

SOON - Inedit 1/20

DOA:.....Geisler - Medical assistance services provider fraud and abuse changes

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

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AN ACT relating to: the budget.

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including decertification or suspension from the medical assistance program,

To implement these sanctions, DHFS must provide written notice, a fair hearing and a written decision.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

Under current law under the medical assistance (MA) program, the department of health and family services (DHFS) certifies persons or facilities that meet certain criteria as providers and pays for services and items that MA recipients receive from the providers. Currently, DHFS is authorized or required to enforce numerous sanctions against providers who fail to comply with requirements under the MA program or to whom MA payments have been improperly or erroneously made or overpayments have been made. Currently, prohibitions exist against fraud in applications for, rights to and conversion of MA benefits or payments. These prohibitions are punishable by fines and imprisonment. Lastly, under current law, if a provider who is liable for repayment of improper or erroneous payments or overpayments sells or otherwise transfers ownership of his or her business, the seller and transferee are each liable for the repayment. The transferee must contact DHFS and ascertain if the seller has an outstanding amount owing. DHFS may bring an action to compel payment against either the buyer or transferee if a sale or other transfer occurs and the amount has not be repaid.

This bill prohibits MA providers from submitting false claims and false statements that accompany the claims for payment of services or items that the

provider furnishes under the MA program. The bill permits DHFS to assess forfeitures for violations of the prohibitions and to impose a surcharge on a forfeiture that is assessed. Further, the bill establishes notice and hearing requirements for providers to contest assessment of a forfeiture; establishes forfeiture and surcharge payment requirements; and permits the attorney general to bring an action to collect outstanding forfeitures and surcharges.

The bill authorizes DHFS to require certain MA providers, as a condition of certification, to file with DHFS a surety bond, payable to DHFS, under terms and in an amount specified by DHFS by rule, that would reasonably pay the amount of a recovery and DHFS' costs to pursue recovery of overpayments or to investigate and pursue allegations of false claims or statements. Providers who are required to file the surety bonds are those who provide MA services, as specified by DHFS by rule, for which providers have demonstrated significant potential to violate fraud prohibitions, to require recovery of overpayments or to need certain additional sanctions.

The bill authorizes DHFS, if it first makes specified findings, to prescribe MA provider certification criteria that limit the number of providers of particular services or that limit the amount of resources, including employes and equipment, that a certified provider may use to provide MA services and items.

The bill changes numerous provisions relating to procedures for the recovery by DHFS of improper or erroneous MA payments or overpayments, including all of the following:

1. Reasonable notice and hearing opportunity requirements are eliminated and, instead, DHFS must promptly afford an opportunity for a provider to present information and argument, but DHFS may collect the amount to be recovered pending that opportunity.

2. A deadline for payment of recoveries is established and payment of interest on delinquent amounts is required.

The bill authorizes DHFS, if certain criteria are met, to suspend certification for a provider pending a hearing on whether the provider ~~has violated~~ federal or state laws. INSERT A must be decertified for violation of

The bill authorizes DHFS to prescribe conditions of MA participation and reimbursement terms and to impose additional sanctions for noncompliance. The bill requires immediate access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

The bill changes provisions concerning liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers ownership of his or her business. Under the bill, before such a sale or transfer may take place, the provider must notify DHFS of the impending sale and DHFS must inform the provider of the extent of liability, if any. If liability exists, the provider must so inform the prospective buyer or transferee of the extent of the liability and, if done, the liability attaches to both the provider and the buyer or transferee, with the sale or other transfer conditioned upon repayment. If the provider fails to inform the buyer

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eliminates DHFS' general authority to suspend a provider, but instead

or other transferee, liability does not attach to the buyer. Repayment must be made prior to the sale or transfer and, if not done, the sale or transfer is void.

Lastly, the bill excepts from the definition of a rule actions by DHFS in prescribing conditions of participation and terms of reimbursement for MA providers of services and in establishing guidelines for determining medical necessity and appropriateness for granting prior authorization for MA coverage of services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.45 (2) (a) 9. of the statutes is amended to read:

2 49.45 (2) (a) 9. Periodically ~~set forth~~ prescribe conditions of participation and
3 terms of reimbursement in a contract with provider of service under this section.

4 **SECTION 2.** 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10. a. and
5 amended to read:

6 49.45 (2) (a) 10. a. ~~After reasonable notice and opportunity for hearing, recover~~
7 Recover money improperly or erroneously paid, or overpayments to a provider either
8 by offsetting or adjusting amounts owed the provider under the program, crediting
9 against a provider's future claims for reimbursement for other services or items
10 furnished by the provider under the program, ~~or by~~ or requiring the provider to make
11 direct payment to the department or its fiscal intermediary.

12 **SECTION 3.** 49.45 (2) (a) 10. b. of the statutes is created to read:

13 49.45 (2) (a) 10. b. Promptly afford the provider an opportunity to present
14 information and argument regarding a recovery imposed under this subdivision, but
15 the department need not stay collection of the amount to be recovered pending that
16 opportunity.

17 **SECTION 4.** 49.45 (2) (a) 10. c. of the statutes is created to read:

1 49.45 (2) (a) 10. c. Establish a deadline for payment of a recovery imposed under
2 this subdivision and, if a provider fails to pay all of the amount to be recovered by the
3 deadline, require payment by the provider of interest on any delinquent amount at
4 the rate of 1% per month or fraction of a month from the date of the overpayment.

5 **SECTION 5.** 49.45 (2) (a) 11. of the statutes is amended to read:

6 49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of
7 ~~services under Title XIX of the social security act~~ medical assistance and, except as
8 provided in par. (b) 6. and 7. and s. 49.48, certify such eligible providers who meet
9 the criteria.

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10 **SECTION 6.** 49.45 (2) (a) 12. of the statutes is amended to read:

11 49.45 (2) (a) 12. ~~Decertify or suspend under this subdivision~~ a provider from
12 the medical assistance program, if after giving reasonable notice and opportunity for
13 hearing, the department finds that the provider has violated a federal statute or
14 regulation or a state law statute or administrative rule and ~~such violations are the~~
15 violation is by law statute, regulation or rule grounds for decertification or
16 ~~suspension.~~ The department shall suspend the provider pending the hearing under
17 this subdivision if the department includes in its decertification notice findings that
18 the provider's continued participation in the medical assistance program pending
19 hearing is likely to lead to the irretrievable loss of public funds and is unnecessary
20 to provide adequate access to services to medical assistance recipients. No payment
21 may be made under the medical assistance program with respect to any service or
22 item furnished by the provider subsequent to decertification or during the period of
23 suspension.

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24 **SECTION 7.** 49.45 (2) (a) 13. of the statutes is amended to read:

As soon as practicable after the hearing, the department shall issue a written decision

1 49.45 (2) (a) 13. Impose additional sanctions for noncompliance with the
2 conditions of participation and terms of provider agreements reimbursement under
3 subd. 9. or certification criteria established under subd. 11. and, if prescribed by the
4 department, under par. (b) 6. or 7. ✓

SECTION 8. RP; 49.45 (2)(a) 14. ✓

SECTION 8. 49.45 (2) (b) 6. of the statutes is created to read:

6 49.45 (2) (b) 6. Prescribe criteria for certification of providers of medical
7 assistance that limit the number of providers of particular services or that limit the
8 amount of resources, including employes and equipment, that a certified provider
9 may use to provide particular services to medical assistance recipients, if the
10 department finds all of the following:

11 a. That existing certified providers and resources provide services that are
12 adequate in quality and amount to meet the need of medical assistance recipients for
13 the particular services.

*all providers of a specific service that is
among those enumerated under s. 49.46 (2)(b) ✓
or 49.47 (b)(a) ✓*

14 b. That the potential for medical assistance fraud or abuse exists if additional
15 providers are certified or additional resources are used by certified providers.

SECTION 9. 49.45 (2) (b) 7. of the statutes is created to read:

17 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., ~~the~~
18 ~~provider~~, as specified in this subdivision, to file with the department a surety bond

19 issued by a surety company licensed to do business in this state. Providers subject
20 to this subdivision provide those services ~~under medical assistance~~ for which

21 providers have demonstrated significant potential to violate s. 49.489 (2) or (3), 49.49
22 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a) or (4m) (a), to require recovery under

23 par. (a) 10. or to need additional sanctions under par. (a) 13. The surety bond shall
24 be payable to the department and in an amount that would reasonably pay the

25 amount of a recovery and the department's costs to pursue recovery under par. (a)
*specified under s. 49.46 (2)(b) ✓
or 49.47 (b)(a) ✓*

or

1 10. or to investigate and pursue allegations of violations of s. 49.489 or 49.49. The
2 department shall promulgate rules under this subdivision that specify all of the
3 following:

4 a. Services under medical assistance for which providers have demonstrated
5 significant potential to violate s. 49.489 (2) or (3), ^{or} 49.49 (1) (a), (2) (a) or (b), (3), (3m)
6 (a), (3p), (4) (a) or (4m) (a), to require recovery under par. (a) 10. or to need additional
7 sanctions under par. (a) 13.

8 b. The amount or amounts of the surety bonds.

9 c. Terms of the surety bond, including amounts, if any, without interest to be
10 refunded to the provider upon withdrawal or decertification from the medical
11 assistance program.

12 **SECTION 10.** 49.45 (3) (f) 3. of the statutes is amended to read:

13 49.45 (3) (f) 3. Contractors under sub. (2) (b) shall maintain records as required
14 by the department for audit purposes. ~~Contractors~~ Upon request of the department,
15 contractors shall immediately provide the department access to the records upon
16 request of the department, and, which the department may audit ~~the records.~~

17 **SECTION 11.** 49.45 (3) (g) of the statutes is amended to read:

18 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or
19 investigate and report to the department on any matter involving violations or
20 complaints alleging violations of laws statutes, regulations, or rules applicable to
21 ~~Title XIX of the federal social security act or~~ the medical assistance program and to
22 perform such investigations or audits as are required to verify the actual provision
23 of services or items available under the medical assistance program and the
24 appropriateness and accuracy of claims for reimbursement submitted by providers
25 participating in the program. Department employees ~~appointed~~ authorized by the

1 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~
2 ~~which~~ while they are performing their investigatory or audit functions under this
3 section, identification, signed by the secretary ~~which, that~~ specifically designates the
4 bearer as possessing the authorization to conduct medical assistance investigations
5 or audits. ~~Pursuant to~~ Under the request of a designated person and upon
6 presentation of ~~that~~ the person's authorization, providers and medical assistance
7 recipients shall immediately accord ~~such~~ the person access to any provider
8 personnel, records, books, ~~recipient medical records,~~ or documents or other
9 information needed. Under the written request of a designated person and upon
10 presentation of the person's authorization, providers and recipients shall
11 immediately accord the person access to any needed patient health care records of
12 a recipient. Authorized employes ~~shall have authority to~~ may hold hearings,
13 administer oaths, take testimony and perform all other duties necessary to bring
14 ~~such~~ the matter before the department for final adjudication and determination.

15 **SECTION 12.** 49.45 (3) (h) 1. of the statutes is repealed.

16 **SECTION 13.** 49.45 (3) (h) 2. of the statutes is repealed.

17 **SECTION 14.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and
18 amended to read:

19 49.45 (3) (h) The failure or refusal of a ~~person to purge himself or herself of~~
20 ~~contempt found under s. 885.12 and perform the act as required by law shall~~
21 constitute provider immediately to accord department auditors under par. (f) 3. or
22 investigators under par. (g) access to any provider personnel, records, books, patient
23 health care records of medical assistance recipients or documents or other
24 information requested constitutes grounds for decertification or suspension of that
25 person the provider from participation in the medical assistance program and no

1 payment may be made for services rendered by ~~that person~~ subsequent to the
2 provider following decertification or during the period of suspension.

3 **SECTION 15.** 49.45 (13) (a) of the statutes is amended to read:

4 49.45 (13) (a) The department may require ~~service~~ providers to prepare and
5 submit cost reports or financial reports for purposes of rate certification under Title
6 XIX of the federal Social Security Act, cost verification, fee schedule determination
7 or research and study purposes. These financial reports may include independently
8 audited financial statements ~~which shall include, including~~ balance sheets and
9 statements of revenues and expenses. The department may withhold
10 reimbursement or may decrease or not increase reimbursement rates if a provider
11 does not submit the reports required under this paragraph within the period
12 specified by the department or if the costs on which the reimbursement rates are
13 based cannot be verified from the provider's cost or financial reports ~~or records from~~
14 ~~which the reports are derived~~.

15 **SECTION 16.** 49.45 (13) (b) of the statutes is amended to read:

16 49.45 (13) (b) ~~The~~ In addition to the remedies specified under par. (a), the
17 department may require any provider who fails to submit a cost report or financial
18 report under par. (a) within the period specified by the department to forfeit not less
19 than \$10 nor more than \$100 for each day the provider fails to submit the report. A
20 provider may contest the imposition of a forfeiture under this paragraph by
21 submitting a written request for a hearing under s. 227.44 to the department within
22 10 days following the date on which the provider received notice of the forfeiture.

23 **SECTION 17.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (a) (intro.)
24 and amended to read:

1 49.45 (21) (a) (intro.) ~~If any~~ Before a provider liable for repayment of improper
2 ~~or erroneous payments or overpayments under ss. 49.43 to 49.497~~ sells or otherwise
3 transfers ownership of his or her business or all or substantially all of the assets of
4 the business, ~~the transferor and transferee are each liable for the repayment. Prior~~
5 ~~to final transfer, the transferee is responsible for contacting the department and~~
6 ~~ascertaining if the transferor is liable under this paragraph.~~ all of the following shall
7 take place:

8 **SECTION 18.** 49.45 (21) (a) 1. to 6. of the statutes are created to read:

9 49.45 (21) (a) 1. The provider shall notify the department of the proposed sale
10 or other transfer.

11 2. Upon notification under subd. 1., the department shall inform the provider
12 of the extent of the provider's liability, if any, for repayment of improper or erroneous
13 payments or overpayments under ss. 49.43 to 49.497.

14 3. If the department informs the provider under subd. 2. that the provider has
15 liability, the provider shall so inform the prospective buyer or other transferee.

16 4. If the provider informs the prospective buyer or other transferee under subd.
17 3., joint and several liability for the repayment attaches to the provider and to the
18 prospective buyer or other transferee and the sale or other transfer is conditioned
19 upon repayment.

20 5. If the provider fails to notify the prospective buyer or other transferee under
21 subd. 3., no liability for the repayment attaches to the prospective buyer or other
22 transferee.

23 6. The provider and, if subd. 4. applies, the prospective buyer or other
24 transferee shall repay the amount of improper or erroneous payments or

1 overpayments under ss. 49.43 to 49.497 for which the provider and, if subd. 4.
2 applies, the prospective buyer or other transferee have liability.

3 **SECTION 19.** 49.45 (21) (b) of the statutes is amended to read:

4 49.45 (21) (b) If a sale or other transfer specified in par. (a) occurs and the
5 applicable amount under par. (a) has not been repaid, the ~~department may proceed~~
6 ~~against either the transferor or the transferee. Within 30 days after receiving notice~~
7 ~~from the department, the transferor or the transferee shall pay the amount in full.~~
8 Upon failure to comply, the sale or other transfer is void. The department may bring
9 an action to compel payment. ~~If a transferor fails to pay within 90 days after~~
10 ~~receiving notice from the department, the department or may proceed under sub. (2)~~
11 (a) 12. ~~or both.~~

12 **SECTION 20.** 49.489 of the statutes is created to read:

13 **49.489 False claims or statements prohibited. (1)** In this section:

14 (a) “Claim” means a request submitted by a provider for payment for services
15 or items furnished by the provider under the medical assistance program.

16 (b) “Statement” means a representation, certification, affirmation, document,
17 record or accounting or bookkeeping entry made with respect to a claim or to obtain
18 approval or payment of a claim.

19 **(2)** No provider may submit a claim or cause a claim to be submitted if the
20 provider knows or should know any of the following:

21 (a) That the claim is false.

22 (b) That the claim includes or is supported by a written statement that asserts
23 a material fact that is false.

1 (c) That the claim includes or is supported by a written statement that omits
2 a material fact that the provider has a duty to include and, by reason of the omission,
3 is false.

4 (3) No provider may make or cause to be made a written statement that
5 contains or is accompanied by an express certification or affirmation of the
6 truthfulness and accuracy of the statement if the provider knows or should know any
7 of the following:

8 (a) That the statement asserts a material fact that is false.

9 (b) That the statement omits a material fact that the provider has a duty to
10 include and, by reason of the omission, is false.

11 (4) For purposes of subs. (2) and (3), all of the following apply:

12 (a) Each claim form constitutes a separate claim.

13 (b) Each representation, certification, affirmation, document, record or
14 accounting or bookkeeping entry constitutes a separate statement.

15 (c) A claim is subject to this section regardless of whether the claim is actually
16 paid.

17 (d) A claim is considered to be made when it is received by the fiscal agent.

18 (e) Except as provided in par. (f), a statement is considered to be made when
19 it is received by the fiscal agent.

20 (f) A statement that is not submitted to a fiscal agent but is retained by the
21 provider to support a claim is considered to be made when it is entered in the
22 provider's books, files or other records.

23 (5) Any person who violates sub. (2) or (3) may be required to forfeit not more
24 than \$5,000 for each offense.

1 (6) If the department assesses a forfeiture under sub. (5) for a violation of sub.
2 (2), the department may impose on the violator, in addition to the forfeiture, a false
3 claim surcharge in an amount that is not more than 200% of the amount of the claim
4 in regard to which sub. (2) was found to have been violated.

5 (7) The department may directly assess a forfeiture provided for in sub. (5).
6 If the department determines that a forfeiture should be assessed for a particular
7 violation, the department shall send a notice of assessment to the alleged violator.
8 The notice shall specify the amount of the forfeiture assessed, the violation and the
9 statute alleged to have been violated and shall inform the alleged violator of the right
10 to a hearing under sub. (8).

11 (8) An alleged violator may contest an assessment of a forfeiture by sending,
12 within 30 days after receipt of the notice under sub. (7), a written request for hearing
13 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).
14 The administrator of the division may designate a hearing examiner to preside over
15 the case and recommend a decision to the administrator under s. 227.46. The
16 decision of the administrator of the division shall be the final administrative
17 decision. The division shall commence the hearing within 30 days after receipt of the
18 request for hearing and shall issue a final decision within 15 days after the close of
19 the hearing. Proceedings before the division are governed by ch. 227. In any petition
20 for judicial review of a decision by the division, the party, other than the petitioner,
21 who was in the proceeding before the division shall be the named respondent.

22 (9) All forfeitures and false claim surcharges, if any, shall be paid to the
23 department within 10 days after receipt of notice of assessment or, if the forfeiture
24 is contested under sub. (8), within 10 days after receipt of the final decision after
25 exhaustion of administrative review, unless the final decision is appealed. The

1 department shall remit all forfeitures paid to the state treasurer for deposit in the
2 school fund. The department shall credit all false claims surcharges to the
3 appropriation account under s. 20.435 (1) (kx).

4 (10) The attorney general may bring an action in the name of the state to collect
5 any forfeiture or false claim surcharge imposed under this section if the forfeiture or
6 false claim surcharge has not been paid following the exhaustion of all
7 administrative and judicial reviews. The only issue to be contested in any such action
8 is whether the forfeiture or false claim surcharge has been paid.

9 **SECTION 21.** 49.85 (2) (a) of the statutes is amended to read:

10 49.85 (2) (a) At least annually, the department of health and family services
11 shall certify to the department of revenue the amounts that, based on the
12 notifications received under sub. (1) and on other information received by the
13 department of health and family services, the department of health and family
14 services has determined that it may recover under s. 49.45 (2) (a) 10. or 49.497, except
15 that the department of health and family services may not certify an amount under
16 this subsection unless it has met the notice requirements under sub. (3) and unless
17 its determination has either not been appealed or is no longer under appeal.

18 **SECTION 22.** 49.85 (3) (a) 1. of the statutes is amended to read:

19 49.85 (3) (a) 1. Inform the person that the department of health and family
20 services intends to certify to the department of revenue an amount that the
21 department of health and family services has determined to be due under s. 49.45
22 (2) (a) 10. or 49.497, for setoff from any state tax refund that may be due the person.

23 **SECTION 23.** 50.03 (13) (a) of the statutes is amended to read:

24 50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from
25 the person or persons named in the license to any other person or persons, the

1 transferee must obtain a new license. The license may be a probationary license.
2 Penalties under sub. (1) shall apply to violations of this subsection. The transferee
3 shall notify the department of the transfer, file an application under sub. (3) (b) and
4 apply for a new license at least 30 days prior to final transfer. Retention of any
5 interest required to be disclosed under sub. (3) (b) after transfer by any person who
6 held such an interest prior to transfer may constitute grounds for denial of a license
7 where violations of this subchapter for which notice had been given to the transferor
8 are outstanding and uncorrected, if the department determines that effective control
9 over operation of the facility has not been transferred. If the transferor was a
10 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45
11 (21).

12 **SECTION 24.** 71.93 (1) (a) 3. of the statutes is amended to read:

13 71.93 (1) (a) 3. An amount that the department of health and family services
14 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and
15 family services has certified the amount under s. 49.85.

16 **SECTION 25.** 227.01 (13) (zL) of the statutes is created to read:

17 227.01 (13) (zL) Prescribes conditions of participation and terms of
18 reimbursement of providers under s. 49.45 (2) (a) 9.

19 **SECTION 26.** 227.01 (13) (zm) of the statutes is created to read:

20 227.01 (13) (zm) Establishes guidelines for the determination of medical
21 necessity and appropriateness for the granting of prior authorization for medical
22 assistance coverage of services under s. 49.46 or 49.47.

23 **SECTION 9323. Initial applicability; health and family services.**

1 (1) TRANSFERS BY LIABLE PROVIDERS OF MEDICAL ASSISTANCE. The treatment of
2 sections 49.45 (21) (a) and (b) and 50.03 (13) (a) of the statutes first applies to sales
3 or other transfers completed on the effective date of this subsection.

4 (2) FALSE CLAIMS OR STATEMENTS BY PROVIDERS OF MEDICAL ASSISTANCE. The
5 treatment of section 49.489 of the statutes first applies to violations of section 49.489
6 (2) or (3) of the statutes, as created by this act, that occur on the effective date of this
7 subsection.

8 (3) DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE. The
9 treatment of section 49.45 (2) (a) 12. ✓ of the statutes first applies to violations of
10 federal statutes or regulations or state statutes or rules committed on the effective
11 date of this subsection.

12 (4) SANCTIONS FOR NONCOMPLIANCE BY PROVIDERS OF MEDICAL ASSISTANCE. The
13 treatment of section 49.45 (2) (a) 13. ✓ of the statutes first applies to instances of
14 noncompliance with conditions of participation or terms of reimbursement or
15 certification criteria that occur on the effective date of this subsection.

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(END)

no # The bill eliminates the right of notice, a fair hearing and a written decision for most sanctions against providers ^{EPS} that DHS may enforce, except for decertification from or restriction of a provider's participation in the MA program.

End of
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1098/3
DAK:kmg:jf

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1. Reasonable notice and hearing opportunity requirements are eliminated and, instead, DHFS must promptly afford an opportunity for a provider to present information and argument, but DHFS may collect the amount to be recovered pending that opportunity.

2. A deadline for payment of recoveries is established and payment of interest on delinquent amounts is required.

The bill eliminates DHFS' general authority to suspend a provider, but instead authorizes DHFS, if certain criteria are met, to suspend certification for a provider pending a hearing on whether the provider must be decertified for violation of federal or state laws. The bill eliminates the right of notice, a fair hearing and a written decision for most sanctions against providers that DHFS may enforce, except for decertification from or restriction of a provider's participation in the MA program.

The bill authorizes DHFS to prescribe conditions of MA participation and reimbursement terms and to impose additional sanctions for noncompliance. The bill requires immediate access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

The bill changes provisions concerning liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers ownership of his or her business. Under the bill, before such a sale or transfer may take place, the provider must notify DHFS of the impending sale and DHFS must inform the

provider of the extent of liability, if any. If liability exists, the provider must so inform the prospective buyer or transferee of the extent of the liability and, if done, the liability attaches to both the provider and the buyer or transferee, with the sale or other transfer conditioned upon repayment. If the provider fails to inform the buyer or other transferee, liability does not attach to the buyer. Repayment must be made prior to the sale or transfer and, if not done, the sale or transfer is void.

Lastly, the bill excepts from the definition of a rule actions by DHFS in prescribing conditions of participation and terms of reimbursement for MA providers of services and in establishing guidelines for determining medical necessity and appropriateness for granting prior authorization for MA coverage of services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.45 (2) (a) 9. of the statutes is amended to read:

2 49.45 (2) (a) 9. Periodically ~~set forth~~ prescribe conditions of participation and
3 terms of reimbursement in a contract with provider of service under this section.

4 **SECTION 2.** 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10. a. and
5 amended to read:

6 49.45 (2) (a) 10. a. ~~After reasonable notice and opportunity for hearing, recover~~
7 Recover money improperly or erroneously paid, or overpayments to a provider either
8 by offsetting or adjusting amounts owed the provider under the program, crediting
9 against a provider's future claims for reimbursement for other services or items
10 furnished by the provider under the program, ~~or by~~ or requiring the provider to make
11 direct payment to the department or its fiscal intermediary.

12 **SECTION 3.** 49.45 (2) (a) 10. b. of the statutes is created to read:

13 49.45 (2) (a) 10. b. Promptly afford the provider an opportunity to present
14 information and argument regarding a recovery imposed under this subdivision, but

1 the department need not stay collection of the amount to be recovered pending that
2 opportunity.

3 **SECTION 4.** 49.45 (2) (a) 10. c. of the statutes is created to read:

4 49.45 (2) (a) 10. c. Establish a deadline for payment of a recovery imposed under
5 this subdivision and, if a provider fails to pay all of the amount to be recovered by the
6 deadline, require payment by the provider of interest on any delinquent amount at
7 the rate of 1% per month or fraction of a month from the date of the overpayment.

8 **SECTION 5.** 49.45 (2) (a) 11. of the statutes is amended to read:

9 49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of
10 ~~services under Title XIX of the social security act~~ medical assistance and, except as
11 provided in par. (b) 6. and 7. and s. 49.48, certify ~~such eligible providers who meet~~
12 the criteria.

13 **SECTION 6.** 49.45 (2) (a) 12. of the statutes is amended to read:

14 49.45 (2) (a) 12. ~~Decertify or suspend under this subdivision~~ a provider from
15 or restrict a provider's participation in the medical assistance program, if after
16 giving reasonable notice and opportunity for hearing, the department finds that the
17 provider has violated a federal statute or regulation or a state law statute or
18 administrative rule and ~~such violations are~~ the violation is by law statute, regulation
19 or rule grounds for decertification or ~~suspension~~ restriction. The department shall
20 suspend the provider pending the hearing under this subdivision if the department
21 includes in its decertification notice findings that the provider's continued
22 participation in the medical assistance program pending hearing is likely to lead to
23 the irretrievable loss of public funds and is unnecessary to provide adequate access
24 to services to medical assistance recipients. As soon as practicable after the hearing,
25 the department shall issue a written decision. No payment may be made under the

1 medical assistance program with respect to any service or item furnished by the
2 provider subsequent to decertification or during the period of suspension.

3 **SECTION 7.** 49.45 (2) (a) 13. of the statutes is amended to read:

4 49.45 (2) (a) 13. Impose additional sanctions for noncompliance with the
5 conditions of participation and terms of provider agreements reimbursement under
6 subd. 9. or certification criteria established under subd. 11. and, if prescribed by the
7 department, under par. (b) 6. or 7.

8 **SECTION 8.** 49.45 (2) (a) 14. of the statutes is repealed.

9 **SECTION 9.** 49.45 (2) (b) 6. of the statutes is created to read:

10 49.45 (2) (b) 6. Prescribe criteria for certification of providers of medical
11 assistance that limit the number of providers of particular services or that limit the
12 amount of resources, including employes and equipment, that a certified provider
13 may use to provide particular services to medical assistance recipients, if the
14 department finds all of the following:

15 a. That existing certified providers and resources provide services that are
16 adequate in quality and amount to meet the need of medical assistance recipients for
17 the particular services.

18 b. That the potential for medical assistance fraud or abuse exists if additional
19 providers are certified or additional resources are used by certified providers.

20 **SECTION 10.** 49.45 (2) (b) 7. of the statutes is created to read:

21 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all
22 providers of a specific service that is among those enumerated under s. 49.46 (2) (b)
23 or 49.47 (6) (a), as specified in this subdivision, to file with the department a surety
24 bond issued by a surety company licensed to do business in this state. Providers
25 subject to this subdivision provide those services specified under s. 49.46 (2) (b) or

1 49.47 (6) (a) for which providers have demonstrated significant potential to violate
2 s. 49.489 (2) or (3) or 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a) or (4m) (a),
3 to require recovery under par. (a) 10. or to need additional sanctions under par. (a)
4 13. The surety bond shall be payable to the department and in an amount that would
5 reasonably pay the amount of a recovery and the department's costs to pursue
6 recovery under par. (a) 10. or to investigate and pursue allegations of violations of
7 s. 49.489 or 49.49. The department shall promulgate rules under this subdivision
8 that specify all of the following:

9 a. Services under medical assistance for which providers have demonstrated
10 significant potential to violate s. 49.489 (2) or (3) or 49.49 (1) (a), (2) (a) or (b), (3), (3m)
11 (a), (3p), (4) (a) or (4m) (a), to require recovery under par. (a) 10. or to need additional
12 sanctions under par. (a) 13.

13 b. The amount or amounts of the surety bonds.

14 c. Terms of the surety bond, including amounts, if any, without interest to be
15 refunded to the provider upon withdrawal or decertification from the medical
16 assistance program.

17 **SECTION 11.** 49.45 (3) (f) 3. of the statutes is amended to read:

18 49.45 (3) (f) 3. Contractors under sub. (2) (b) shall maintain records as required
19 by the department for audit purposes. ~~Contractors~~ Upon request of the department,
20 contractors shall immediately provide the department access to the records upon
21 request of the department, and, which the department may audit ~~the records.~~

22 **SECTION 12.** 49.45 (3) (g) of the statutes is amended to read:

23 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or
24 investigate and report to the department on any matter involving violations or
25 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to

1 ~~Title XIX of the federal social security act~~ or the medical assistance program and to
2 perform such investigations or audits as are required to verify the actual provision
3 of services or items available under the medical assistance program and the
4 appropriateness and accuracy of claims for reimbursement submitted by providers
5 participating in the program. Department employes ~~appointed~~ authorized by the
6 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~
7 ~~which~~ while they are performing their investigatory or audit functions under this
8 section, identification, signed by the secretary ~~which, that~~ specifically designates the
9 bearer as possessing the authorization to conduct medical assistance investigations
10 or audits. ~~Pursuant to~~ Under the request of a designated person and upon
11 presentation of ~~that~~ the person's authorization, providers and medical assistance
12 recipients shall immediately accord ~~such~~ the person access to any provider
13 personnel, records, books, ~~recipient medical records,~~ or documents or other
14 information needed. Under the written request of a designated person and upon
15 presentation of the person's authorization, providers and recipients shall
16 immediately accord the person access to any needed patient health care records of
17 a recipient. Authorized employes ~~shall have authority to~~ may hold hearings,
18 administer oaths, take testimony and perform all other duties necessary to bring
19 ~~such~~ the matter before the department for final adjudication and determination.

20 **SECTION 13.** 49.45 (3) (h) 1. of the statutes is repealed.

21 **SECTION 14.** 49.45 (3) (h) 2. of the statutes is repealed.

22 **SECTION 15.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and
23 amended to read:

24 49.45 (3) (h) The failure or refusal of a person to ~~purge himself or herself of~~
25 ~~contempt found under s. 885.12 and perform the act as required by law shall~~

1 constitute provider immediately to accord department auditors under par. (f) 3. or
2 investigators under par. (g) access to any provider personnel, records, books, patient
3 health care records of medical assistance recipients or documents or other
4 information requested constitutes grounds for decertification or suspension of that
5 person the provider from participation in the medical assistance program and no
6 payment may be made for services rendered by ~~that person~~ subsequent to the
7 provider following decertification or during the period of suspension.

8 **SECTION 16.** 49.45 (13) (a) of the statutes is amended to read:

9 49.45 (13) (a) The department may require ~~service~~ providers to prepare and
10 submit cost reports or financial reports for purposes of rate certification under Title
11 XIX of the federal Social Security Act, cost verification, fee schedule determination
12 or research and study purposes. These financial reports may include independently
13 audited financial statements ~~which shall include, including~~ balance sheets and
14 statements of revenues and expenses. The department may withhold
15 reimbursement or may decrease or not increase reimbursement rates if a provider
16 does not submit the reports required under this paragraph within the period
17 specified by the department or if the costs on which the reimbursement rates are
18 based cannot be verified from the provider's cost or financial reports ~~or records from~~
19 ~~which the reports are derived.~~

20 **SECTION 17.** 49.45 (13) (b) of the statutes is amended to read:

21 49.45 (13) (b) The In addition to the remedies specified under par. (a), the
22 department may require any provider who fails to submit a cost report or financial
23 report under par. (a) within the period specified by the department to forfeit not less
24 than \$10 nor more than \$100 for each day the provider fails to submit the report. A
25 provider may contest the imposition of a forfeiture under this paragraph by

1 submitting a written request for a hearing under s. 227.44 to the department within
2 10 days following the date on which the provider received notice of the forfeiture.

3 **SECTION 18.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (a) (intro.)
4 and amended to read:

5 49.45 (21) (a) (intro.) ~~If any~~ Before a provider liable for repayment of improper
6 ~~or erroneous payments or overpayments under ss. 49.43 to 49.497~~ sells or otherwise
7 transfers ownership of his or her business or all or substantially all of the assets of
8 the business, ~~the transferor and transferee are each liable for the repayment. Prior~~
9 ~~to final transfer, the transferee is responsible for contacting the department and~~
10 ~~ascertaining if the transferor is liable under this paragraph.~~ all of the following shall
11 take place:

12 **SECTION 19.** 49.45 (21) (a) 1. to 6. of the statutes are created to read:

13 49.45 (21) (a) 1. The provider shall notify the department of the proposed sale
14 or other transfer.

15 2. Upon notification under subd. 1., the department shall inform the provider
16 of the extent of the provider's liability, if any, for repayment of improper or erroneous
17 payments or overpayments under ss. 49.43 to 49.497.

18 3. If the department informs the provider under subd. 2. that the provider has
19 liability, the provider shall so inform the prospective buyer or other transferee.

20 4. If the provider informs the prospective buyer or other transferee under subd.
21 3., joint and several liability for the repayment attaches to the provider and to the
22 prospective buyer or other transferee and the sale or other transfer is conditioned
23 upon repayment.

1 5. If the provider fails to notify the prospective buyer or other transferee under
2 subd. 3., no liability for the repayment attaches to the prospective buyer or other
3 transferee.

4 6. The provider and, if subd. 4. applies, the prospective buyer or other
5 transferee shall repay the amount of improper or erroneous payments or
6 overpayments under ss. 49.43 to 49.497 for which the provider and, if subd. 4.
7 applies, the prospective buyer or other transferee have liability.

8 **SECTION 20.** 49.45 (21) (b) of the statutes is amended to read:

9 49.45 (21) (b) If a sale or other transfer specified in par. (a) occurs and the
10 applicable amount under par. (a) has not been repaid, the ~~department may proceed~~
11 ~~against either the transferor or the transferee. Within 30 days after receiving notice~~
12 ~~from the department, the transferor or the transferee shall pay the amount in full.~~
13 ~~Upon failure to comply, the sale or other transfer is void. The department may bring~~
14 ~~an action to compel payment. If a transferor fails to pay within 90 days after~~
15 ~~receiving notice from the department, the department or~~ may proceed under sub. (2)
16 (a) 12., or both.

17 **SECTION 21.** 49.489 of the statutes is created to read:

18 **49.489 False claims or statements prohibited. (1)** In this section:

19 (a) "Claim" means a request submitted by a provider for payment for services
20 or items furnished by the provider under the medical assistance program.

21 (b) "Statement" means a representation, certification, affirmation, document,
22 record or accounting or bookkeeping entry made with respect to a claim or to obtain
23 approval or payment of a claim.

24 (2) No provider may submit a claim or cause a claim to be submitted if the
25 provider knows or should know any of the following:

1 (a) That the claim is false.

2 (b) That the claim includes or is supported by a written statement that asserts
3 a material fact that is false.

4 (c) That the claim includes or is supported by a written statement that omits
5 a material fact that the provider has a duty to include and, by reason of the omission,
6 is false.

7 **(3)** No provider may make or cause to be made a written statement that
8 contains or is accompanied by an express certification or affirmation of the
9 truthfulness and accuracy of the statement if the provider knows or should know any
10 of the following:

11 (a) That the statement asserts a material fact that is false.

12 (b) That the statement omits a material fact that the provider has a duty to
13 include and, by reason of the omission, is false.

14 **(4)** For purposes of subs. (2) and (3), all of the following apply:

15 (a) Each claim form constitutes a separate claim.

16 (b) Each representation, certification, affirmation, document, record or
17 accounting or bookkeeping entry constitutes a separate statement.

18 (c) A claim is subject to this section regardless of whether the claim is actually
19 paid.

20 (d) A claim is considered to be made when it is received by the fiscal agent.

21 (e) Except as provided in par. (f), a statement is considered to be made when
22 it is received by the fiscal agent.

23 (f) A statement that is not submitted to a fiscal agent but is retained by the
24 provider to support a claim is considered to be made when it is entered in the
25 provider's books, files or other records.

1 (5) Any person who violates sub. (2) or (3) may be required to forfeit not more
2 than \$5,000 for each offense.

3 (6) If the department assesses a forfeiture under sub. (5) for a violation of sub.
4 (2), the department may impose on the violator, in addition to the forfeiture, a false
5 claim surcharge in an amount that is not more than 200% of the amount of the claim
6 in regard to which sub. (2) was found to have been violated.

7 (7) The department may directly assess a forfeiture provided for in sub. (5).
8 If the department determines that a forfeiture should be assessed for a particular
9 violation, the department shall send a notice of assessment to the alleged violator.
10 The notice shall specify the amount of the forfeiture assessed, the violation and the
11 statute alleged to have been violated and shall inform the alleged violator of the right
12 to a hearing under sub. (8).

13 (8) An alleged violator may contest an assessment of a forfeiture by sending,
14 within 30 days after receipt of the notice under sub. (7), a written request for hearing
15 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).
16 The administrator of the division may designate a hearing examiner to preside over
17 the case and recommend a decision to the administrator under s. 227.46. The
18 decision of the administrator of the division shall be the final administrative
19 decision. The division shall commence the hearing within 30 days after receipt of the
20 request for hearing and shall issue a final decision within 15 days after the close of
21 the hearing. Proceedings before the division are governed by ch. 227. In any petition
22 for judicial review of a decision by the division, the party, other than the petitioner,
23 who was in the proceeding before the division shall be the named respondent.

24 (9) All forfeitures and false claim surcharges, if any, shall be paid to the
25 department within 10 days after receipt of notice of assessment or, if the forfeiture

1 is contested under sub. (8), within 10 days after receipt of the final decision after
2 exhaustion of administrative review, unless the final decision is appealed. The
3 department shall remit all forfeitures paid to the state treasurer for deposit in the
4 school fund. The department shall credit all false claims surcharges to the
5 appropriation account under s. 20.435 (1) (kx).

6 (10) The attorney general may bring an action in the name of the state to collect
7 any forfeiture or false claim surcharge imposed under this section if the forfeiture or
8 false claim surcharge has not been paid following the exhaustion of all
9 administrative and judicial reviews. The only issue to be contested in any such action
10 is whether the forfeiture or false claim surcharge has been paid.

11 **SECTION 22.** 49.85 (2) (a) of the statutes is amended to read:

12 49.85 (2) (a) At least annually, the department of health and family services
13 shall certify to the department of revenue the amounts that, based on the
14 notifications received under sub. (1) and on other information received by the
15 department of health and family services, the department of health and family
16 services has determined that it may recover under s. 49.45 (2) (a) 10. or 49.497, except
17 that the department of health and family services may not certify an amount under
18 this subsection unless it has met the notice requirements under sub. (3) and unless
19 its determination has either not been appealed or is no longer under appeal.

20 **SECTION 23.** 49.85 (3) (a) 1. of the statutes is amended to read:

21 49.85 (3) (a) 1. Inform the person that the department of health and family
22 services intends to certify to the department of revenue an amount that the
23 department of health and family services has determined to be due under s. 49.45
24 (2) (a) 10. or 49.497, for setoff from any state tax refund that may be due the person.

25 **SECTION 24.** 50.03 (13) (a) of the statutes is amended to read:

1 50.03 (13) (a) *New license*. Whenever ownership of a facility is transferred from
2 the person or persons named in the license to any other person or persons, the
3 transferee must obtain a new license. The license may be a probationary license.
4 Penalties under sub. (1) shall apply to violations of this subsection. The transferee
5 shall notify the department of the transfer, file an application under sub. (3) (b) and
6 apply for a new license at least 30 days prior to final transfer. Retention of any
7 interest required to be disclosed under sub. (3) (b) after transfer by any person who
8 held such an interest prior to transfer may constitute grounds for denial of a license
9 where violations of this subchapter for which notice had been given to the transferor
10 are outstanding and uncorrected, if the department determines that effective control
11 over operation of the facility has not been transferred. If the transferor was a
12 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45
13 (21).

14 **SECTION 25.** 71.93 (1) (a) 3. of the statutes is amended to read:

15 71.93 (1) (a) 3. An amount that the department of health and family services
16 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and
17 family services has certified the amount under s. 49.85.

18 **SECTION 26.** 227.01 (13) (zL) of the statutes is created to read:

19 227.01 (13) (zL) Prescribes conditions of participation and terms of
20 reimbursement of providers under s. 49.45 (2) (a) 9.

21 **SECTION 27.** 227.01 (13) (zm) of the statutes is created to read:

22 227.01 (13) (zm) Establishes guidelines for the determination of medical
23 necessity and appropriateness for the granting of prior authorization for medical
24 assistance coverage of services under s. 49.46 or 49.47.

25 **SECTION 9323. Initial applicability; health and family services.**

