

2001 ASSEMBLY BILL 806

February 12, 2002 – Introduced by Representatives JOHNSRUD, MUSSER, HUBER, J. LEHMAN, SYKORA, URBAN, STARZYK, HINES and ALBERS, cosponsored by Senators M. MEYER, WIRCH, SCHULTZ and ROESSLER. Referred to Committee on Health.

1 **AN ACT** *to repeal* 20.435 (4) (iL), 49.45 (2) (a) 10. b., 49.45 (2) (a) 10. c., 49.45 (2)
2 (a) 11. b., 49.45 (2) (a) 12. b., 49.45 (2) (b) 6m., 49.45 (2) (b) 7., 49.45 (2) (b) 8.,
3 49.45 (2) (b) 9., 49.45 (3) (g) 2., 49.45 (3) (h) 1n., 49.45 (21) (ag) and 49.45 (21)
4 (e); *to renumber and amend* 49.45 (2) (a) 10. a., 49.45 (2) (a) 11. a., 49.45 (2)
5 (a) 12. a., 49.45 (3) (g) 1., 49.45 (3) (h) 1m. and 49.45 (21) (ar); *to amend* 49.45
6 (2) (a) 9., 49.45 (2) (a) 14., 49.45 (21) (title), 49.45 (21) (b), 49.85 (2) (a), 49.85 (3)
7 (a) 1., 71.93 (1) (a) 3. and 227.43 (1) (bg); *to create* 49.45 (3) (h) 1. and 49.45 (3)
8 (h) 2. of the statutes; and *to affect* 2001 Wisconsin Act 16, section 9323 (18k),
9 (18m), (18n), (18pk), (18pm) and (18pn) and 2001 Wisconsin Act 16, section
10 9423 (18k); **relating to:** providers of medical assistance and requiring the
11 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under 2001 Wisconsin Act 16 (the biennial budget act), numerous changes were made, effective January 1, 2003, to provisions relating to procedures for the recovery by the department of health and family services (DHFS) of alleged medical assistance (MA) provider overpayments or improper or erroneous payments, access

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by DHFS to provider records, and liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers his or her business. In addition, the biennial budget act created provisions concerning limitations on the number of MA providers, conditions for certification of providers, and fees chargeable to certain providers. As further affected by the biennial budget act, each of these changes or new provisions requires rule making by DHFS for implementation. The changed or new provisions are as follows:

1. After providing reasonable notice and the opportunity for a hearing, DHFS is authorized to charge a fee to an MA provider that has repeatedly been subject to recoveries of MA payments because of the provider's failure to follow identical or similar billing procedures or to follow other identical or similar MA requirements. The fee must be used to defray in part the costs of audits and investigations by DHFS of medicaid or MA violations and to verify service provision and the appropriateness and accuracy of reimbursement claims. The fee may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. DHFS may recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider; the attorney general may collect the fees. Failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. DHFS must deposit the fees into an appropriation of program revenue for performance by DHFS of MA audits and investigations.

2. DHFS may 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.

3. DHFS, if it first makes specified findings, may limit the number of providers of particular services that may receive MA certification or limit the amount of resources, including employees and equipment, that a certified provider may use to provide MA services and items.

4. Procedures for the recovery by DHFS of alleged MA provider overpayments or improper or erroneous payments include the opportunity for a provider to present information and argument to DHFS staff, a deadline for payment of recoveries, and payment of interest on delinquent amounts. (Former law required a hearing before recovery could be made.) If certain criteria are met, DHFS may suspend certification for a provider pending a hearing on whether the provider must be decertified for violation of federal or state laws. Lastly, DHFS may compel access to provider records, and a provider's failure to provide access constitutes grounds for decertification.

5. With respect to liability for repayment of improper or erroneous payments or overpayments of a provider who sells or transfers ownership of his or her business, before a person may take over the operations of an MA provider, the person must

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obtain MA certification with respect to the provider's operation, regardless of whether the person is currently certified. Also, before a person may take over the operation of an MA provider that is liable for repayment of improper or erroneous MA payments or overpayments, full repayment must be made. DHFS must, upon request, notify the person or provider as to whether the provider is liable. If, notwithstanding the prohibition, the person takes over the provider's operation, and the outstanding repayment is not made, DHFS may withhold certification from the person and may proceed against the provider or person. If, within 30 days after DHFS provides notice to the certified provider, the repayment is not paid in full, DHFS may bring an action to compel payment, to decertify a provider, or to do both.

Also under current law, DHFS must periodically set forth conditions of participation and reimbursement in a contract with an MA provider.

Effective January 1, 2003, this bill eliminates provisions created and changes made under the biennial budget act concerning MA providers, including charging a fee to an MA provider who has repeatedly been subject to recoveries of MA payments; the required filing of a surety bond as a condition of certification; authority for DHFS to limit the number of MA providers; and changes to procedures for recovery of alleged MA overpayments or improper or erroneous payments. The bill, instead, restores provisions that existed before enactment of the biennial budget act. The restored provisions include all of the following:

1. The requirement for DHFS to provide written notice and a hearing for sanctions, including decertification or suspension from the MA program, against providers who fail to comply with MA requirements or to whom MA payments have been improperly or erroneously made or overpayments have been made; the bill additionally requires that the hearing be conducted as a class 2 proceeding under the laws relating to administrative procedure.

2. If a provider who is liable for repayment of improper or erroneous MA 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 to ascertain whether the seller has an outstanding amount owing. DHFS may bring an action to compel payment against either the seller or transferee if a sale or other transfer occurs and the amount has not been repaid.

3. The secretary of health and family services is authorized to sign and issue subpoenas for the production of books, patient records, and other information.

With respect to the requirement that DHFS periodically set forth conditions of participation and reimbursement, the bill requires that DHFS promulgate rules that specify criteria for and required procedures for submittal of appropriate claims for reimbursement.

Lastly, the bill eliminates the appropriation of program revenue for moneys received from fees imposed against noncomplying MA providers and transfers moneys in the appropriation to the general fund as of January 1, 2003.

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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.** 20.435 (4) (iL) of the statutes, as created by 2001 Wisconsin Act 16,
2 is repealed.

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

4 49.45 **(2)** (a) 9. Periodically set forth conditions of participation and
5 reimbursement ~~in a contract with provider~~ for contracts with providers of service
6 under this section. The department shall promulgate rules that specify criteria for
7 and required procedures for submittal of appropriate claims for reimbursement.

8 **SECTION 3.** 49.45 (2) (a) 10. a. of the statutes, as affected by 2001 Wisconsin Act
9 16, is renumbered 49.45 (2) (a) 10. and amended to read:

10 49.45 **(2)** (a) 10. After reasonable notice and opportunity for a hearing
11 conducted as a class 2 proceeding under ch. 227, recover money improperly or
12 erroneously paid or overpayments to a provider by offsetting or adjusting amounts
13 owed the provider under the program, crediting against a provider's future claims
14 for reimbursement for other services or items furnished by the provider under the
15 program, or requiring the provider to make direct payment to the department or its
16 fiscal intermediary.

17 **SECTION 4.** 49.45 (2) (a) 10. b. of the statutes, as created by 2001 Wisconsin Act
18 16, is repealed.

19 **SECTION 5.** 49.45 (2) (a) 10. c. of the statutes, as created by 2001 Wisconsin Act
20 16, is repealed.

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1 **SECTION 6.** 49.45 (2) (a) 11. a. of the statutes, as affected by 2001 Wisconsin Act
2 16, is renumbered 49.45 (2) (a) 11. and amended to read:

3 49.45 **(2)** (a) 11. Establish criteria for the certification of eligible providers of
4 medical assistance and, except as provided in ~~par. (b) 6m. and s. 49.48, and subject~~
5 to ~~par. (b) 7. and 8.~~, certify providers who meet the criteria.

6 **SECTION 7.** 49.45 (2) (a) 11. b. of the statutes, as created by 2001 Wisconsin Act
7 16, is repealed.

8 **SECTION 8.** 49.45 (2) (a) 12. a. of the statutes, as affected by 2001 Wisconsin Act
9 16, is renumbered 49.45 (2) (a) 12. and amended to read:

10 49.45 **(2)** (a) 12. Decertify or suspend under this subdivision a provider from
11 ~~or restrict a provider's participation in~~ the medical assistance program, if after
12 giving reasonable notice and opportunity for hearing the department finds that the
13 provider has violated a federal statute or regulation or a state statute or
14 administrative rule and the violation is by statute, regulation, or rule grounds for
15 decertification or restriction. ~~The department shall suspend the provider pending~~
16 ~~the hearing under this subdivision if the department includes in its decertification~~
17 ~~notice findings that the provider's continued participation in the medical assistance~~
18 ~~program pending hearing is likely to lead to the irretrievable loss of public funds and~~
19 ~~is unnecessary to provide adequate access to services to medical assistance~~
20 ~~recipients. As soon as practicable after the hearing, the department shall issue a~~
21 ~~written decision~~ suspension. No payment may be made under the medical assistance
22 program with respect to any service or item furnished by the provider subsequent to
23 decertification or during the period of suspension.

24 **SECTION 9.** 49.45 (2) (a) 12. b. of the statutes, as created by 2001 Wisconsin Act
25 16, is repealed.

ASSEMBLY BILL 806**SECTION 10**

1 **SECTION 10.** 49.45 (2) (a) 14. of the statutes is amended to read:

2 49.45 **(2)** (a) 14. Assure due process in implementing subds. 12. and 13. by
3 providing written notice, ~~a fair hearing and a written decision~~ and a hearing
4 conducted as a class 2 proceeding under ch. 227.

5 **SECTION 11.** 49.45 (2) (b) 6m. of the statutes, as created by 2001 Wisconsin Act
6 16, is repealed.

7 **SECTION 12.** 49.45 (2) (b) 7. of the statutes, as created by 2001 Wisconsin Act
8 16, is repealed.

9 **SECTION 13.** 49.45 (2) (b) 8. of the statutes, as created by 2001 Wisconsin Act
10 16, is repealed.

11 **SECTION 14.** 49.45 (2) (b) 9. of the statutes, as created by 2001 Wisconsin Act
12 16, is repealed.

13 **SECTION 15.** 49.45 (3) (g) 1. of the statutes, as affected by 2001 Wisconsin Act
14 16, is renumbered 49.45 (3) (g) and amended to read:

15 49.45 **(3)** (g) The secretary may authorize personnel to audit or investigate and
16 report to the department on any matter involving violations or complaints alleging
17 violations of statutes, regulations, or rules applicable to the medical assistance
18 program and to perform such investigations or audits as are required to verify the
19 actual provision of services or items available under the medical assistance program
20 and the appropriateness and accuracy of claims for reimbursement submitted by
21 providers participating in the program. Department employees authorized by the
22 secretary under this paragraph shall be issued, and shall possess at all times while
23 they are performing their investigatory or audit functions under this section,
24 identification, signed by the secretary, that specifically designates the bearer as
25 possessing the authorization to conduct medical assistance investigations or audits.

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1 Under the request of a designated person and upon presentation of the person's
2 authorization, providers and medical assistance recipients shall accord the person
3 access to any ~~provider personnel~~, records, books, or documents or other information
4 needed. Under the written request of a designated person and upon presentation of
5 the person's authorization, providers and recipients shall accord the person access
6 to any needed patient health care records of a recipient. Authorized employees may
7 hold hearings, administer oaths, take testimony, and perform all other duties
8 necessary to bring the matter before the department for final adjudication and
9 determination.

10 **SECTION 16.** 49.45 (3) (g) 2. of the statutes, as created by 2001 Wisconsin Act
11 16, is repealed.

12 **SECTION 17.** 49.45 (3) (h) 1. of the statutes is created to read:

13 49.45 (3) (h) 1. For purposes of any audit, investigation, examination, analysis,
14 review, or other function authorized by law with respect to the medical assistance
15 program, the secretary shall have the power to sign and issue subpoenas to any
16 person requiring the production of any pertinent books, records, patient health care
17 records, or other information. Subpoenas so issued shall be served by anyone
18 authorized by the secretary by delivering a copy to the person named in the
19 subpoena, or by registered mail or certified mail addressed to the person at his or her
20 last-known residence or principal place of business. A verified return by the person
21 serving the subpoena setting forth the manner of service, or, in the event service is
22 by registered or certified mail, the return post-office receipt signed by the person
23 served constitutes proof of service.

24 **SECTION 18.** 49.45 (3) (h) 1m. of the statutes, as affected by 2001 Wisconsin Act
25 16, is renumbered 49.45 (3) (h) 3. and amended to read:

ASSEMBLY BILL 806**SECTION 18**

1 49.45 (3) (h) 3. ~~The failure or refusal of a provider to accord department~~
2 ~~auditors or investigators access as required under par. (g) to any provider personnel,~~
3 ~~records, books, patient health care records of medical assistance recipients, or~~
4 ~~documents or other information requested constitutes person to purge himself or~~
5 ~~herself of contempt found under s. 885.12 and perform the act as required by law~~
6 ~~shall constitute grounds for decertification or suspension of the provider that person~~
7 ~~from participation in the medical assistance program. No payment may be made for~~
8 ~~services rendered by the provider that person following decertification, or during the~~
9 ~~period of suspension, or during any period of provider failure or refusal to accord~~
10 ~~access as required under par. (g).~~

11 **SECTION 19.** 49.45 (3) (h) 1n. of the statutes, as created by 2001 Wisconsin Act
12 16, is repealed.

13 **SECTION 20.** 49.45 (3) (h) 2. of the statutes is created to read:

14 49.45 (3) (h) 2. In the event of contumacy or refusal to obey a subpoena issued
15 under this paragraph and duly served upon any person, any judge in a court of record
16 in the county in which the person was served may enforce the subpoena in accordance
17 with s. 885.12.

18 **SECTION 21.** 49.45 (21) (title) of the statutes, as affected by 2001 Wisconsin Act
19 16, is amended to read:

20 49.45 (21) (title) ~~TAKING OVER PROVIDER'S OPERATION~~ TRANSFER OF BUSINESS,
21 LIABILITY FOR; REPAYMENTS REQUIRED.

22 **SECTION 22.** 49.45 (21) (ag) of the statutes, as created by 2001 Wisconsin Act
23 16, is repealed.

24 **SECTION 23.** 49.45 (21) (ar) of the statutes, as affected by 2001 Wisconsin Act
25 16, is renumbered 49.45 (21) (a) and amended to read:

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1 49.45 (21) (a) ~~Before a person may take over the operation of a provider that~~
2 is If any provider liable for repayment of improper or erroneous payments or
3 overpayments under ss. 49.43 to 49.497, ~~full repayment shall be made.~~ Upon
4 request, the department shall notify the provider or the person that intends to take
5 over the operation of the provider as to whether the provider sells or otherwise
6 transfers ownership of his or her business or all or substantially all of the assets of
7 the business, the transferor and transferee are each liable for the repayment. Prior
8 to final transfer, the transferee is responsible for contacting the department and
9 ascertaining if the transferor is liable under this paragraph.

10 **SECTION 24.** 49.45 (21) (b) of the statutes, as affected by 2001 Wisconsin Act 16,
11 is amended to read:

12 49.45 (21) (b) ~~If, notwithstanding the prohibition under par. (ar), a person takes~~
13 ~~over the operation of a provider~~ If a transfer occurs and the applicable amount under
14 par. (ar) (a) has not been repaid, the department may, ~~in addition to withholding~~
15 ~~certification as authorized under sub. (2) (b) 8.,~~ proceed against the provider or the
16 person either the transferor or the transferee. Within 30 days after ~~the certified~~
17 ~~provider receives~~ receiving notice from the department, the transferor or the
18 transferee shall pay the amount shall be repaid in full. If the amount is not repaid
19 ~~in full~~ Upon failure to comply, the department may bring an action to compel
20 payment, If a transferor fails to pay within 90 days after receiving notice from the
21 department, the department may proceed under sub. (2) (a) 12., ~~or may do both.~~

22 **SECTION 25.** 49.45 (21) (e) of the statutes, as created by 2001 Wisconsin Act 16,
23 is repealed.

24 **SECTION 26.** 49.85 (2) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
25 is amended to read:

ASSEMBLY BILL 806**SECTION 26**

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

9 **SECTION 27.** 49.85 (3) (a) 1. of the statutes, as affected by 2001 Wisconsin Act
10 16, is amended to read:

11 49.85 (3) (a) 1. Inform the person that the department of health and family
12 services intends to certify to the department of revenue an amount that the
13 department of health and family services has determined to be due under s. ~~49.45~~
14 ~~(2) (a) 10. or~~ 49.497, for setoff from any state tax refund that may be due the person.

15 **SECTION 28.** 71.93 (1) (a) 3. of the statutes, as affected by 2001 Wisconsin Act
16 16, is amended to read:

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

20 **SECTION 29.** 227.43 (1) (bg) of the statutes is amended to read:

21 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
22 under ss. 49.45 (2) (a) 10. and 14., 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16
23 (5), 86.195 (9) (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b),
24 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12)
25 (b), 218.0116 (2), (4), (7) (a), (8) (a), and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22

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1 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d),
2 342.26, 343.69, and 348.25 (9).

3 **SECTION 30.** 2001 Wisconsin Act 16, section 9323 (18k), (18m), (18n), (18pk),
4 (18pm) and (18pn) are repealed.

5 **SECTION 31.** 2001 Wisconsin Act 16, section 9423 (18k) is repealed.

6 **SECTION 32. Nonstatutory provisions.**

7 (1) **MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE; RULES.** The department of
8 health and family services shall submit in proposed form the rules required under
9 section 49.45 (2) (a) 9. of the statutes, as affected by this act, to the legislative council
10 staff under section 227.15 (1) of the statutes no later than the first day of the 7th
11 month beginning after the effective date of this subsection.

12 **SECTION 33. Appropriation changes.**

13 (1) **MEDICAL ASSISTANCE AUDITS AND INVESTIGATIONS; LAPSE.** Notwithstanding
14 section 20.001 (3) (c) of the statutes, on January 1, 2003, there is lapsed to the general
15 fund the unencumbered balance in the appropriation under section 20.435 (4) (iL)
16 of the statutes immediately before the effective date of the repeal of section 20.435
17 (4) (iL) of the statutes.

18 **SECTION 34. Initial applicability.**

19 (1) **LIABILITY FOR TRANSFER OF BUSINESS.** The treatment of section 49.45 (2) (b)
20 8. and (21) (title), (ag), (ar), (b), and (e) of the statutes first applies to sales or other
21 transfers completed on the effective date of this subsection.

22 (2) **ASSESSMENT FOR REPEATED RECOVERIES AGAINST PROVIDERS OF MEDICAL**
23 **ASSISTANCE.** The treatment of section 49.45 (2) (b) 9. of the statutes first applies to
24 repeated recoveries from the identical provider that are made on the effective date
25 of this subsection.

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1 (3) DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE. The
2 treatment of section 49.45 (2) (a) 12. a. and b. and 14. of the statutes first applies to
3 violations of federal statutes or regulations or state statutes or rules committed on
4 the effective date of this subsection.

5 (4) CERTIFICATION OF PROVIDERS OF MEDICAL ASSISTANCE. The treatment of section
6 49.45 (2) (a) 11. a. and b. and (b) 7. of the statutes first applies to applications for
7 certification received on the effective date of this subsection.

8 (5) RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The treatment of
9 sections 49.45 (2) (a) 9. and 10. a., b., and c., 49.85 (2) (a) and (3) (a) 1., and 71.93 (1)
10 (a) 3. of the statutes first applies to recoveries imposed on the effective date of this
11 subsection.

12 (6) AUDITS AND ACCESS TO RECORDS OF PROVIDERS OF MEDICAL ASSISTANCE. The
13 treatment of section 49.45 (3) (g) 1. and 2. and (h) 1., 1m., 1n., and 2. of the statutes
14 first applies to audits or investigations performed on or access requested on the
15 effective date of this subsection.

16 (7) LIMIT ON NUMBER OF CERTIFIED MEDICAL ASSISTANCE PROVIDERS. The treatment
17 of section 49.45 (2) (b) 6m. of the statutes first applies to certifications made on the
18 effective date of this subsection.

19 **SECTION 35. Effective dates.** This act takes effect on January 1, 2003, except
20 as follows:

21 (1) SECTION 32 (1) of this act takes effect on the day after publication.

22 (END)