

1989 Senate Bill 292

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1989 WISCONSIN ACT 173

AN ACT to repeal 150.43 (2); to renumber 46.92, 46.925 and 49.45 (19) (a) 3; to renumber and amend 140.05 (11) and 632.755 (1); to amend 20.435 (5) (d), 46.73 (3) (intro.) and (4), 49.195 (4), 49.45 (19) (a) (intro.), 49.45 (19) (a) 2, 49.46 (1) (a) 5, 49.47 (4) (c) 2, 49.497 (2), 49.50 (10), 140.06 (11), 150.35 (2), 150.35 (3), 150.43 (3), 632.72 and 632.755 (2); and to create 632.755 (1) and 632.755 (1m) of the statutes, relating to: review of applications for approval of certain additional beds or of certain activities by a nursing home under the resource allocation program of the department of health and social services; reporting information concerning cancer to the department of health and social services; applying certain insurance laws to federally regulated self-insured health and disability plans; the telecommunications assistance program; medical assistance eligibility of children in certain adoption placements; assignment by medical assistance recipients of rights to payment of medical expenses; treatment of income in determining eligibility for medical assistance; recovery of public assistance overpayments; and verification of eligibility for certain public assistance benefits (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. 20.435 (5) (d) of the statutes is amended to read:

20.435 (5) (d) *Telecommunication aid for the hearing impaired.* The amounts in the schedule for the purpose of providing assistance under the telecommunication assistance program for the hearing impaired under s. ~~46.92~~ 47.20.

SECTION 2. 46.73 (3) (intro.) and (4) of the statutes are amended to read:

46.73 (3) (intro.) Any information reported to the department under sub. (1) or (5) which could identify any individual who is the subject of the report or the person

submitting the report shall be confidential and may not be disclosed by the department except to the following:

(4) The report of information under sub. (1) or (5) may not be construed as a violation of any person's responsibility for maintaining the confidentiality of patient health care records, as defined under s. 146.81 (4).

SECTION 3. 46.92 of the statutes is renumbered 47.20.

NOTE: Section 46.92, stats., relates to the telecommunication aid program for the hearing impaired. The transfer of the hearing-impaired program to ch. 47, stats., parallels the relocation of the appropriations for the hearing impaired in the division of vocational rehabilitation in the department of health and social services.

SECTION 4. 46.925 of the statutes, as affected by 1989 Wisconsin Act 31, is renumbered 47.25.

NOTE: Section 46.925, stats., relates to the vehicle sticker program for the hearing impaired. The transfer of the program to ch. 47, stats., parallels the relocation of the appropriations for the hearing impaired in the division of vocational rehabilitation in the department of health and social services.

SECTION 5. 49.195 (4) of the statutes is amended to read:

49.195 (4) Any county or governing body of a federally recognized American Indian tribe may retain 15% of

state aid benefits distributed under s. 49.19 that is are recovered due to the efforts of an employe or officer of the county or tribe. This subsection does not apply to recovery of aid benefits that ~~was~~ were provided as a result of state, county or tribal governing body error.

NOTE: Section 49.195 (4), stats., conforms the 15% overpayment recovery law to the administrative practice of the department of health and social services which has existed since the aid to families with dependent children and medical assistance programs commenced. The subsection clarifies that federal, as well as state, funds are recoverable.

SECTION 6. 49.45 (19) (a) (intro.) of the statutes is amended to read:

49.45 (19) (a) (intro.) As a condition of eligibility for medical assistance, ~~any a person charged with the care and custody of a dependent child or children~~ shall:

SECTION 7. 49.45 (19) (a) 2. of the statutes is amended to read:

49.45 (19) (a) 2. Notwithstanding other provisions of the statutes, be deemed to have assigned to the state, by applying for or receiving medical assistance, any rights to medical support or other payment of medical expenses from any other person ~~that the parent and the dependent child or children may have~~, including rights to unpaid amounts accrued at the time of application for medical assistance as well as any rights to support accruing during the time for which medical assistance is paid.

NOTE: Section 49.45 (19) (a) 2., stats., codifies a 1985 federal requirement under section 1902 (a) 25. of the federal social security act which requires states to: (1) identify legally liable 3rd-party resources to pay for medical services to all recipients of medical assistance; and (2) seek reimbursement from such parties to the extent of their liability. The effect of the codification is to extend, to all persons receiving supplemental security income, the requirements of s. 49.45 (19), stats., which currently is applicable only to persons charged with the care and custody of any dependent child. Specifically, application for or receipt of medical assistance constitutes an assignment to the state of any rights to support from, or payment of medical expenses by, a 3rd party.

SECTION 8. 49.45 (19) (a) 3. of the statutes is renumbered 49.45 (19) (bm).

SECTION 9. 49.46 (1) (a) 5. of the statutes is amended to read:

49.46 (1) (a) 5. Any child in a ~~subsidized~~ an adoption assistance or foster care placement under ch. 48, as determined by the department.

NOTE: In s. 49.46 (1) (a) 5., stats., the reference to a "subsidized adoption" in the public assistance statute is replaced with the phrase "adoption assistance" to conform the reference to a change made in 1985 Wisconsin Act 308, affecting the children's code.

SECTION 10. 49.47 (4) (c) 2. of the statutes, as affected by 1987 Wisconsin Act 413 and 1989 Wisconsin Act 31, is amended to read:

49.47 (4) (c) 2. Whenever an applicant has excess income under subd. 1 or par. (am), no certification may be issued until the excess income above the applicable limits has been obligated or expended for medical care or

for any other type of remedial care recognized under state law or for personal health insurance premiums or both.

NOTE: Section 49.47 (4) (c) 2., stats., codifies in the statutes administrative practice based on federal regulation, 42 CFR 433.831, on the income requirement to be eligible for medical assistance under the medically indigent criteria. Specifically, the bill adds that amounts "obligated for" medical care, as well as amounts "expended", must be recognized in determining that a person's income has been "spent down" sufficiently to be eligible.

SECTION 11. 49.497 (2) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

49.497 (2) A county or governing body of a federally recognized American Indian tribe may retain 15% of state-aid benefits distributed under s. 49.46, 49.468 or 49.47 that is are recovered under sub. (1) due to the efforts of an employe or officer of the county or tribe.

NOTE: Section 49.497 (2), stats., conforms the 15% overpayment recovery law to the administrative practice of the department of health and social services which has existed since the aid to families with dependent children and medical assistance programs commenced. The subsection clarifies that federal, as well as state, funds are recoverable.

SECTION 12. 49.50 (10) of the statutes is amended to read:

49.50 (10) ELIGIBILITY VERIFICATION. Proof shall be provided for each person included in an application for public assistance, except for a child who is eligible for medical assistance under s. 49.46 or 49.47 because of 42 USC 1396a (e) (4), of his or her social security number or that an application for a social security number has been made.

NOTE: Section 49.50 (10), stats., codifies in Wisconsin law a provision of the federal social security act which automatically makes a child eligible for medical assistance, up to one year of age, who is born to a woman receiving medical assistance. The eligibility continues for the year if the woman remains eligible for medical assistance and the child is a member of the woman's household. [See 42 USC 1396a (e) (4), created by the federal deficit reduction act of 1984 (P.L. 98-369).] Otherwise, state and federal law requires each person included in an application for medical assistance to provide proof of a social security number or application for a social security number.

SECTION 13. 140.05 (11) of the statutes is renumbered 46.73 (5) and amended to read:

46.73 (5) ~~The department may collect information from hospitals and physicians relating to the incidence, causes and treatment of cancer. Any information collected is confidential and may not be released by the department except in statistical summaries.~~ The department may, to the extent feasible, collect information related to the occupation of cancer patients in order to fulfill the purpose of ~~sub. s. 140.05~~ (14m).

NOTE: Consistent with the mandatory reporting requirement of s. 46.73, stats., in 1985 Wisconsin Act 29, section 46.73 (5), stats., deletes permissive authority of the department of health and social services (DHSS) under s. 140.05 (1), stats., to collect cancer information from hospitals and physicians. Section 46.73 (5), stats., retains the permissive authority of DHSS to collect information related to the occupation

1989 Senate Bill 292

of cancer patients, formerly incorporated in s. 140.05 (11), stats.

SECTION 13m. 140.06 (11) of the statutes is amended to read:

140.06 (11) PENALTY. Any person who violates this section or any rule promulgated or order issued under this section shall forfeit not less than \$25 nor more than \$100 for each violation. Each day of violation and each violation constitutes a separate offense.

SECTION 14. 150.35 (2) of the statutes is amended to read:

150.35 (2) The department shall hold a public meeting upon the request of an affected party to review applications under s. 150.33 or 150.34, at which all affected parties may present testimony. ~~The department shall make recommendations on these applications within 60 days after the department issues its notice under s. 150.33 (4) or 150.34 (3) declaring all applications complete.~~ The department shall keep minutes or other record of testimony presented at the public meeting and shall formulate recommendations, based on the testimony, consider the record in determining whether the applicant has met the review criteria under s. 150.39.

SECTION 15. 150.35 (3) of the statutes is amended to read:

150.35 (3) Except as provided under sub. (3m), the department shall issue an initial finding to approve or reject the application within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3), unless all applicants consent to an extension of this period. The department may extend by 60 days the review cycle of all applications being concurrently reviewed if it finds that completing the reviews within 75 days after the date it publishes its notice under s. 150.33 (4) or 150.34 (3) is not practicable due to the volume of applications received. The department shall base its initial finding on a comparative analysis of applications, relying on the criteria specified in s. 150.39 ~~and the recommendations formulated under sub. (2).~~ The applicant has the burden of proving, by a preponderance of the evidence, that each of the criteria criterion specified in s. 150.39 has been met or does not apply to the project. The department may approve fewer additional nursing home beds than allowed by the statewide bed limit if the cost of adding those beds exceeds the medical assistance allocation for new beds projected in s. 150.31 (1) (e). Unless an adversely affected applicant makes a timely request for a public hearing under sub. (4), the department's initial finding under this subsection is its final action.

NOTE: Section 150.35 (2) and (3), stats., corrects anomalies in the statutes which resulted when 1987 Wisconsin Act 399, the 1988 annual budget bill, deleted all references in ch. 150, stats., to health systems agencies (HSA's), for which federal funding was previously eliminated.

Act 399 also transferred to the department of health and social services (DHSS) those HSA functions related to the ch. 150, stats., review of proposed projects for the allocation of

additional resources for long-term care nursing homes or facilities primarily serving the developmentally disabled, such as increased bed capacity or capital expenditures exceeding \$600,000.

Two of the deleted HSA functions in the project review process involved: (1) holding a public hearing, if requested; and (2) making recommendations about proposed projects to DHSS on the basis of information presented at the hearing combined with HSA's comprehensive analysis of the project.

A literal reading of ch. 150, stats., as affected by Act 399, required DHSS to make project review recommendations to itself before making its initial decision to approve or reject a project. Section 150.35 (2) and (3), stats., resolves the anomalous result by retaining DHSS's responsibility to hold a public hearing, if requested, and to keep a record of the testimony presented. Although subsections (2) and (3) delete the unnecessary requirement for DHSS to make a project review recommendation to itself, they require DHSS to consider the hearing record in making its determination on whether an applicant has satisfied the statutory review criteria under s. 150.39, stats.

SECTION 16. 150.43 (2) of the statutes is repealed.

NOTE: The repeal of s. 150.43 (2), stats., deletes the requirement that DHSS in a DHSS project review make a recommendation to itself.

SECTION 17. 150.43 (3) of the statutes is amended to read:

150.43 (3) The record of the public meeting, if any, under s. 150.35 (2).

SECTION 18. 632.72 of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

632.72 Medical assistance; assignment. The providing of medical benefits under s. 49.02 or 49.046 or of medical assistance under s. 49.45, 49.46, 49.465, 49.468 or 49.47 constitutes an assignment to the department of health and social services or the county providing the medical benefits or assistance. The assignment shall be, to the extent of the medical benefits or assistance provided, for benefits to which the recipient would be entitled under any policy of health and disability insurance or under any partially or wholly uninsured health and disability plan, including a plan that is subject to 29 USC 1001 to 1461.

NOTE: Section 632.72, stats., extends the application of Wisconsin laws related to the assignment provisions in a health insurance policy to any partially or wholly uninsured health and disability plan (e.g., self-insured plan), including plans federally regulated under the employe retirement income security act (ERISA).

SECTION 19. 632.755 (1) of the statutes is renumbered 632.755 (1g) and amended to read:

632.755 (1g) (a) A disability insurance policy or disability plan may not exclude a person or a person's dependent from coverage under the policy because the person or the dependent is eligible for assistance under ch. 49.

(b) A disability insurance policy or disability plan may not terminate its coverage of an insured a person or an insured a person's dependent because the person or the dependent is eligible for assistance under ch. 49.

(c) A disability insurance policy or disability plan may not provide different benefits of coverage to ~~an~~

insured a person or the insured person's dependent because the person or the dependent is eligible for assistance under ch. 49 than it provides to insured persons and their dependents who are not eligible for assistance under ch. 49.

NOTE: Section 632.755 (1g) and (1m), stats., extends the application of Wisconsin laws prohibiting health insurance policies from discriminating against persons eligible for medical assistance to any partially or wholly uninsured health and disability plan (e.g., self-insured plan), including plans federally regulated under the employe retirement income security act (ERISA).

SECTION 20. 632.755 (1) of the statutes is created to read:

632.755 (1) In this section:

(a) "Disability plan" means a partially or wholly uninsured disability plan that is not subject to 29 USC 1001 to 1461.

(b) "Federally regulated disability plan" means a partially or wholly uninsured disability plan that is subject to 29 USC 1001 to 1461.

NOTE: Section 632.755, stats., implements the directive incorporated in the federal consolidated omnibus budget reconciliation act of 1985 (P.L. 99-272) that health plans regulated under the federal employe retirement income security act (ERISA) (P.L. 93-406) be subject to state insurance laws related to medical assistance, in accordance with 29 USC 1144 (B) (8).

SECTION 21. 632.755 (1m) of the statutes is created to read:

632.755 (1m) (a) A federally regulated disability plan may not exclude a person or a person's dependent from coverage because the person or the dependent is eligible for medical assistance under ss. 49.45 to 49.47.

(b) A federally regulated disability plan may not terminate its coverage of a person or a person's dependent

because the person or the dependent is eligible for medical assistance under ss. 49.45 to 49.47.

(c) A federally regulated disability plan may not provide different benefits of coverage to a person or the person's dependent because the person or the dependent is eligible for medical assistance under ss. 49.45 to 49.47 than it provides to persons and their dependents who are not eligible for medical assistance under ss. 49.45 to 49.47.

NOTE: Section 632.755 (1g) and (1m), stats., extends the application of Wisconsin laws prohibiting health insurance policies from discriminating against persons eligible for medical assistance to any partially or wholly uninsured health and disability plan (e.g., self-insured plan), including plans federally regulated under the employe retirement income security act (ERISA).

SECTION 22. 632.755 (2) of the statutes is amended to read:

632.755 (2) Benefits provided by a disability insurance policy or disability plan shall be primary to those benefits provided under ch. 49. Benefits provided by a federally regulated disability plan shall be primary to those benefits provided under ss. 49.45 to 49.47.

NOTE: Section 632.755 (2), stats., supports the status of medical assistance as the "payer of the last resort", by requiring the payment or reimbursement for medical services by other public or private sector plans, whether insured, self-insured or partially or wholly insured before payments under medical assistance.

SECTION 22m. Initial applicability. (1) HEALTH AND SOCIAL SERVICES. (a) *Asbestos certification penalty.* The treatment of section 140.06 (11) of the statutes first applies to violations occurring on the effective date of this paragraph.