

1987 Senate Bill 270

Date of enactment: April 20, 1988
Date of publication: April 27, 1988

1987 Wisconsin Act 307

AN ACT *to repeal* 46.03 (24), 49.19 (11) (c), 49.47 (4) (c) 1m and 51.23; *to amend* 13.09 (4), 46.10 (14), 49.195 (1), 49.45 (3) (e) 7, 49.45 (25) (am), 49.46 (2) (c), 49.465 (5) (a), 49.47 (4) (c) 1, 50.50 (1), 50.535 (2) (e), 50.575 (3), 51.08, 51.37 (9), 69.21 (2) (a), 69.21 (2) (b) and 616.09 (1) (a) 2; *to repeal and recreate* 13.09 (4); and *to create* 49.46 (1) (d) 4 and 50.50 (5r) of the statutes, *relating to* eligibility of certain disabled children for medical assistance benefits; eligibility for medical assistance case management benefits; medical assistance payment of certain medicare premiums; notification of determination of presumptive medical assistance eligibility; notice and hearing requirements for certain temporary orders issued by the department of health and social services; value of aid to families with dependent children benefits which may be recovered; restricting the definition of "bed and breakfast establishment" to provision of rooms only to tourists or transients; issuance of uncertified copies of vital records; repealing the required furnishing of psychiatric officer uniforms; a periodic report on the computer reporting network; aid to families with dependent children benefits for groups with no caretaker; contracts with certain organizations concerning medical assistance reimbursement of health care providers in specified situations; prohibiting school benefit plans from becoming secondary to medical assistance or public assistance; and changing the name of the Milwaukee county mental health center (suggested as remedial legislation by the department of health and social services).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of health and social services, and introduced by the law revision committee under s. 13.83 (1) (c) 4, stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 13.09 (4) of the statutes, as affected by 1987 Wisconsin Act 4, section 2, is amended to read:

13.09 (4) The joint committee on finance shall receive reports submitted under ss. 13.095, 13.105 (intro.), 13.106 (1) (intro.) and (2), 13.94 (1) (a) and (b), 16.004 (2) and (7) (b), 16.04 (1m), 16.40 (14), 16.50 (3), 16.513 (2) to (4), 16.528 (5), 16.531 (3), 16.54 (5)

and (8), 16.544 (1) and (3), 16.545 (8), 16.82 (4) (c), 16.97 (3), 20.002 (10), 20.235 (1) (g), 23.31 (1), 35.03 (6), 36.09 (1) (j), 38.06 (3) (c), 39.16 (2) (im), 39.28 (3) (b), 44.20 (4) (b), 46.03 (18) (a), ~~(24), (26)~~ (intro.) and (31), 49.45 (2) (a) 8 and 16 and (b) 2, 56.018, 73.03 (32), 115.781, 146.90, 230.08 (4) (c), 234.25 (1), 234.65 (4) and 977.10.

SECTION 2. 13.09 (4) of the statutes, as affected by 1987 Wisconsin Acts 4 and (this act), is repealed and recreated to read:

13.09 (4) The joint committee on finance shall receive reports submitted under ss. 13.095, 13.105 (intro.), 13.106 (1) (intro.) and (2), 13.94 (1) (a) and (b), 16.004 (2) and (7) (b), 16.04 (1m), 16.40 (14), 16.50 (3), 16.513 (2) to (4), 16.528 (5), 16.531 (3), 16.54 (5) and (8), 16.544 (1) and (3), 16.545 (8), 16.82 (4) (c), 16.97 (3), 20.002 (10), 20.235 (1) (g), 23.31 (1), 35.03

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(6), 36.09 (1) (j), 38.06 (3) (c), 39.16 (2) (im), 39.28 (3) (b), 44.20 (4) (b), 46.03 (18) (a), (26) (intro.) and (31), 49.45 (2) (a) 8 and 16 and (b) 2, 56.018, 115.781, 146.90, 230.08 (4) (c), 234.25 (1), 234.65 (4) and 977.10.

SECTION 3. 46.03 (24) of the statutes is repealed.

NOTE: The current statute requires that the department of health and social services (DHSS) make a periodic report to the joint committee on finance regarding "the progress made in implementing the computer reporting network". The computer reporting network was fully implemented in 1979.

The annual report required in s. 46.03 (26), stats., enables the joint committee on finance to monitor all data processing systems development efforts. Therefore, a separate report under s. 46.03 (24), stats., is unnecessary.

SECTION 4. 46.10 (14) of the statutes is amended to read:

46.10 (14) Liability of a person specified in sub. (2) or s. 46.03 (18) for inpatient care and maintenance of persons under 18 years of age at community mental health centers, a county mental health center complex under s. 51.08, the centers for the developmentally disabled, Mendota mental health institute and Winnebago mental health institute or care and maintenance of persons under 18 years of age in residential, non-medical facilities such as group homes and foster care, child care and juvenile correctional institutions is determined in accordance with the cost-based fee established under s. 46.03 (18). The department shall bill the liable person up to any amount of liability not paid by an insurer under s. 632.89 (2) or (2m) or by other 3rd party benefits, subject to rules which include formulas governing ability to pay promulgated by the department under s. 46.03 (18). Any liability of the patient not payable by any other person terminates when the patient reaches age 18, unless the liable person has prevented payment by any act or omission.

NOTE: See the NOTE following the treatment of s. 51.37 (9), stats., in this bill.

SECTION 5. 49.19 (11) (c) of the statutes is repealed.

NOTE: The "child only" allowance was created by chapter 20, laws of 1981, to provide a mechanism allowing aid to families with dependent children payments at less than the standard for a family with one child. Such a mechanism was thought necessary at the time in cases where a dependent child lived with a natural parent with no income and a stepparent whose income was not counted in determining eligibility.

Since the child only allowance was enacted, the federal government has prohibited its use. In addition, the stepparent's income is now deemed available for purposes of determining eligibility. Therefore, this statute is repealed.

SECTION 6. 49.195 (1) of the statutes is amended to read:

49.195 (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, or by winning a lottery or prize the county granting such aid may sue the parent on behalf of the department to recover the value of that portion of the aid which does not exceed the amount of the property so acquired. The value of

aid liable for recovery under this section may not include the value of work performed by a member of the family in a community work experience program under s. 46.215, 46.22 (1) (b) 11 or 49.50 (7j) (d). 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 of aid paid kept by the county or by the department are prima facie evidence of the value of the aid furnished. Liability under this section shall extend to any parent or 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.

NOTE: Under current law, DHSS may recoup aid provided under aid to families with dependent children (AFDC) should the parent receiving aid acquire financial resources. DHSS is limited to recouping the amount of aid furnished or the value of property or resources acquired, whichever is less.

The value of work furnished to the community in community work experience program (CWEP) jobs should be considered when making a claim against an estate or windfall. If the value of CWEP work is not considered, then the person will have reimbursed the state twice for AFDC benefits received.

SECTION 7m. 49.45 (3) (e) 7 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

49.45 (3) (e) 7. The daily reimbursement or payment rate to a hospital for services provided to medical assistance recipients awaiting admission to a skilled nursing home, intermediate care facility, community-based residential facility, group home, foster home or other custodial living arrangement may not exceed the maximum reimbursement or payment rate based on the average adjusted state skilled nursing facility rate, created under sub. (6m). This limited reimbursement or payment rate to a hospital commences on the date the department, through its own data or information provided by hospitals, determines that continued hospitalization is no longer medically necessary or appropriate during a period where the recipient awaits placement in an alternate custodial living arrangement. The department may contract with a ~~professional standards~~ peer review organiza-

tion, established under 42 USC 1320c to ~~1320c-22~~ 1320c-10, to determine that continued hospitalization of a recipient is no longer necessary and that admission to an alternate custodial living arrangement is more appropriate for the continued care of the recipient. In addition, the department may contract with a ~~professional standards~~ peer review organization to determine the medical necessity or appropriateness of physician services or other services provided during the period when a hospital patient awaits placement in an alternate custodial living arrangement.

NOTE: This amendment changes the term "professional standards review organization" to "peer review organization", to be consistent with the corresponding terminology in federal law, and corrects an erroneous cross-reference to federal law.

SECTION 7n. 49.45 (25) (am) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

49.45 (25) (am) Except as provided under sub. (24), case management services under ss. 49.46 (2) (b) 9 and 49.47 (6) (a) 3 are reimbursable under medical assistance only if provided to a medical assistance beneficiary who has a developmental disability, as defined under s. 51.01 (5) (a), chronic mental illness, as defined under s. 51.01 (3g), or Alzheimer's disease, as defined under s. 46.87 (1) (a), is alcoholic, as defined under s. 51.01 (1), or drug dependent, as defined under s. 51.01 (8), is physically disabled, as defined by the department, is a severely emotionally disturbed child, or is ~~over~~ age 65 or over and who receives case management services from or through a certified case management provider in a county which elects, under par. (b), to make the services available.

SECTION 8. 49.46 (1) (d) 4 of the statutes is created to read:

49.46 (1) (d) 4. A child who meets the conditions under 42 USC 1396a (e) 3 shall be considered a recipient of benefits under s. 49.177 or federal Title XVI.

SECTION 8g. 49.46 (2) (c) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

49.46 (2) (c) Medical assistance shall also include payment of any of the deductible and coinsurance portions of the above services which are not paid by medicare under 42 USC 1395 to 1395zz and the monthly premiums payable under 42 USC ~~1395f~~ 1395v. Payment of coinsurance for a service under part B of medicare, 42 USC 1395j to 1395w, may not exceed the allowable charge for the service under medical assistance minus the medicare payment.

SECTION 8r. 49.465 (5) (a) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

49.465 (5) (a) Notify the department of that determination ~~on or before the 5th day~~ within 5 working days after the day the determination is made.

SECTION 9m. 49.47 (4) (c) 1 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

49.47 (4) (c) 1. Except ~~as provided in subd. 1m and~~ as limited by subd. 3, eligibility exists if income does

not exceed 133 1/3% of the maximum aid to families with dependent children payment under s. 49.19 (11) for the applicant's family size or the combined benefit amount available under supplemental security income under 42 USC 1381 to 1383c and state supplemental aid under s. 49.177 whichever is higher. In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled under 42 USC 1381 to 1385. "Income" does not include earned or unearned income which would be excluded in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled individual under 42 USC 1381 to 1385.

SECTION 10. 49.47 (4) (c) 1m of the statutes is repealed.

NOTE: Under the provisions of the medical assistance state plan, Wisconsin provides categorical medical assistance coverage, outside of the institutional setting, to eligible disabled children under age 18 who meet specific criteria and whose financial eligibility is determined without regard to the income and assets of the parents under section 1902 (e) (3) of the social security act (P.L. 97-248, sec. 134).

The statutory provision regarding the consideration of parental income, as created by 1983 Wisconsin Act 27, is found at s. 49.47 (4) (c) 1m, stats., the medically needy portion of the medical assistance statutes. The bill moves this provision to the categorically needy portion of the medical assistance statutes, as these children are in the optional categorically needy coverage group and receive categorically needy benefits.

SECTION 11. 50.50 (1) of the statutes is amended to read:

50.50 (1) "Bed and breakfast establishment" means any place of lodging that provides 4 or fewer rooms for rent to tourists or transients, provides no meals other than breakfast, is the owner's personal residence and is occupied by the owner at the time of rental.

SECTION 12. 50.50 (5r) of the statutes is created to read:

50.50 (5r) "Tourist or transient" means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment.

NOTE: In its current form, the definition of a bed and breakfast establishment can be interpreted to include establishments which take in long-term boarders. As such, these long-term boarding establishments would not be subject to regulation by the department of industry, labor and human relations, because of the exemption of bed and breakfast establishments from rules on residential occupancy and other building codes in s. 101.05, stats. The intent of the definition is to restrict the special statutory provisions for bed and breakfast establishments to temporary boarding in the house of the operator. This bill restricts the definition of "bed and breakfast establishment" to short-term boarding for tourists or transients, in order to accomplish the original intent of the legislature.

SECTION 12m. 50.535 (2) (e) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

50.535 (2) (e) The department shall establish state fees for its costs related to setting standards under this

subchapter and s. 140.05 (17) and monitoring and evaluating the activities of, and providing education and training to, agent villages, cities and counties. Agent villages, cities and counties shall include the state fees in the permit fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the permit fees charged under ss. 50.53 and 140.05 (17).

SECTION 13. 50.575 (3) of the statutes is amended to read:

50.575 (3) A notice issued under sub. (2) (c) shall be accompanied by ~~notice of a hearing, as provided in s. 227.44~~ a statement which informs the permittee, owner or custodian that he or she has a right to request a hearing in writing within 15 days after issuance of the notice. The department shall hold a hearing no later than 15 days after the ~~service of the notice~~ department receives the written request for a hearing, unless both parties agree to a later date. A final decision shall be issued under s. 227.47 within 10 days of the conclusion of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the permit only if a more limited order will not remove the immediate danger to health.

NOTE: Section 50.575 (3), stats., provides for a notice and hearing concerning DHSS orders regarding hotels, restaurants and food vending establishments. The current statutory language may be interpreted to require that a hearing be scheduled and arranged for prior to issuing a notice, whether or not the owner or operator wishes a hearing to be held. The bill makes it explicit that a hearing need not be scheduled unless the owner or operator of the establishment requests a hearing.

The 15-day time period during which DHSS must hold a hearing is retained but the time period begins only after receipt of a written request for a hearing. In addition, the person requesting a hearing must file the request within 15 days of issuance of the notice.

SECTION 14. 51.08 of the statutes is amended to read:

51.08 (title) **Milwaukee county mental health complex.** Any county having a population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a county mental health ~~center~~ complex. The county mental health ~~center, north division (hereafter in this section referred to as "north division"),~~ complex shall be a hospital devoted to the detention and care of drug addicts, alcoholics, chronic patients and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to s. 46.21. Treatment of alcoholics at the ~~north division county mental health complex~~ is subject to approval by the

department under s. 51.45 (8). ~~The county mental health center, south division, shall be a hospital for the treatment of chronic patients and shall be governed pursuant to s. 46.21.~~ The county mental health center complex established pursuant to this section is subject to rules promulgated by the department concerning hospital standards.

NOTE: See the NOTE following the treatment of s. 51.37 (9), stats., in this bill.

SECTION 15. 51.23 of the statutes is repealed.

NOTE: The current statute requires DHSS to furnish uniforms to psychiatric officers. The concept of a "psychiatric officer" is antithetical to modern treatment methodology and terminology and there is no civil service category labeled "psychiatric officer". Also, there is no uniform worn at the institutes or in any other psychiatric inpatient setting.

SECTION 16. 51.37 (9) of the statutes is amended to read:

51.37 (9) If in the judgment of the director of Men-dota mental health institute, Winnebago mental health institute or the Milwaukee county mental health ~~center~~ complex, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department, the committing court and the district attorney of the county in which the court is located his or her reasons for such judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department. Before a person is conditionally transferred or discharged under supervision under this subsection, the department shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified.

NOTE: The Milwaukee county mental health complex no longer divides its functions between the north and south divisions. This bill deletes the obsolete references to the divisions and changes the name of the county mental health center that serves Milwaukee county to the county mental health complex.

SECTION 17. 69.21 (2) (a) of the statutes is amended to read:

69.21 (2) (a) The state registrar or local registrar ~~may~~ shall issue an uncertified copy of the vital record of one or more registrants if the subject of the vital record is an event occurring after September 30, 1907. The requirements of ~~ss. 69.15 (6) (b) and 69.20 (3) (b)~~ for disclosing information under s. 69.20 (2) shall apply to issuance under this paragraph of any copy of a vital record containing such information.

SECTION 18. 69.21 (2) (b) of the statutes is amended to read:

69.21 (2) (b) The state registrar and any local registrar may shall issue an uncertified copy of the vital record of one or more registrants, whether specified or not, to any person if the subject of the vital record is an event occurring before October 1, 1907, and if the person submits a request for the copy in writing to the registrar responsible for filing or registering the vital record and if the request is accompanied by the fee required under s. 69.22 (1) (b).

NOTE: This bill clarifies that uncertified (as opposed to certified) copies of vital records must be issued to any person upon request. 1985 Wisconsin Act 315 was passed with the understanding between state and local registrars and legislators that uncertified copies would be issued upon request. In actual practice, all requests that meet the requirements of the law are honored. This bill makes it clear that registrars must honor all legal requests for uncertified copies.

SECTION 20. 616.09 (1) (a) 2 of the statutes is amended to read:

616.09 (1) (a) 2. Plans authorized under s. 616.06 are subject to chs. 600, 601, 620, 625, 627 and 645, to

ss. 610.21, 610.55, 610.57 and 628.34 to 628.39, all as they exist in 1977 stats., to ~~s.~~ ss. 632.72, 632.755 and 632.87 and to this subchapter except s. 616.08.

NOTE: Federal regulations provide for the loss of federal funds if state laws allow insurance contracts to make themselves secondary to medicaid. 1985 Wisconsin Act 29 created s. 632.755, stats., which prohibits certain insurers from making themselves secondary to medicaid. However, school insurers organized under s. 616.06, stats., are not specifically referenced as subject to s. 632.755 or to s. 632.72, stats., which makes payments assignable to DHSS.

School benefit plans are generally health insurance plans provided to students participating in Wisconsin interscholastic athletic association programs. These insurance plans have not proposed becoming secondary to medicaid. However, to avoid potential future problems, this amendment makes the prohibition apply to all insurance programs operating in Wisconsin.

SECTION 21. **Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 13.09 (4) of the statutes takes effect on July 1, 1989.