

(b) Such report shall be open to public inspection at all times during regular office hours and may be destroyed after the next succeeding report becomes available. Any person except any public officer, seeking permission to inspect such book shall prove his identity and shall be required to sign a statement setting forth his address and his reasons for making such request and indicating that he understands the provisions of par. (c) with respect to the use of the information obtained. The use of a fictitious name is a violation of this section. Within 72 hours after any such record has been inspected, the agency shall mail to each person whose record was inspected a notification of that fact and the name and address of the person making such inspection. The agency shall keep a record of such requests.

(c) It is unlawful to use any information obtained through access to such report for political or commercial purposes. The violation of this provision is punishable upon conviction as provided in sub. (1).

History: 1973 c. 147; 1975 c. 82; 1977 c. 261.

This section does not deny access to records as to general relief granted *McCrossen v. Nekoosa-Edwards Paper Co.* 59 W (2d) 245, 208 NW (2d) 148.

Function of county agency in furnishing information to public regarding social security aid recipients is nondiscretionary and limited under 49.53 (2), Stats 1969. County welfare boards are an integral part of county administration and entitled to full access to case records. Advisory committees are not. Access to information concerning individual social security aid recipients by county board of supervisors is limited by its limited role in administration of the aid programs. 59 Atty. Gen. 240.

Only amounts of monthly payments to AFDC recipients, together with their names and addresses, may be released to department of revenue by department of health and social services. AFDC recipients must be notified when such information is released. OAG 22-80.

49.54 Income determination. In determining the amount of aid to be granted a person applying for supplemental payments under s. 49.177, income shall be disregarded to the extent allowed by federal regulations.

History: 1971 c. 87; 1973 c. 147.

49.65 Third party liability. (1) SUBROGATION. The department, county or municipality providing any public assistance under this chapter as a result of an act that creates a claim or cause of action on the part of the public assistance recipient against a 3rd party, including an insurer, is subrogated to the rights of the recipient or the beneficiary and may make a claim or maintain an action in tort against the 3rd party.

(2) **ASSIGNMENT OF ACTIONS.** The department, county or municipality providing any public assistance authorized under this chapter, including medical assistance, as a result of the occurrence of injury, sickness or death which

results in a possible recovery of indemnity from a 3rd party, including an insurer, may require an assignment from the applicant or recipient of such public assistance or legally appointed representative of the incompetent or deceased applicant or recipient giving it the right to make a claim against the 3rd party.

(3) **CONTROL OF ACTION.** The applicant or recipient or any party having a right under this section may make a claim against the 3rd party or may commence an action and shall join the other party as provided under s. 803.03 (2). Each shall have an equal voice in the prosecution of such claim or action.

(4) **RECOVERY; HOW COMPUTED.** Reasonable costs of collection including attorney's fees shall be deducted first. The amount of assistance granted as a result of the occurrence of the injury, sickness or death shall be deducted next and the remainder shall be paid to the public assistance recipient. The amount of the medical assistance funds recovered shall be subject to fees and proration as is set forth in sub. (6).

(5) **DEPARTMENT'S DUTIES AND POWERS.** The department shall enforce its rights under this section and may contract for the recovery of any claim or right of indemnity arising under this section.

(6) **PRORATION OF THIRD PARTY RECOVERED FUNDS.** The county agency shall be entitled to retain from the total amount recovered an amount equal to one-tenth of the funds received. The remaining amount shall be deposited in the state treasury to the respective appropriation from which the assistance was paid and this amount shall be prorated between the federal government and the state government on the basis of the proportionate amount each contributed.

History: 1977 c. 29; 1979 c. 221.

49.66 Health insurance for aid recipients.

(1) The department may establish rules which direct the county agencies administering aid under s. 49.19, 49.46 or 49.47 to require that employed persons who are recipients of benefits under these sections purchase medical or health insurance on behalf of recipients under these sections when a net savings in state funds will result from the mitigation of medical expenses payable under this chapter.

(2) If rules are promulgated under this section, the department shall direct that the county agencies consider who pays the premium, including but not limited to employers; risk exclusions; the benefits available; whether or not such insurance has been or otherwise can be provided; equity in the distribution of contributions and such other factors specified by the department.

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The rules shall permit counties to provide premium contributions by means of payment to the recipients, to the person having custody of a minor recipient or directly to the insurance company or group.

(3) Reimbursement to the counties for expenditures under this section shall be as provided in s. 49.52.

(4) The employed recipient of aid under s. 49.19 purchasing such insurance may include the premiums as a work-related expense. If aid is received under s. 49.46 or 49.47 where no money payments are made, the agency may purchase directly from the insurance provider or reimburse the recipient or person having custody of a minor recipient.

History: 1977 c. 418.

49.70 Menominee Enterprises, Inc., bonds, acquisition. (1) The department is authorized to exercise options to purchase securities assigned to the state of Wisconsin under s. 710.05, 1973 stats., at par value, or to accept an assignment of such securities, for the purpose of providing relief, public assistance or welfare aid under this section.

(2) The department shall exercise the options to purchase such securities or accept an assignment of such securities when it finds that the owner of the securities is a resident of this state as provided in s. 49.01 (7) and is in need of relief, public assistance or welfare aid, or who but for the ownership of such securities would qualify for relief, public assistance or other welfare aid. If the department exercises an option to purchase such security, the purchase price shall be paid out, at par value, as relief, as defined in s. 49.01 (1). Where the department accepts an assignment of such security as provided in this section it shall pay out as relief, as defined in s. 49.01 (1), an amount equal to the par value of the security assigned. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts as will in the discretion of the department meet the needs of the recipient and protect the public. The department is authorized to exercise the options to purchase assigned to it in whole or in part, or to accept an assignment of such securities in whole or in part. The department is granted such authority as may be necessary and convenient to enable it to exercise the functions and

perform the duties required of it by this section, including without limitation because of enumeration the authority to adopt and publish suitable rules governing eligibility and the furnishing and paying of relief under this section, the authority to enter into suitable agreements with the owner of the security or other appropriate persons for the purpose of carrying out this section, and the authority to sell or transfer the securities or defend and prosecute all actions concerning it and pay all just claims against it and do all other things necessary for the protection, preservation and management of the securities.

(3) If the relief, public assistance, or other welfare aid provided pursuant to this section is discontinued during the life of the person receiving such aid and the value of the securities transferred to the department exceed the total amount of assistance paid under this section, the excess of such property shall be returned to such person; and in the event of his death such excess shall be considered the property of such person for administration proceedings.

(4) The department may make loans to the owner of such securities for relief and welfare purposes which loans shall be secured by pledges of the securities to the state. The department may by rule establish the purposes for which loans may be made, permissible interest rates and fees, time and manner in which the loan is paid out, time and manner of repayment, general procedures to be followed in making loans, the action which shall be taken if a borrower defaults on a loan, maximum amount which may be loaned to any one borrower, and any other rules necessary to carry out the purposes of this section.

(5) Nothing in s. 49.70 of the statutes as created by chapter 2, laws of Special Session of 1963, is in derogation of other rights and remedies provided by law.

(6) On and after May 20, 1972, where the owner of such security is otherwise eligible for welfare assistance, such security shall be an exempt asset under the welfare law and shall not disqualify such person from receiving welfare assistance.

History: 1971 c. 302; 1975 c. 422 s. 163.

Note: Ch. 303, laws 1971, provided for returning to its original owners Menominee Enterprises, Inc. bonds assigned to the state as a condition for receiving public assistance.