

# State of Wisconsin



1995 Assembly Bill 863

Date of enactment: **June 6, 1996**  
Date of publication\*: **June 20, 1996**

## 1995 WISCONSIN ACT 407

**AN ACT to amend** 49.27 (4) (d) 2. b., 49.27 (4) (d) 2. b., 49.493 (1) (b), 49.498 (16m), 49.65 (2), 49.65 (3), 49.65 (7) (c), 49.65 (8) (a), 49.65 (8) (b), 49.89 (2), 49.89 (3), 49.89 (7) (c), 49.89 (8), 253.06, 619.12 (3) (b), 632.72 (1g) (b) and 632.755 (2); and **to repeal and recreate** 619.12 (3) (b) of the statutes; **relating to:** including a learnfare sanction as a significant change in circumstances for a work-not-welfare group for the purpose of adjustment of benefits; eligibility for coverage under the health insurance risk-sharing plan; assignment and subrogation of certain rights and clarifying that payment for services under disability insurance and uninsured health plans is primary to payment for services under the maternal and child health program; appealing findings or certifications of noncompliance by nursing homes and intermediate care facilities for the mentally retarded to the division of hearings and appeals in the department of administration; and the administration of the state supplemental food program for women, infants and children (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.** 49.27 (4) (d) 2. b. of the statutes, as affected by [1995 Wisconsin Act 27](#), is amended to read:

49.27 (4) (d) 2. b. A person in the work-not-welfare group is sanctioned under sub. (5) (f) or s. 49.127, 49.19 (4) (h) 2., 49.29, 49.49, ~~49.50 (7)~~ or 49.95.

NOTE: This section provides that a significant change in circumstances in a work-not-welfare group includes the application of a learnfare sanction, which would allow for adjustment of aid to families with dependent children benefit amounts at times other than regularly scheduled investigations if this sanction is applied.

**SECTION 2.** 49.27 (4) (d) 2. b. of the statutes, as affected by 1995 Wisconsin Act .... (this act), is amended to read:

49.27 (4) (d) 2. b. A person in the work-not-welfare group is sanctioned under sub. (5) (f) or s. 49.127, 49.19 (4) (h) 2., ~~49.26 (1) (h)~~, 49.29, 49.49, ~~49.50 (7)~~ or 49.95.

**SECTION 3.** 49.493 (1) (b) of the statutes, as created by [1995 Wisconsin Act 27](#), is amended to read:

49.493 (1) (b) "Medical benefits or assistance" means medical benefits under s. 49.02 ~~or~~ 49.046 ~~or~~ 253.05 or medical assistance.

**SECTION 4.** 49.498 (16m) of the statutes, as created by [1995 Wisconsin Act 27](#), is amended to read:

49.498 (16m) APPEALS PROCEDURES. Appeals procedures under this section shall be consistent with the requirements specified in [42 CFR 431.151](#) (a) and (b). Any appeals under this section shall be filed with the division of hearings and appeals created under s. 15.103 (1).

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

NOTE: This amendment specifies that appeals of nursing home deficiencies under s. 49.498 shall be filed with the division of hearings and appeals in the department of administration.

**SECTION 5.** 49.65 (2) of the statutes is amended to read:

49.65 (2) SUBROGATION. The department, county or elected tribal governing body providing any public assistance under this chapter or under s. 253.05 as a result of the occurrence of an injury, sickness or death which creates a claim or cause of action, whether in tort or contract, on the part of a public assistance recipient or beneficiary or the estate of a recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may make a claim or maintain an action or intervene in a claim or action by the recipient, beneficiary or estate against the 3rd party.

**SECTION 6.** 49.65 (3) of the statutes, as affected by [1995 Wisconsin Act 27](#), section 3155, is amended to read:

49.65 (3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter or under s. 253.05, an applicant assigns to the department the right to make a claim to recover an indemnity from a 3rd party, including an insurer, if the assistance is provided as a result of the occurrence of injury, sickness or death that results in a possible recovery of an indemnity from the 3rd party.

**SECTION 7.** 49.65 (7) (c) of the statutes, as affected by [1995 Wisconsin Act 27](#), section 3169, is amended to read:

49.65 (7) (c) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid under s. 49.19, 49.20 or 49.30 ~~or~~ as state supplemental payments under s. 49.177 or as benefits paid under s. 253.05. The incentive payment shall be taken from the state share of the sum recovered, except that the incentive payment for an amount recovered because of benefits paid under s. 49.19 shall be considered an administrative cost under s. 49.19 for the purpose of claiming federal funding.

**SECTION 8.** 49.65 (8) (a) of the statutes is amended to read:

49.65 (8) (a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter or under s. 253.05 as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party's insurer from liability to the units of government specified in sub. (2). Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance.

**SECTION 9.** 49.65 (8) (b) of the statutes is amended to read:

49.65 (8) (b) Liability under par. (a) is to the extent of assistance payments under this chapter or under s. 253.05 resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

**SECTION 10.** 49.89 (2) of the statutes, as affected by [1995 Wisconsin Act 27](#), is amended to read:

49.89 (2) SUBROGATION. The department of health and ~~social family~~ services, the department of industry, labor and ~~human relations~~ job development, a county or an elected tribal governing body that provides any public assistance under this chapter or under s. 253.05 as a result of the occurrence of an injury, sickness or death that creates a claim or cause of action, whether in tort or contract, on the part of a public assistance recipient or beneficiary or the estate of a recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may make a claim or maintain an action or intervene in a claim or action by the recipient, beneficiary or estate against the 3rd party.

**SECTION 11.** 49.89 (3) of the statutes, as affected by [1995 Wisconsin Act 27](#), is amended to read:

49.89 (3) ASSIGNMENT OF ACTIONS. By applying for assistance under this chapter or under s. 253.05, an applicant assigns to the state department, the county department or the tribal governing body that provided the assistance the right to make a claim to recover an indemnity from a 3rd party, including an insurer, if the assistance is provided as a result of the occurrence of injury, sickness or death that results in a possible recovery of an indemnity from the 3rd party.

**SECTION 12.** 49.89 (7) (c) of the statutes, as affected by [1995 Wisconsin Act 27](#), is amended to read:

49.89 (7) (c) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid under s. 49.19, 49.20 ~~or~~ 49.30 or 253.05. The incentive payment shall be taken from the state share of the sum recovered, except that the incentive payment for an amount recovered because of benefits paid under s. 49.19 shall be considered an administrative cost under s. 49.19 for the purpose of claiming federal funding.

**SECTION 13.** 49.89 (8) of the statutes, as affected by [1995 Wisconsin Act 27](#), is amended to read:

49.89 (8) WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT'S RELEASE. (a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter or under s. 253.05 as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party's

insurer from liability to the units of government specified in sub. (2). Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance.

(b) Liability under par. (a) is to the extent of assistance payments under this chapter or under s. 253.05 resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

**SECTION 14.** 253.06 of the statutes is amended to read:

**253.06 State supplemental food program for women, infants and children.** From the appropriation under s. 20.435 (1) (em), the department shall supplement the provision of supplemental foods, nutrition education and other services, including nutritional counseling, to low-income women, infants and children who meet the eligibility criteria under the federal special supplemental food program for women, infants and children authorized under 42 USC 1786. To the extent that funds are available under this section and to the extent that funds are available under 42 USC 1786, ~~every county the department~~ shall provide the supplemental food, nutrition education and other services authorized under this section and shall ~~establish or designate an agency to administer that provision in every county. The department may enter into contracts for this purpose.~~

NOTE: SECTION 14 amends current law relating to the administration of the special supplemental food program for women, infants and children (WIC) to provide that the department of health and social services (DHSS), not the counties, administers this program. According to DHSS, this revision reflects the actual operation of the WIC program and is consistent with federal regulations governing the program.

**SECTION 15.** 619.12 (3) (b) of the statutes is amended to read:

619.12 (3) (b) Persons for whom deductible or coinsurance amounts are paid or reimbursed under ch. 47 for vocational rehabilitation, under s. 49.48 for renal disease, under s. 49.485 (8) for hemophilia ~~or~~ under s. 49.483 for cystic fibrosis or under s. 253.05 for maternal and child

health services are not ineligible for coverage under the plan by reason of such payments or reimbursements.

NOTE: Current law provides that a person whose health insurance deductible or coinsurance amounts are paid or reimbursed by vocational rehabilitation or with state aids for renal disease, hemophilia or cystic fibrosis is still eligible for coverage under the health insurance risk-sharing plan (HIRSP). The revision clarifies that persons who receive state aids for maternal and child health services as children with special health care needs would also be eligible for HIRSP. The revision restores this exception, which was deleted by 1993 Wisconsin Act 27.

**SECTION 16.** 619.12 (3) (b) of the statutes, as affected by 1995 Wisconsin Acts 27 and .... (this act), is repealed and recreated to read:

619.12 (3) (b) Persons for whom deductible or coinsurance amounts are paid or reimbursed under ch. 47 for vocational rehabilitation, under s. 49.68 for renal disease, under s. 49.685 (8) for hemophilia, under s. 49.683 for cystic fibrosis or under s. 253.05 for maternal and child health services are not ineligible for coverage under the plan by reason of such payments or reimbursements.

**SECTION 17.** 632.72 (1g) (b) of the statutes, as affected by 1995 Wisconsin Act 27, section 7045b, is amended to read:

632.72 (1g) (b) "Medical benefits or assistance" means health care services funded by a relief block grant under ch. 49; ~~or~~ medical assistance, as defined under s. 49.43 (8); or maternal and child health services under s. 253.05.

**SECTION 18.** 632.755 (2) of the statutes is amended to read:

632.755 (2) Benefits provided by a disability insurance policy shall be primary to those benefits provided under ch. 49 or under s. 253.05.

NOTE: SECTIONS 3, 5 to 13, 17 and 18 amend current law to clarify that payments for services under the federal maternal and child health block grant fund are secondary to any payments for services under the medical assistance program and private insurance, including uninsured (self-insured) health plans. DHSS states that this clarification is needed in order to reflect current practice as well as to reflect information in the medical assistance provider manual that it is the primary payer over these federal block grant funds.

**SECTION 19. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 49.27 (4) (d) 2. b. (by SECTION 2) and 49.89 (2), (3), (7) (c) and (8) of the statutes and the repeal and recreation of section 619.12 (3) (b) of the statutes take effect on July 1, 1996.