

2001 Jr2 DRAFTING REQUEST

Senate Amendment (SA-SSA1-AB1)

Received: 03/28/2002

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus 266-9220

By/Representing: Engel

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: Public Assistance - med. assist.

Extra Copies:

Submit via email: NO

Pre Topic:

SCC:.....Engel - CN3402,

Topic:

Medical Assistance fraud and abuse

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 03/28/2002	gilfokm 03/28/2002		_____			
/1			pgreensl 03/28/2002	_____	lrb_docadmin 03/29/2002		

FE Sent For:

<END>

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/?	kenneda	3/28 kmp	3/28 pg	3/28 pg/kjfe			

FE Sent For:

<END>

CN 3402

2002 Budget Adjustment Amendment

SB 406—MEDICAL ASSISTANCE FRAUD & ABUSE

DAK

Motion:

Eliminate provisions created and changes made during biennial budget act concerning MA providers including charging a fee to an MA provider who has repeatedly been subject to recoveries, Restore \$110,000 GPR for 2002-03 in a DOA appropriation to provide the Wisconsin Patient Safe of MA payments; the required filing of a surety bond as a condition of certification; authority of DHFS to limit the number of MA providers; and changes to procedures for recovery of alleged MA overpayments or improper or erroneous payments; The motion instead, restores provisions that existed before enactment of the biennial budget act

LOCATION/STATUS: Public hearing in Senate Health, Utilities, Military & Veteran's Affairs Committee. No vote taken. Also no opposition.

DEPARTMENT(S): Department of Health and Family Services

FISCAL IMPACT: \$155,000

FUNDING SOURCE(S): GPR

2001

Date (time) needed soon

LRB b 2863 / 1

CAUCUS BUDGET AMENDMENT
[CAUCUS AMDTS. ONLY]

DAK: kg:

See form **AMENDMENTS — COMPONENTS & ITEMS.**

CAUCUS AMENDMENT
TO SENATE SUBSTITUTE AMENDMENT 1
TO 2001 SPECIAL SESSION ASSEMBLY BILL 1

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

✓ #. Page 16., line 12.: *after that line insert:*

#. Page ..., line:

#. Page ..., line ...:

#. Page ..., line:

#. Page ..., line:

#. Page ..., line:

2001 SENATE BILL 406

January 29, 2002 – Introduced by Senators M. MEYER, WIRCH, SCHULTZ and ROESSLER, cosponsored by Representatives JOHNSRUD, MUSSER, HUBER, J. LEHMAN, SYKORA, URBAN, STARZYK, HINES and ALBERS. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT to repeal** 20.435 (4) (L), 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

SENATE BILL 406

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.

SENATE BILL 406

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 ~~3~~^{38r} 20.435 (4) (iL) of the statutes, as created by 2001 Wisconsin Act 16,
2 is repealed. "

✓ #. Page 38, line 20 ; after that line insert :

3 " SECTION ~~4~~^{121pb} 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 ~~5~~^{121pc} 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 ~~6~~^{121pd} 49.45 (2) (a) 10. b. of the statutes, as created by 2001 Wisconsin Act
18 16, is repealed.

19 SECTION ~~7~~^{121pe} 49.45 (2) (a) 10. c. of the statutes, as created by 2001 Wisconsin Act
20 16, is repealed.

SENATE BILL 406

121 pf

(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. 121 pg 121 ph

(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. 121 pi

SENATE BILL 406

121pj

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

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

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

121pk

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

121pl

121pm

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

121pn

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

121pp

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

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

SENATE BILL 406

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. (121pt) (121pu)

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. (121pv)

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. (121pw)

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:

SENATE BILL 406

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: 121px

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. " 121px

24 " SECTION ~~26~~ 49.85 (2) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
 25 is amended to read: 145g

SENATE BILL 406

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: 145h

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 ✓ # Page 139, line 16; after that line insert:
16 ((SECTION ~~28~~. 71.93 (1) (a) 3. of the statutes, as affected by 2001 Wisconsin Act
16 16, is amended to read: 232f

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 ✓ # Page 180, line 20; after that line insert:
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

SENATE BILL 406

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). "
✓ # . Page 346, line 13 : after that line insert :

3 " SECTION 30. 2001 Wisconsin Act 16, section 9323 (18k), (18m), (18n), (18pk),
4 (18pm) and (18pn) are repealed. *1160 rd*

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

6 SECTION 32. *1160 out* 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. "
✓ # . Page 358, line 24 : after that line insert :

12 SECTION 33. *2w* 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. "
18w

18 SECTION 34. *3y0* 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. *3yv*

923

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SENATE BILL 406

~~§~~ 3YW

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. ~~§~~ 3yX

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. ~~§~~ 3yY

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. ~~§~~ 3yZ

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. ~~§~~ 3yZV

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. " (4)

✓ #. Page 446, line 4: after that line insert:

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)

2001

Nonstat File Sequence: **FFF**

LRB _____ / _____
_____ : _____ : _____

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective date.**

(#1) () This act takes effect
on

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective dates;**

..... This act takes effect on the day after publication, except as follows:
(#1) () The treatment of
sections
of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:..**create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

SECTION 94 ____ . **Effective dates;**

(#1) () PROVIDERS OF MEDICAL ASSISTANCE. The treatment of
sections
of the statutes takes effect on January 1, 2003. "

IVV
IVV
INSERT X

INSERT Y

(End)

INSERT X

20.135 (4)(iL), 49.45 (2) (a) 9., 10. a., b., and c., 11.

a. and b., 12. a. and b., and 14. (b) 6m., 7., 8., and 9., (3)

(g) 1. and 2., (h) 1., 1m., 1n., and 2., and (21) (title), (ag),

(ar), (b), and (e), 49.85 (2) (a) and (3) (a) 1., 71.93 (1) (a)

3. and 227.43 (1)(bg) of the statutes and

2001 Wisconsin Act 16, sections 9323 (18k), (18m), (18n), (18pk), (18pm), and (18pn) and 9423 (18k)

INSERT Y

and SECTION 9323 (*)

14* of this act

(3yo), (3yv), (3yw), (3yx), (3yy), (3yz),

and (3yzv)



State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2863/1
DAK:kg:pg

SCC:.....Engel – CN3402, Medical Assistance fraud and abuse

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 1**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 16, line 12: after that line insert:

3 “SECTION 38r. 20.435 (4) (iL) of the statutes, as created by 2001 Wisconsin Act
4 16, is repealed.”.

5 **2.** Page 38, line 20: after that line insert:

6 “SECTION 121pb. 49.45 (2) (a) 9. of the statutes is amended to read:

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

1 **SECTION 121pc.** 49.45 (2) (a) 10. a. of the statutes, as affected by 2001
2 Wisconsin Act 16, is renumbered 49.45 (2) (a) 10. and amended to read:

3 49.45 (2) (a) 10. After reasonable notice and opportunity for a hearing
4 conducted as a class 2 proceeding under ch. 227, recover money improperly or
5 erroneously paid or overpayments to a provider by offsetting or adjusting amounts
6 owed the provider under the program, crediting against a provider's future claims
7 for reimbursement for other services or items furnished by the provider under the
8 program, or requiring the provider to make direct payment to the department or its
9 fiscal intermediary.

10 **SECTION 121pd.** 49.45 (2) (a) 10. b. of the statutes, as created by 2001 Wisconsin
11 Act 16, is repealed.

12 **SECTION 121pe.** 49.45 (2) (a) 10. c. of the statutes, as created by 2001 Wisconsin
13 Act 16, is repealed.

14 **SECTION 121pf.** 49.45 (2) (a) 11. a. of the statutes, as affected by 2001 Wisconsin
15 Act 16, is renumbered 49.45 (2) (a) 11. and amended to read:

16 49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of
17 medical assistance and, except as provided in ~~par. (b) 6m. and s. 49.48, and subject~~
18 ~~to par. (b) 7. and 8.~~, certify providers who meet the criteria.

19 **SECTION 121pg.** 49.45 (2) (a) 11. b. of the statutes, as created by 2001 Wisconsin
20 Act 16, is repealed.

21 **SECTION 121ph.** 49.45 (2) (a) 12. a. of the statutes, as affected by 2001
22 Wisconsin Act 16, is renumbered 49.45 (2) (a) 12. and amended to read:

23 49.45 (2) (a) 12. Decertify or suspend under this subdivision a provider from
24 ~~or restrict a provider's participation in~~ the medical assistance program, if after
25 giving reasonable notice and opportunity for hearing the department finds that the

1 provider has violated a federal statute or regulation or a state statute or
2 administrative rule and the violation is by statute, regulation, or rule grounds for
3 decertification or restriction. ~~The department shall suspend the provider pending~~
4 ~~the hearing under this subdivision if the department includes in its decertification~~
5 ~~notice findings that the provider's continued participation in the medical assistance~~
6 ~~program pending hearing is likely to lead to the irretrievable loss of public funds and~~
7 ~~is unnecessary to provide adequate access to services to medical assistance~~
8 ~~recipients. As soon as practicable after the hearing, the department shall issue a~~
9 ~~written decision suspension.~~ No payment may be made under the medical assistance
10 program with respect to any service or item furnished by the provider subsequent to
11 decertification or during the period of suspension.

12 **SECTION 121pi.** 49.45 (2) (a) 12. b. of the statutes, as created by 2001 Wisconsin
13 Act 16, is repealed.

14 **SECTION 121pj.** 49.45 (2) (a) 14. of the statutes is amended to read:

15 49.45 (2) (a) 14. Assure due process in implementing subds. 12. and 13. by
16 providing written notice, ~~a fair hearing and a written decision~~ and a hearing
17 conducted as a class 2 proceeding under ch. 227.

18 **SECTION 121pk.** 49.45 (2) (b) 6m. of the statutes, as created by 2001 Wisconsin
19 Act 16, is repealed.

20 **SECTION 121pL.** 49.45 (2) (b) 7. of the statutes, as created by 2001 Wisconsin
21 Act 16, is repealed.

22 **SECTION 121pm.** 49.45 (2) (b) 8. of the statutes, as created by 2001 Wisconsin
23 Act 16, is repealed.

24 **SECTION 121pn.** 49.45 (2) (b) 9. of the statutes, as created by 2001 Wisconsin
25 Act 16, is repealed.

1 **SECTION 121pp.** 49.45 (3) (g) 1. of the statutes, as affected by 2001 Wisconsin
2 Act 16, is renumbered 49.45 (3) (g) and amended to read:

3 49.45 (3) (g) The secretary may authorize personnel to audit or investigate and
4 report to the department on any matter involving violations or complaints alleging
5 violations of statutes, regulations, or rules applicable to the medical assistance
6 program and to perform such investigations or audits as are required to verify the
7 actual provision of services or items available under the medical assistance program
8 and the appropriateness and accuracy of claims for reimbursement submitted by
9 providers participating in the program. Department employees authorized by the
10 secretary under this paragraph shall be issued, and shall possess at all times while
11 they are performing their investigatory or audit functions under this section,
12 identification, signed by the secretary, that specifically designates the bearer as
13 possessing the authorization to conduct medical assistance investigations or audits.
14 Under the request of a designated person and upon presentation of the person's
15 authorization, providers and medical assistance recipients shall accord the person
16 access to any ~~provider personnel~~, records, books, or documents or other information
17 needed. Under the written request of a designated person and upon presentation of
18 the person's authorization, providers and recipients shall accord the person access
19 to any needed patient health care records of a recipient. Authorized employees may
20 hold hearings, administer oaths, take testimony, and perform all other duties
21 necessary to bring the matter before the department for final adjudication and
22 determination.

23 **SECTION 121pq.** 49.45 (3) (g) 2. of the statutes, as created by 2001 Wisconsin
24 Act 16, is repealed.

25 **SECTION 121pr.** 49.45 (3) (h) 1. of the statutes is created to read:

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

12 **SECTION 121ps.** 49.45 (3) (h) 1m. of the statutes, as affected by 2001 Wisconsin
13 Act 16, is renumbered 49.45 (3) (h) 3. and amended to read:

14 49.45 (3) (h) 3. ~~The failure or refusal of a provider to accord department~~
15 ~~auditors or investigators access as required under par. (g) to any provider personnel,~~
16 ~~records, books, patient health care records of medical assistance recipients, or~~
17 ~~documents or other information requested constitutes person to purge himself or~~
18 ~~herself of contempt found under s. 885.12 and perform the act as required by law~~
19 ~~shall constitute grounds for decertification or suspension of the provider that person~~
20 from participation in the medical assistance program. No payment may be made for
21 services rendered by ~~the provider that person~~ following decertification, or during the
22 period of suspension, or during any period of provider failure or refusal to accord
23 access as required under par. (g).

24 **SECTION 121pt.** 49.45 (3) (h) 1n. of the statutes, as created by 2001 Wisconsin
25 Act 16, is repealed.

1 **SECTION 121pu.** 49.45 (3) (h) 2. of the statutes is created to read:

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

6 **SECTION 121pv.** 49.45 (21) (title) of the statutes, as affected by 2001 Wisconsin
7 Act 16, is amended to read:

8 49.45 (21) (title) ~~TAKING OVER PROVIDER'S OPERATION~~ TRANSFER OF BUSINESS,
9 LIABILITY FOR; REPAYMENTS REQUIRED.

10 **SECTION 121pw.** 49.45 (21) (ag) of the statutes, as created by 2001 Wisconsin
11 Act 16, is repealed.

12 **SECTION 121pwj.** 49.45 (21) (ar) of the statutes, as affected by 2001 Wisconsin
13 Act 16, is renumbered 49.45 (21) (a) and amended to read:

14 49.45 (21) (a) ~~Before a person may take over the operation of a provider that~~
15 ~~is~~ If any provider liable for repayment of improper or erroneous payments or
16 overpayments under ss. 49.43 to 49.497, ~~full repayment shall be made. Upon~~
17 ~~request, the department shall notify the provider or the person that intends to take~~
18 ~~over the operation of the provider as to whether the provider~~ sells or otherwise
19 transfers ownership of his or her business or all or substantially all of the assets of
20 the business, the transferor and transferee are each liable for the repayment. Prior
21 to final transfer, the transferee is responsible for contacting the department and
22 ascertaining if the transferor is liable under this paragraph.

23 **SECTION 121px.** 49.45 (21) (b) of the statutes, as affected by 2001 Wisconsin Act
24 16, is amended to read:

1 49.45 (21) (b) ~~If, notwithstanding the prohibition under par. (ar), a person takes~~
2 ~~over the operation of a provider~~ If a transfer occurs and the applicable amount under
3 par. ~~(ar)~~ (a) has not been repaid, the department may, ~~in addition to withholding~~
4 ~~certification as authorized under sub. (2) (b) 8.,~~ proceed against the provider or the
5 ~~person~~ either the transferor or the transferee. Within 30 days after the certified
6 ~~provider receives~~ receiving notice from the department, the transferor or the
7 transferee shall pay the amount shall be repaid in full. ~~If the amount is not repaid~~
8 ~~in full~~ Upon failure to comply, the department may bring an action to compel
9 payment, ~~. If a transferor fails to pay within 90 days after receiving notice from the~~
10 department, the department may proceed under sub. (2) (a) 12., ~~or may do both.~~

11 **SECTION 121py.** 49.45 (21) (e) of the statutes, as created by 2001 Wisconsin Act
12 16, is repealed.”.

13 **3.** Page 46, line 20: after that line insert:

14 “**SECTION 145g.** 49.85 (2) (a) of the statutes, as affected by 2001 Wisconsin Act
15 16, is amended to read:

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

1 **SECTION 145h.** 49.85 (3) (a) 1. of the statutes, as affected by 2001 Wisconsin Act
2 16, is amended to read:

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

7 **4.** Page 139, line 16: after that line insert:

8 **“SECTION 232f.** 71.93 (1) (a) 3. of the statutes, as affected by 2001 Wisconsin
9 Act 16, is amended to read:

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

13 **5.** Page 180, line 20: after that line insert:

14 **“SECTION 359f.** 227.43 (1) (bg) of the statutes is amended to read:

15 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
16 under ss. 49.45 (2) (a) 10. and 14., 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16
17 (5), 86.195 (9) (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b),
18 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12)
19 (b), 218.0116 (2), (4), (7) (a), (8) (a), and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22
20 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d),
21 342.26, 343.69, and 348.25 (9).”.

22 **6.** Page 346, line 13: after that line insert:

23 **“SECTION 1160rd.** 2001 Wisconsin Act 16, section 9323 (18k), (18m), (18n),
24 (18pk), (18pm) and (18pn) are repealed.

1 **SECTION 1160out.** 2001 Wisconsin Act 16, section 9423 (18k) is repealed.”.

2 **7.** Page 357, line 24: after that line insert:

3 “(2w) **MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE; RULES.** The department
4 of health and family services shall submit in proposed form the rules required under
5 section 49.45 (2) (a) 9. of the statutes, as affected by this act, to the legislative council
6 staff under section 227.15 (1) of the statutes no later than the first day of the 7th
7 month beginning after the effective date of this subsection.”.

8 **8.** Page 394, line 16: after that line insert:

9 “(18w) **MEDICAL ASSISTANCE AUDITS AND INVESTIGATIONS; LAPSE.** Notwithstanding
10 section 20.001 (3) (c) of the statutes, on January 1, 2003, there is lapsed to the general
11 fund the unencumbered balance in the appropriation under section 20.435 (4) (iL)
12 of the statutes immediately before the effective date of the repeal of section 20.435
13 (4) (iL) of the statutes.”.

14 **9.** Page 435, line 24: after that line insert:

15 “(3yo) **LIABILITY FOR TRANSFER OF BUSINESS.** The treatment of section 49.45 (2)
16 (b) 8. and (21) (title), (ag), (ar), (b), and (e) of the statutes first applies to sales or other
17 transfers completed on the effective date of this subsection.

18 (3yv) **ASSESSMENT FOR REPEATED RECOVERIES AGAINST PROVIDERS OF MEDICAL**
19 **ASSISTANCE.** The treatment of section 49.45 (2) (b) 9. of the statutes first applies to
20 repeated recoveries from the identical provider that are made on the effective date
21 of this subsection.

22 (3yw) **DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE.** The
23 treatment of section 49.45 (2) (a) 12. a. and b. and 14. of the statutes first applies to

1 violations of federal statutes or regulations or state statutes or rules committed on
2 the effective date of this subsection.

3 (3yx) CERTIFICATION OF PROVIDERS OF MEDICAL ASSISTANCE. The treatment of
4 section 49.45 (2) (a) 11. a. and b. and (b) 7. of the statutes first applies to applications
5 for certification received on the effective date of this subsection.

6 (3yy) RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The treatment of
7 sections 49.45 (2) (a) 9. and 10. a., b., and c., 49.85 (2) (a) and (3) (a) 1., and 71.93 (1)
8 (a) 3. of the statutes first applies to recoveries imposed on the effective date of this
9 subsection.

10 (3yz) AUDITS AND ACCESS TO RECORDS OF PROVIDERS OF MEDICAL ASSISTANCE. The
11 treatment of section 49.45 (3) (g) 1. and 2. and (h) 1., 1m., 1n., and 2. of the statutes
12 first applies to audits or investigations performed on or access requested on the
13 effective date of this subsection.

14 (3yzv) LIMIT ON NUMBER OF CERTIFIED MEDICAL ASSISTANCE PROVIDERS. The
15 treatment of section 49.45 (2) (b) 6m. of the statutes first applies to certifications
16 made on the effective date of this subsection.”.

17 **10.** Page 446, line 4: after that line insert:

18 “(1yv) PROVIDERS OF MEDICAL ASSISTANCE. The treatment of sections 20.435 (4)
19 (iL), 49.45 (2) (a) 9., 10. a., b., and c., 11. a. and b., 12. a. and b., and 14. and (b) 6m.,
20 7., 8., and 9., (3) (g) 1. and 2., (h) 1., 1m., 1n., and 2., and (21) (title), (ag), (ar), (b), and
21 (e), 49.85 (2) (a) and (3) (a) 1., 71.93 (1) (a) 3., and 227.43 (1) (bg) of the statutes and
22 2001 Wisconsin Act 16, sections 9323 (18k), (18m), (18n), (18pk), (18pm), and (18pn)

1 and 9423 (18k) and SECTION 9323 (3yo), (3yv), (3yw), (3yx), (3yy), (3yz), and (3yzv)
2 of this act take effect on January 1, 2003.”

3 (END)