



SOON - In edit 1/16/01  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0193/P1 1

DAK: [initials]

WJ

DOA:.....Mullikin - Health care provider fraud and abuse

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES ✓**

**MEDICAL ASSISTANCE ✓**

Under current law under the medical assistance (MA) program, 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, including decertification or suspension from the medical assistance 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. To implement these sanctions, DHFS must provide written notice, a fair hearing, and a written decision. 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 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 and ascertain whether 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 been repaid.

MA

This bill ~~requires~~ DHFS, after providing reasonable notice and the opportunity for a hearing, to charge a fee to a MA provider that has repeatedly been subject to

authorizes

must be used to defray in part the costs of audits and investigations by DHFS of

MA provider payments and overpayments and

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 may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. The bill permits DHFS to recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider and also authorizes fee collection by the attorney general. Further, failure to pay a fee is grounds for MA decertification. The bill creates an appropriation of program revenue into which DHFS must deposit the fees for performance by DHFS of MA audits and investigations.

other than by offsetting the fee against the MA payment owed,

timely

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.

MA overpayments or

The bill authorizes DHFS, if it first makes specified findings, to 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.

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:

has the opportunity

1. Hearing opportunity requirements are eliminated and, instead, DHFS must ~~start collection of the recoverable amount for a time period sufficient to afford an opportunity for~~ a provider to present information and argument. ~~to DHFS staff~~

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 requires access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

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, the bill eliminates provisions that confer liability on both the transferor and the transferee. Under the bill, before a person may take over the operation (as defined in the bill) of a MA provider, the person must 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 a MA provider that is liable for repayment of improper or erroneous MA payments or overpayments, full repayment

to the certified provider

the provider to present information and argument to department staff

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 any liable party. If, within 30 days after DHFS provides notice, the repayment is not paid in full, DHFS may bring an action to compel payment, to decertify a provider, or to do both.

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

the provider or person

*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 is created to read:

2 20.435 (4) (iL) *Medical assistance provider fees.* All moneys received from fees  
3 charged under s. 49.45 (2) (a) <sup>b</sup> ~~item~~ <sup>9.</sup> for performance by the department of audits and  
4 investigations of improper or erroneous medical assistance provider payments ~~and~~  
5 medical assistance provider overpayments and

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 SECTION 2. 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10. a. and  
7 amended to read:

RESTORE TO PLAIN TEXT

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

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

15 49.45 (2) (a) 10. b. Stay collection of amount to be recovered under this  
16 subdivision for a period of time sufficient to afford the provider an opportunity to  
17 present information and argument regarding the recovery.

INSERT  
4-10 ✓

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SECTION 4. 49.45 (2) (a) 10. <sup>b</sup> of the statutes is created to read:

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

SECTION 5. 49.45 (2) (a) <sup>b</sup> ~~10m.~~ <sup>9</sup> of the statutes is created to read:

49.45 (2) (a) <sup>a</sup> ~~10m.~~ After providing reasonable notice and opportunity for a hearing, charge <sup>STET</sup> ~~to~~ a provider that repeatedly has been subject to recoveries under ~~subd. 10.~~ <sup>par. (a) 10. a.</sup> because of the provider's failure to follow identical or similar billing procedures or to follow other identical or similar program requirements. The fee may not exceed \$1,000 or 200% of the amount of any such repeated recovery made, whichever is greater. The provider shall pay the fee to the department within 10 days after receipt of notice of the fee or the final decision after administrative hearing, whichever is later. The department may recover any part of a fee not timely paid by offsetting the fee against any medical assistance payment owed to the provider and may refer any such unpaid fees not collected in this manner to the attorney general, who may proceed with collection under this subdivision. Failure <sup>in any manner</sup> ~~timely to pay~~ a fee charged under this subdivision is grounds for decertification under subd. 12. A provider's payment of a fee does not relieve the provider of any other legal liability incurred in connection with the recovery for which the fee is charged, but is not evidence of violation of a statute or rule. The department shall credit all fees received under this subdivision to the appropriation account under s. 20.435 (4) (iL).

SECTION 6. 49.45 (2) (a) 11. of the statutes is amended to read:

49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of services under Title XIX of the social security act medical assistance and, except as

other than a fee that is offset against any medical assistance payment owed to the provider,

MOVE TO P. 7, after l. 9

*subject*  
~~par (b) 7. and~~

1 provided in ~~par. (b) 6. and s. 49.48,~~ *subject* certify such eligible providers who meet  
2 the criteria. *and subject to par (b) 7. and*  
*8.*

3 SECTION 7. 49.45 (2) (a) 12. of the statutes is amended to read:

4 49.45 (2) (a) 12. Decertify ~~or suspend under this subdivision~~ a provider from  
5 or restrict a provider's participation in the medical assistance program, if after  
6 giving reasonable notice and opportunity for hearing, the department finds that the  
7 provider has violated a federal statute or regulation or a state law statute or  
8 administrative rule and such violations are by law the violation is by statute,  
9 regulation, or rule grounds for decertification or suspension restriction. The  
10 department shall suspend the provider pending the hearing under this subdivision  
11 if the department includes in its decertification notice findings that the provider's  
12 continued participation in the medical assistance program pending hearing is likely  
13 to lead to the irretrievable loss of public funds and is unnecessary to provide  
14 adequate access to services to medical assistance recipients. As soon as practicable  
15 after the hearing, the department shall issue a written decision. No payment may  
16 be made under the medical assistance program with respect to any service or item  
17 furnished by the provider subsequent to decertification or during the period of  
18 suspension.

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

20 49.45 (2) (b) 6. Limit the number of providers of particular services that maybe  
21 certified under par. (a) 11. or the amount of resources, including employees and  
22 equipment, that a certified provider may use to provide particular services to medical  
23 assistance recipients, if the department finds all of the following:

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

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

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

7 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all  
8 providers of a specific service that is among those enumerated under s. 49.46 (2) or  
9 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond  
10 issued by a surety company licensed to do business in this state. Providers subject  
11 to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a)  
12 for which providers have demonstrated significant potential to violate s. 49.49 (1) (a),  
13 (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a)  
14 10., or to need additional sanctions under par. (a) 13. The surety bond shall be  
15 payable to the department in an amount that the department determines is  
16 reasonable in view of amounts of former recoveries against providers of the specific  
17 service and the department's costs to pursue those recoveries. The department shall  
18 promulgate rules under this subdivision that specify all of the following:

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

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

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

4 SECTION 10. 49.45 (2) (b) 8. of the statutes is created to read:

5 49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
6 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
7 of the provider, regardless of whether the person is currently certified. The  
8 department may withhold the certification required under this subdivision until any  
9 outstanding repayment under sub. (21) is made.

Material from p. 4, ll. 6 to 22, goes HERE

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

11 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
12 investigate and report to the department on any matter involving violations or  
13 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
14 ~~Title XIX of the federal social security act or the medical assistance program and to~~  
15 perform such investigations or audits as are required to verify the actual provision  
16 of services or items available under the medical assistance program and the  
17 appropriateness and accuracy of claims for reimbursement submitted by providers  
18 participating in the program. Department employees ~~appointed~~ authorized by the  
19 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
20 ~~which~~ while they are performing their investigatory or audit functions under this  
21 section, identification, signed by the secretary ~~which~~, that specifically designates the  
22 bearer as possessing the authorization to conduct medical assistance investigations  
23 or audits. ~~Pursuant to~~ Under the request of a designated person and upon  
24 presentation of ~~that~~ the person's authorization, providers and medical assistance  
25 recipients shall accord ~~such~~ the person access to any provider personnel, records,

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

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

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

10 SECTION 14. 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
11 amended to read:

12 49.45 (3) (h) ~~The failure or refusal of a person to purge himself or herself of~~  
13 ~~contempt found under s. 885.12 and perform the act as required by law shall~~  
14 ~~constitute provider to accord department auditors or investigators access as required~~  
15 under par. (g) to any provider personnel, records, books, patient health care records  
16 of medical assistance recipients, or documents or other information requested  
17 constitutes grounds for decertification or suspension of that person the provider from  
18 participation in the medical assistance program and no. No payment may be made  
19 for services rendered by ~~that person subsequent to~~ the provider following  
20 decertification or, during the period of suspension, or during any period of provider  
21 failure or refusal to accord access as required under par. (g).

22 SECTION 15. 49.45 (21) (title) of the statutes is amended to read:

23 49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
24 OPERATION; REPAYMENTS REQUIRED.



1           **SECTION 16.** 49.45 (21) (a)<sup>✓</sup> of the statutes is renumbered 49.45 (21) (ar)<sup>✓</sup> and  
2 amended to read:

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

12           **SECTION 17.** 49.45 (21) (ag)<sup>✓</sup> of the statutes is created to read:

13           49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
14 respect to an aspect of a provider’s business for which the provider has filed claims  
15 for medical assistance reimbursement, any of the following:

- 16           1. Ownership of the provider’s business or all or substantially all of the assets  
17 of the business.
- 18           2. Majority control over decisions.
- 19           3. The right to any profits or income.
- 20           4. The right to contact and offer services to patients, clients, or residents served  
21 by the provider.
- 22           5. An agreement that the provider will not compete with the person at all or  
23 with respect to a patient, client, resident, service, geographical area, or other part  
24 of the provider’s business.

the certified provider receives

1 6. The right to perform services that are substantially similar to services  
2 performed by the provider at the same location as those performed by the provider.

3 7. The right to use any distinctive name or symbol by which the provider is  
4 known in connection with services to be provided by the person.

**SECTION 18.** 49.45 (21) (b) of the statutes is amended to read:

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

16 **SECTION 19.** 49.85 (2) (a) of the statutes is amended to read:

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

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

THIS PERIOD SHOULD NOT BE UNDERSCORED

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

5           **SECTION 21.** 50.03 (13) (a) of the statutes is amended to read:

6           50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from  
7 the person or persons named in the license to any other person or persons, the  
8 transferee must obtain a new license. The license may be a probationary license.  
9 Penalties under sub. (1) shall apply to violations of this subsection. The transferee  
10 shall notify the department of the transfer, file an application under sub. (3) (b), and  
11 apply for a new license at least 30 days prior to final transfer. Retention of any  
12 interest required to be disclosed under sub. (3) (b) after transfer by any person who  
13 held such an interest prior to transfer may constitute grounds for denial of a license  
14 where violations of this subchapter for which notice had been given to the transferor  
15 are outstanding and uncorrected, if the department determines that effective control  
16 over operation of the facility has not been transferred. If the transferor was a  
17 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45  
18 (21).

19           **SECTION 22.** 71.93 (1) (a) 3. of the statutes is amended to read:

20           71.93 (1) (a) 3. An amount that the department of health and family services  
21 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and  
22 family services has certified the amount under s. 49.85.

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

24           (1) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment of  
25 sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b) and 50.03 (13) (a) of the

1 statutes first applies to sales or other transfers completed on the effective date of this  
2 subsection.

(b) ~~9.~~

3 (2) FEE FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The  
4 treatment of sections 49.45 (2) ~~(a) 12.~~ of the statutes first applies to ~~violations of~~  
5 ~~federal statutes or regulations or state statutes or rules committed~~ on the effective  
6 date of this subsection.

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

11 (END)

repeated recoveries from the identical provider that  
are made

INSERT 4-10

As if

shall be used to defray in part the costs of audits and  
investigations by the department of provider overpayments and  
improper or  
erroneous provider payments and

## Kennedy, Debora

---

**From:** Sager-Rosenthal, Ivy  
**Sent:** Thursday, January 18, 2001 7:47 AM  
**To:** Kennedy, Debora  
**Subject:** FW: FW: LRB Draft: 01-0193/1 Health care provider fraud and abuse



Comments Fraud and  
Abuse 2nd S...

Debora:

I think this is one of your drafts.

Ivy

-----Original Message-----

**From:** Mullikin, Melissa  
**Sent:** Wednesday, January 17, 2001 6:04 PM  
**To:** Sager-Rosenthal, Ivy  
**Subject:** FW: FW: LRB Draft: 01-0193/1 Health care provider fraud and abuse

Hi Ivy,

More comments from DHFS, of course. I haven't had a chance to look at them, I wanted to get them to you ASAP though. If you have concerns about including them, please let me know.

Thanks much,  
Melissa

Melissa Mullikin  
Executive Policy and Budget Analyst  
State Budget Office  
267-7980

-----Original Message-----

**From:** Miller, Anne  
**Sent:** Wednesday, January 17, 2001 4:11 PM  
**To:** Mullikin, Melissa  
**Cc:** Bove, Fredi-Ellen; Gebhart, Neil; Thornton, Lori; White, Alan; Kraus, Jennifer; Kennedy, Debora  
**Subject:** Re: FW: LRB Draft: 01-0193/1 Health care provider fraud and abuse

Hi Melissa!

Attached is DHFS' comment on the most recent draft of the Preventing MA Fraud and Abuse Stat Language Draft.

Please feel free to contact me with any questions or concerns.

Anne Miller  
DHFS/OSF  
6-5422

>>> Mullikin, Melissa 01/16/01 03:09PM >>>

Hi Anne,

Here is the most recent draft of the fraud and abuse stat language. Please provide department comments to me by Thursday, January 18. If the department is okay with this draft, please let me know that it's final.

Thanks,

Melissa

Melissa Mullikin  
Executive Policy and Budget Analyst  
State Budget Office  
267-7980

-----Original Message-----

From: Follett, Kathy  
Sent: Tuesday, January 16, 2001 3:07 PM  
To: Mullikin, Melissa  
Cc: Kraus, Jennifer; Currier, Dawn; Hanaman, Cathlene; Haugen, Caroline  
Subject: LRB Draft: 01-0193/1 Health care provider fraud and abuse

Following is the PDF version of draft 01-0193/1.

**Kennedy, Debora**

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**From:** Miller, Anne  
**Sent:** Wednesday, January 17, 2001 4:11 PM  
**To:** Mullikin, Melissa  
**Cc:** Bove, Fredi-Ellen; Gebhart, Neil; Thornton, Lori; White, Alan; Kraus, Jennifer; Kennedy, Debora  
**Subject:** Re: FW: LRB Draft: 01-0193/1 Health care provider fraud and abuse



Comments Fraud and Abuse 2nd S...

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Please feel free to contact me with any questions or concerns.

Annie Miller  
DHFS/OSF  
6-5422

>>> Mullikin, Melissa 01/16/01 03:09PM >>>  
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Thanks,  
Melissa

Melissa Mullikin  
Executive Policy and Budget Analyst  
State Budget Office  
267-7980

-----Original Message-----

**From:** Follett, Kathy  
**Sent:** Tuesday, January 16, 2001 3:07 PM  
**To:** Mullikin, Melissa  
**Cc:** Kraus, Jennifer; Currier, Dawn; Hanaman, Cathlene; Haugen, Caroline  
**Subject:** LRB Draft: 01-0193/1 Health care provider fraud and abuse

Following is the PDF version of draft 01-0193/1.



**Department of Health and Family Services  
Response to LRB Draft 01-0193/1  
1/17/01**

Section 1 as currently worded provides in part:

“...for performance by the department of audits and investigations of medical assistance provider overpayments and improper or erroneous medical assistance provider payments.”

Please change this passage to read:

“...for performance by the department of audits and investigations under s. 49.45(3)(g).”

The current wording may have the effect of limiting audits/investigations to only those providers of whom we have “proof” that an overpayment and/or an improper or erroneous payment has occurred.

Sections 49.45(3)(g) provides as follows:

“The secretary may appoint personnel to audit or investigate and report to the department on any matter involving violations or complaints alleging violations of laws, regulations, or rules applicable to Title XIX of the federal social security act or 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 appointed by the secretary under this paragraph shall be issued and shall possess at all times during which they are performing their investigatory or audit functions under this section identification signed by the secretary which specifically designates the bearer as possessing the authorization to conduct medical assistance investigations or audits. Pursuant to the request of a designated person and upon presentation of that person’s authorization, providers and recipients shall accord such person access to any records, books, recipient medical records, documents or other information needed. Authorized employees shall have authority to hold hearings, administer oaths, take testimony and perform all other duties necessary to bring such matter before the department for final adjudication and determination.”

This language should cover all the audits and investigations for which funding under the new appropriation should be available.

The language quoted above from section 1 also appears in section 9:

“...The fee shall be used to defray in part the costs of audits and investigations by the department of provider overpayments and improper or erroneous provider payments...”



DOA:.....Mullikin - Health care provider fraud and abuse

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Under current law under the medical assistance (MA) program, 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, 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. To implement these sanctions, DHFS must provide written notice, a fair hearing, and a written decision. 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 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 and ascertain whether 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 been repaid.

This bill authorizes DHFS, after providing reasonable notice and the opportunity for a hearing, to charge a fee to an MA provider that has repeatedly been

*medicaid or MA violations  
and to verify service provision and the appropriateness  
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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 ~~MA provider payments and overpayments~~ and may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. The bill permits DHFS to recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider and also authorizes fee collection by the attorney general. Further, failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. The bill creates an appropriation of program revenue into which DHFS must deposit the fees for performance by DHFS of MA audits and investigations.

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 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.

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

1. Hearing opportunity requirements are eliminated and, instead, a provider has the opportunity to present information and argument to DHFS staff.
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 requires access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

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, the bill eliminates provisions that confer liability on both the transferor and the transferee. Under the bill, before a person may take over the operation (as defined in the bill) of an MA provider, the person must 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.

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 is created to read:

2           20.435 (4) (iL) *Medical assistance provider fees.* All moneys received from fees  
3 charged under s. 49.45 (2) (b) 9., for performance by the department of audits and  
4 investigations of ~~medical assistance provider overpayments and improper or~~  
5 ~~erroneous medical assistance provider payments.~~ under s. 49.45 (3) (g) ✓

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

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

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

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

6           **SECTION 4.** 49.45 (2) (a) 11. of the statutes is amended to read:

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

11           **SECTION 5.** 49.45 (2) (a) 12. of the statutes is amended to read:

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

1 furnished by the provider subsequent to decertification or during the period of  
2 suspension.

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

4 49.45 (2) (b) 6. Limit the number of providers of particular services that may  
5 be certified under par. (a) 11. or the amount of resources, including employees and  
6 equipment, that a certified provider may use to provide particular services to medical  
7 assistance recipients, if the department finds all of the following:

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

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

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

14 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all  
15 providers of a specific service that is among those enumerated under s. 49.46 (2) or  
16 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond  
17 issued by a surety company licensed to do business in this state. Providers subject  
18 to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a)  
19 for which providers have demonstrated significant potential to violate s. 49.49 (1) (a),  
20 (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a)  
21 10., or to need additional sanctions under par. (a) 13. The surety bond shall be  
22 payable to the department in an amount that the department determines is  
23 reasonable in view of amounts of former recoveries against providers of the specific  
24 service and the department's costs to pursue those recoveries. The department shall  
25 promulgate rules under this subdivision that specify all of the following:

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

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

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

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

10 49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
11 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
12 of the provider, regardless of whether the person is currently certified. The  
13 department may withhold the certification required under this subdivision until any  
14 outstanding repayment under sub. (21) is made.

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

16 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
17 charge a fee to a provider that repeatedly has been subject to recoveries under par.  
18 (a) 10. a. because of the provider's failure to follow identical or similar billing  
19 procedures or to follow other identical or similar program requirements. The fee  
20 shall be used to defray in part the costs of audits and investigations by the  
21 department of ~~provider overpayments and improper or erroneous provider payments~~  
22 and may not exceed \$1,000 or 200% of the amount of any such repeated recovery  
23 made, whichever is greater. The provider shall pay the fee to the department within  
24 10 days after receipt of notice of the fee or the final decision after administrative  
25 hearing, whichever is later. The department may recover any part of a fee not timely

under sub. (3) (g) ✓

1 paid by offsetting the fee against any medical assistance payment owed to the  
2 provider and may refer any such unpaid fees not collected in this manner to the  
3 attorney general, who may proceed with collection under this subdivision. Failure  
4 to timely pay in any manner a fee charged under this subdivision, other than a fee  
5 that is offset against any medical assistance payment owed to the provider, is  
6 grounds for decertification under subd. 12. A provider's payment of a fee does not  
7 relieve the provider of any other legal liability incurred in connection with the  
8 recovery for which the fee is charged, but is not evidence of violation of a statute or  
9 rule. The department shall credit all fees received under this subdivision to the  
10 appropriation account under s. 20.435 (4) (iL).

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

12 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
13 investigate and report to the department on any matter involving violations or  
14 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
15 ~~Title XIX of the federal social security act or the medical assistance program and to~~  
16 perform such investigations or audits as are required to verify the actual provision  
17 of services or items available under the medical assistance program and the  
18 appropriateness and accuracy of claims for reimbursement submitted by providers  
19 participating in the program. Department employees ~~appointed~~ authorized by the  
20 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
21 ~~which~~ while they are performing their investigatory or audit functions under this  
22 section, identification, signed by the secretary ~~which, that~~ specifically designates the  
23 bearer as possessing the authorization to conduct medical assistance investigations  
24 or audits. Pursuant ~~to~~ Under the request of a designated person and upon  
25 presentation of ~~that~~ the person's authorization, providers and medical assistance



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

9 **SECTION 11.** 49.45 (3) (h) 1. of the statutes is repealed.

10 **SECTION 12.** 49.45 (3) (h) 2. of the statutes is repealed.

11 **SECTION 13.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
12 amended to read:

13 49.45 (3) (h) The failure or refusal of a person to purge himself or herself of  
14 contempt found under s. 885.12 and perform the act as required by law shall  
15 constitute provider to accord department auditors or investigators access as required  
16 under par. (g) to any provider personnel, records, books, patient health care records  
17 of medical assistance recipients, or documents or other information requested  
18 constitutes grounds for decertification or suspension of that person the provider from  
19 participation in the medical assistance program and no. No payment may be made  
20 for services rendered by that person subsequent to the provider following  
21 decertification or, during the period of suspension, or during any period of provider  
22 failure or refusal to accord access as required under par. (g).

23 **SECTION 14.** 49.45 (21) (title) of the statutes is amended to read:

24 49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
25 OPERATION; REPAYMENTS REQUIRED.

1           **SECTION 15.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
2 amended to read:

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

12           **SECTION 16.** 49.45 (21) (ag) of the statutes is created to read:

13           49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
14 respect to an aspect of a provider’s business for which the provider has filed claims  
15 for medical assistance reimbursement, any of the following:

16           1. Ownership of the provider’s business or all or substantially all of the assets  
17 of the business.

18           2. Majority control over decisions.

19           3. The right to any profits or income.

20           4. The right to contact and offer services to patients, clients, or residents served  
21 by the provider.

22           5. An agreement that the provider will not compete with the person at all or  
23 with respect to a patient, client, resident, service, geographical area, or other part  
24 of the provider’s business.

1           6. The right to perform services that are substantially similar to services  
2 performed by the provider at the same location as those performed by the provider.

3           7. The right to use any distinctive name or symbol by which the provider is  
4 known in connection with services to be provided by the person.

5           **SECTION 17.** 49.45 (21) (b) of the statutes is amended to read:

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

16           **SECTION 18.** 49.85 (2) (a) of the statutes is amended to read:

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

25           **SECTION 19.** 49.85 (3) (a) 1. of the statutes is amended to read:

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

5           **SECTION 20.** 50.03 (13) (a) of the statutes is amended to read:

6           50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from  
7 the person or persons named in the license to any other person or persons, the  
8 transferee must obtain a new license. The license may be a probationary license.  
9 Penalties under sub. (1) shall apply to violations of this subsection. The transferee  
10 shall notify the department of the transfer, file an application under sub. (3) (b), and  
11 apply for a new license at least 30 days prior to final transfer. Retention of any  
12 interest required to be disclosed under sub. (3) (b) after transfer by any person who  
13 held such an interest prior to transfer may constitute grounds for denial of a license  
14 where violations of this subchapter for which notice had been given to the transferor  
15 are outstanding and uncorrected, if the department determines that effective control  
16 over operation of the facility has not been transferred. If the transferor was a  
17 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45  
18 (21).

19           **SECTION 21.** 71.93 (1) (a) 3. of the statutes is amended to read:

20           71.93 (1) (a) 3. An amount that the department of health and family services  
21 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and  
22 family services has certified the amount under s. 49.85.

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

24           (1) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment of  
25 sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b), and 50.03 (13) (a) of the

1 statutes first applies to sales or other transfers completed on the effective date of this  
2 subsection.

3 (2) FEE FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The  
4 treatment of section 49.45 (2) (b) 9. of the statutes first applies to repeated recoveries  
5 from the identical provider that are made on the effective date of this subsection.

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

10

(END)



(TUES or WED a.m.)

State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0193/3

DAK:wlj

D-NOTE

DOA:.....Mullikin - Health care provider fraud and abuse

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Only changes are pp. 4 + 5. + D-NOTE

DON'T GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

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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 and may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. The bill permits DHFS to recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider and also authorizes fee collection by the attorney general. Further, failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. The bill creates an appropriation of program revenue into which DHFS must deposit the fees for performance by DHFS of MA audits and investigations.

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.

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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.

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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.

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12 the provider under the program, or by requiring the provider to make direct payment  
13 to the department or its fiscal intermediary.

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3 by the deadline, require payment, by the provider, of interest on any delinquent  
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5 overpayment.

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10 providers who meet the criteria. Lem. ✓

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

1 furnished by the provider subsequent to decertification or during the period of  
2 suspension.

3 **SECTION 6.** 49.45 (2) (b) ~~§~~ <sup>6m.</sup> of the statutes is created to read:

4 49.45 (2) (b) ~~§~~ Limit the number of providers of particular services that may  
5 be certified under par. (a) 11. or the amount of resources, including employees and  
6 equipment, that a certified provider may use to provide particular services to medical  
7 assistance recipients, if the department finds all of the following:

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

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

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

14 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all  
15 providers of a specific service that is among those enumerated under s. 49.46 (2) or  
16 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond  
17 issued by a surety company licensed to do business in this state. Providers subject  
18 to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a)  
19 for which providers have demonstrated significant potential to violate s. 49.49 (1) (a),  
20 (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a)  
21 10., or to need additional sanctions under par. (a) 13. The surety bond shall be  
22 payable to the department in an amount that the department determines is  
23 reasonable in view of amounts of former recoveries against providers of the specific  
24 service and the department's costs to pursue those recoveries. The department shall  
25 promulgate rules under this subdivision that specify all of the following:

INSERT  
5-12

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

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

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

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

10 49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
11 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
12 of the provider, regardless of whether the person is currently certified. The  
13 department may withhold the certification required under this subdivision until any  
14 outstanding repayment under sub. (21) is made.

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

16 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
17 charge a fee to a provider that repeatedly has been subject to recoveries under par.  
18 (a) 10. a. because of the provider's failure to follow identical or similar billing  
19 procedures or to follow other identical or similar program requirements. The fee  
20 shall be used to defray in part the costs of audits and investigations by the  
21 department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount of  
22 any such repeated recovery made, whichever is greater. The provider shall pay the  
23 fee to the department within 10 days after receipt of notice of the fee or the final  
24 decision after administrative hearing, whichever is later. The department may  
25 recover any part of a fee not timely paid by offsetting the fee against any medical

1 assistance payment owed to the provider and may refer any such unpaid fees not  
2 collected in this manner to the attorney general, who may proceed with collection  
3 under this subdivision. Failure to timely pay in any manner a fee charged under this  
4 subdivision, other than a fee that is offset against any medical assistance payment  
5 owed to the provider, is grounds for decertification under subd. 12. A provider's  
6 payment of a fee does not relieve the provider of any other legal liability incurred in  
7 connection with the recovery for which the fee is charged, but is not evidence of  
8 violation of a statute or rule. The department shall credit all fees received under this  
9 subdivision to the appropriation account under s. 20.435 (4) (iL).

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

11 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
12 investigate and report to the department on any matter involving violations or  
13 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
14 ~~Title XIX of the federal social security act or the medical assistance program and to~~  
15 perform such investigations or audits as are required to verify the actual provision  
16 of services or items available under the medical assistance program and the  
17 appropriateness and accuracy of claims for reimbursement submitted by providers  
18 participating in the program. Department employees ~~appointed~~ authorized by the  
19 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
20 ~~which~~ while they are performing their investigatory or audit functions under this  
21 section, identification, signed by the secretary ~~which, that~~ specifically designates the  
22 bearer as possessing the authorization to conduct medical assistance investigations  
23 or audits. ~~Pursuant to~~ Under the request of a designated person and upon  
24 presentation of ~~that~~ the person's authorization, providers and medical assistance  
25 recipients shall accord ~~such~~ the person access to any provider personnel, records,

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

8 **SECTION 11.** 49.45 (3) (h) 1. of the statutes is repealed.

9 **SECTION 12.** 49.45 (3) (h) 2. of the statutes is repealed.

10 **SECTION 13.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
11 amended to read:

12 49.45 (3) (h) The failure or refusal of a person to purge himself or herself of  
13 contempt found under s. 885.12 and perform the act as required by law shall  
14 constitute provider to accord department auditors or investigators access as required  
15 under par. (g) to any provider personnel, records, books, patient health care records  
16 of medical assistance recipients, or documents or other information requested  
17 constitutes grounds for decertification or suspension of that person the provider from  
18 participation in the medical assistance program and no. No payment may be made  
19 for services rendered by that person subsequent to the provider following  
20 decertification or, during the period of suspension, or during any period of provider  
21 failure or refusal to accord access as required under par. (g).

22 **SECTION 14.** 49.45 (21) (title) of the statutes is amended to read:

23 49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
24 OPERATION; REPAYMENTS REQUIRED.

1           **SECTION 15.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
2 amended to read:

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

12           **SECTION 16.** 49.45 (21) (ag) of the statutes is created to read:

13           49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
14 respect to an aspect of a provider’s business for which the provider has filed claims  
15 for medical assistance reimbursement, any of the following:

16           1. Ownership of the provider’s business or all or substantially all of the assets  
17 of the business.

18           2. Majority control over decisions.

19           3. The right to any profits or income.

20           4. The right to contact and offer services to patients, clients, or residents served  
21 by the provider.

22           5. An agreement that the provider will not compete with the person at all or  
23 with respect to a patient, client, resident, service, geographical area, or other part  
24 of the provider’s business.

1           6. The right to perform services that are substantially similar to services  
2 performed by the provider at the same location as those performed by the provider.

3           7. The right to use any distinctive name or symbol by which the provider is  
4 known in connection with services to be provided by the person.

5           **SECTION 17.** 49.45 (21) (b) of the statutes is amended to read:

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

16           **SECTION 18.** 49.85 (2) (a) of the statutes is amended to read:

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

25           **SECTION 19.** 49.85 (3) (a) 1. of the statutes is amended to read:

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

5           **SECTION 20.** 50.03 (13) (a) of the statutes is amended to read:

6           50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from  
7 the person or persons named in the license to any other person or persons, the  
8 transferee must obtain a new license. The license may be a probationary license.  
9 Penalties under sub. (1) shall apply to violations of this subsection. The transferee  
10 shall notify the department of the transfer, file an application under sub. (3) (b), and  
11 apply for a new license at least 30 days prior to final transfer. Retention of any  
12 interest required to be disclosed under sub. (3) (b) after transfer by any person who  
13 held such an interest prior to transfer may constitute grounds for denial of a license  
14 where violations of this subchapter for which notice had been given to the transferor  
15 are outstanding and uncorrected, if the department determines that effective control  
16 over operation of the facility has not been transferred. If the transferor was a  
17 provider under s. 49.43 (10), the transferee and transferor shall comply with s. 49.45  
18 (21).

19           **SECTION 21.** 71.93 (1) (a) 3. of the statutes is amended to read:

20           71.93 (1) (a) 3. An amount that the department of health and family services  
21 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and  
22 family services has certified the amount under s. 49.85.

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

24           (1) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment of  
25 sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b), and 50.03 (13) (a) of the



1 statutes first applies to sales or other transfers completed on the effective date of this  
2 subsection.

3 (2) FEE FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The  
4 treatment of section 49.45 (2) (b) 9. of the statutes first applies to repeated recoveries  
5 from the identical provider that are made on the effective date of this subsection.

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

10 (END)

D-NOTE

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0193/3ins  
DAK:wlj:rs

**INSERT 5-12**

\*\*\*NOTE: This is reconciled s. 49.45 (2) (b) 6m. This SECTION has been affected by drafts with the following LRB numbers: -0193/2 and -1939/4.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0193/3dn  
DAK:wlj/AM

Melissa:

This draft renumbers s. 49.45 (2) (b) 6<sup>✓</sup> (created in the draft) to s. 49.45 (2) (b) 6m<sup>✓</sup>. The draft reconciles LRB-0193/2 and LRB-1939/4. Both LRB-0193 and LRB-1939 should continue to appear in the compiled bill.

Debora A. Kennedy  
Managing Attorney  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0193/3dn  
DAK.wlj:rs

February 6, 2001

Melissa:

This draft renumbers s. 49.45 (2) (b) 6. (created in the draft) to s. 49.45 (2) (b) 6m. The draft reconciles LRB-0193/2 and LRB-1939/4. Both LRB-0193 and LRB-1939 should continue to appear in the compiled bill.

Debora A. Kennedy  
Managing Attorney  
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MONDAY early  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0193/4

DAK:wlj

D-NOTE

DOA:.....Mullikin - Health care provider fraud and abuse

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Do not gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Under current law under the medical assistance (MA) program, 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, 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. To implement these sanctions, DHFS must provide written notice, a fair hearing, and a written decision. 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 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 and 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.

This bill authorizes DHFS, after providing reasonable notice and the opportunity for a hearing, to charge a fee to an MA provider that has repeatedly been

✓  
seller

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 and may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. The bill permits DHFS to recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider and also authorizes fee collection by the attorney general. Further, failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. The bill creates an appropriation of program revenue into which DHFS must deposit the fees for performance by DHFS of MA audits and investigations.

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 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.

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

1. Hearing opportunity requirements are eliminated and, instead, a provider has the opportunity to present information and argument to DHFS staff.
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 requires access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

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, the bill eliminates provisions that confer liability on both the transferor and the transferee. Under the bill, before a person may take over the operation (as defined in the bill) of an MA provider, the person must 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.

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

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*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 is created to read:

2           20.435 (4) (iL) *Medical assistance provider fees.* All moneys received from fees  
3 charged under s. 49.45 (2) (b) 9., for performance by the department of audits and  
4 investigations under s. 49.45 (3) (g).

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

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

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

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

6           **SECTION 4.** 49.45 (2) (a) 11. of the statutes is amended to read:

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

11           **SECTION 5.** 49.45 (2) (a) 12. of the statutes is amended to read:

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



1 furnished by the provider subsequent to decertification or during the period of  
2 suspension.

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

4 49.45 (2) (b) 6m. Limit the number of providers of particular services that may  
5 be certified under par. (a) 11. or the amount of resources, including employees and  
6 equipment, that a certified provider may use to provide particular services to medical  
7 assistance recipients, if the department finds all of the following:

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

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

\*\*\*\*NOTE: This is reconciled s. 49.45 (2) (b) 6m. This SECTION has been affected by  
drafts with the following LRB numbers: -0193/2 and -1939/4.

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

14 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all  
15 providers of a specific service that is among those enumerated under s. 49.46 (2) or  
16 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond  
17 issued by a surety company licensed to do business in this state. Providers subject  
18 to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a)  
19 for which providers have demonstrated significant potential to violate s. 49.49 (1) (a),  
20 (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a)  
21 10., or to need additional sanctions under par. (a) 13. The surety bond shall be  
22 payable to the department in an amount that the department determines is  
23 reasonable in view of amounts of former recoveries against providers of the specific

1 service and the department's costs to pursue those recoveries. The department shall  
2 promulgate rules under this subdivision that specify all of the following:

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

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

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

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

12 49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
13 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
14 of the provider, regardless of whether the person is currently certified. The  
15 department may withhold the certification required under this subdivision until any  
16 outstanding repayment under sub. (21) is made.

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

18 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
19 charge a fee to a provider that repeatedly has been subject to recoveries under par.  
20 (a) 10. a. because of the provider's failure to follow identical or similar billing  
21 procedures or to follow other identical or similar program requirements. The fee  
22 shall be used to defray in part the costs of audits and investigations by the  
23 department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount of  
24 any such repeated recovery made, whichever is greater. The provider shall pay the  
25 fee to the department within 10 days after receipt of notice of the fee or the final

1 decision after administrative hearing, whichever is later. The department may  
2 recover any part of a fee not timely paid by offsetting the fee against any medical  
3 assistance payment owed to the provider and may refer any such unpaid fees not  
4 collected in this manner to the attorney general, who may proceed with collection  
5 under this subdivision. Failure to timely pay in any manner a fee charged under this  
6 subdivision, other than a fee that is offset against any medical assistance payment  
7 owed to the provider, is grounds for decertification under subd. 12. A provider's  
8 payment of a fee does not relieve the provider of any other legal liability incurred in  
9 connection with the recovery for which the fee is charged, but is not evidence of  
10 violation of a statute or rule. The department shall credit all fees received under this  
11 subdivision to the appropriation account under s. 20.435 (4) (iL).

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

13 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
14 investigate and report to the department on any matter involving violations or  
15 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
16 ~~Title XIX of the federal social security act or~~ the medical assistance program and to  
17 perform such investigations or audits as are required to verify the actual provision  
18 of services or items available under the medical assistance program and the  
19 appropriateness and accuracy of claims for reimbursement submitted by providers  
20 participating in the program. Department employees ~~appointed~~ authorized by the  
21 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
22 ~~which~~ while they are performing their investigatory or audit functions under this  
23 section, identification, signed by the secretary ~~which~~, that specifically designates the  
24 bearer as possessing the authorization to conduct medical assistance investigations  
25 or audits. ~~Pursuant to~~ Under the request of a designated person and upon

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

10 **SECTION 11.** 49.45 (3) (h) 1. of the statutes is repealed.

11 **SECTION 12.** 49.45 (3) (h) 2. of the statutes is repealed.

12 **SECTION 13.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
13 amended to read:

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

24 **SECTION 14.** 49.45 (21) (title) of the statutes is amended to read:

1           49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR TAKING OVER PROVIDER'S~~  
2           ~~OPERATION; REPAYMENTS REQUIRED.~~

3           **SECTION 15.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
4           amended to read:

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

14          **SECTION 16.** 49.45 (21) (ag) of the statutes is created to read:

15          49.45 (21) (ag) In this subsection, "take over the operation" means obtain, with  
16          respect to an aspect of a provider's business for which the provider has filed claims  
17          for medical assistance reimbursement, any of the following:

- 18           1. Ownership of the provider's business or all or substantially all of the assets  
19           of the business.
- 20           2. Majority control over decisions.
- 21           3. The right to any profits or income.
- 22           4. The right to contact and offer services to patients, clients, or residents served  
23           by the provider.

1           5. An agreement that the provider will not compete with the person at all or  
2 with respect to a patient, client, resident, service, geographical area, or other part  
3 of the provider's business.

4           6. The right to perform services that are substantially similar to services  
5 performed by the provider at the same location as those performed by the provider.

6           7. The right to use any distinctive name or symbol by which the provider is  
7 known in connection with services to be provided by the person.

8           **SECTION 17.** 49.45 (21) (b) of the statutes is amended to read:

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

19           **SECTION 18.** 49.85 (2) (a) of the statutes is amended to read:

20           49.85 (2) (a) At least annually, the department of health and family services  
21 shall certify to the department of revenue the amounts that, based on the  
22 notifications received under sub. (1) and on other information received by the  
23 department of health and family services, the department of health and family  
24 services has determined that it may recover under s. 49.45 (2) (a) 10. or 49.497, except  
25 that the department of health and family services may not certify an amount under

1 this subsection unless it has met the notice requirements under sub. (3) and unless  
2 its determination has either not been appealed or is no longer under appeal.

3 **SECTION 19.** 49.85 (3) (a) 1. of the statutes is amended to read:

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

8 **SECTION 20.** 50.03 (13) (a) of the statutes is amended to read:

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

22 **SECTION 21.** 71.93 (1) (a) 3. of the statutes is amended to read:

23 71.93 (1) (a) 3. An amount that the department of health and family services  
24 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and  
25 family services has certified the amount under s. 49.85.

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

(1) TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER. The treatment of sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b), and 50.03 (13) (a) of the statutes first applies to sales or other transfers completed on the effective date of this subsection.

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

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

(END)

D-NOTE



DAK:jed

D-NOTE

To Melissa Mueller:

This redraft makes a minor change, to the first paragraph of the analysis. No substantive or technical textual change is made.

Debra Kennedy

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0193/4dn  
DAK:jld:jf

February 19, 2001

To Melissa Mullikin:

This redraft makes a minor change, to the first paragraph of the analysis. No substantive or technical textual change is made.

Debra A. Kennedy  
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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0193/4

DAK:wljfj

DOA:.....Mullikin - Health care provider fraud and abuse

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Under current law under the medical assistance (MA) program, 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, 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. To implement these sanctions, DHFS must provide written notice, a fair hearing, and a written decision. 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 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 and 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.

This bill authorizes DHFS, after providing reasonable notice and the opportunity for a hearing, 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 and may not exceed \$1,000 or 200% of the amount of the repeated recovery, whichever is greater. The bill permits DHFS to recover any part of such a fee that is not timely paid by offsetting the fee against any MA payment owed to the provider and also authorizes fee collection by the attorney general. Further, failure to timely pay a fee, other than by offsetting the fee against the MA payment owed, is grounds for MA decertification. The bill creates an appropriation of program revenue into which DHFS must deposit the fees for performance by DHFS of MA audits and investigations.

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 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.

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

1. Hearing opportunity requirements are eliminated and, instead, a provider has the opportunity to present information and argument to DHFS staff.
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 requires access, upon request by DHFS, to provider records and specifies that a provider's failure to provide access constitutes grounds for decertification.

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, the bill eliminates provisions that confer liability on both the transferor and the transferee. Under the bill, before a person may take over the operation (as defined in the bill) of an MA provider, the person must 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.

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

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*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 is created to read:

2           20.435 (4) (iL) *Medical assistance provider fees.* All moneys received from fees  
3 charged under s. 49.45 (2) (b) 9., for performance by the department of audits and  
4 investigations under s. 49.45 (3) (g).

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

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

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

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

6           **SECTION 4.** 49.45 (2) (a) 11. of the statutes is amended to read:

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

11           **SECTION 5.** 49.45 (2) (a) 12. of the statutes is amended to read:

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

1 furnished by the provider subsequent to decertification or during the period of  
2 suspension.

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

4 49.45 (2) (b) 6m. Limit the number of providers of particular services that may  
5 be certified under par. (a) 11. or the amount of resources, including employees and  
6 equipment, that a certified provider may use to provide particular services to medical  
7 assistance recipients, if the department finds all of the following:

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

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

\*\*\*\*NOTE: This is reconciled s. 49.45 (2) (b) 6m. This SECTION has been affected by  
drafts with the following LRB numbers: -0193/2 and -1939/4.

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

14 49.45 (2) (b) 7. Require, as a condition of certification under par. (a) 11., all  
15 providers of a specific service that is among those enumerated under s. 49.46 (2) or  
16 49.47 (6) (a), as specified in this subdivision, to file with the department a surety bond  
17 issued by a surety company licensed to do business in this state. Providers subject  
18 to this subdivision provide those services specified under s. 49.46 (2) or 49.47 (6) (a)  
19 for which providers have demonstrated significant potential to violate s. 49.49 (1) (a),  
20 (2) (a) or (b), (3), (3m) (a), (3p), (4) (a), or (4m) (a), to require recovery under par. (a)  
21 10., or to need additional sanctions under par. (a) 13. The surety bond shall be  
22 payable to the department in an amount that the department determines is  
23 reasonable in view of amounts of former recoveries against providers of the specific

1 service and the department's costs to pursue those recoveries. The department shall  
2 promulgate rules under this subdivision that specify all of the following:

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

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

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

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

12 49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
13 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
14 of the provider, regardless of whether the person is currently certified. The  
15 department may withhold the certification required under this subdivision until any  
16 outstanding repayment under sub. (21) is made.

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

18 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
19 charge a fee to a provider that repeatedly has been subject to recoveries under par.  
20 (a) 10. a. because of the provider's failure to follow identical or similar billing  
21 procedures or to follow other identical or similar program requirements. The fee  
22 shall be used to defray in part the costs of audits and investigations by the  
23 department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount of  
24 any such repeated recovery made, whichever is greater. The provider shall pay the  
25 fee to the department within 10 days after receipt of notice of the fee or the final



1 decision after administrative hearing, whichever is later. The department may  
2 recover any part of a fee not timely paid by offsetting the fee against any medical  
3 assistance payment owed to the provider and may refer any such unpaid fees not  
4 collected in this manner to the attorney general, who may proceed with collection  
5 under this subdivision. Failure to timely pay in any manner a fee charged under this  
6 subdivision, other than a fee that is offset against any medical assistance payment  
7 owed to the provider, is grounds for decertification under subd. 12. A provider's  
8 payment of a fee does not relieve the provider of any other legal liability incurred in  
9 connection with the recovery for which the fee is charged, but is not evidence of  
10 violation of a statute or rule. The department shall credit all fees received under this  
11 subdivision to the appropriation account under s. 20.435 (4) (iL).

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

13 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
14 investigate and report to the department on any matter involving violations or  
15 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
16 ~~Title XIX of the federal social security act or the medical assistance program and to~~  
17 perform such investigations or audits as are required to verify the actual provision  
18 of services or items available under the medical assistance program and the  
19 appropriateness and accuracy of claims for reimbursement submitted by providers  
20 participating in the program. Department employees ~~appointed~~ authorized by the  
21 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
22 ~~which~~ while they are performing their investigatory or audit functions under this  
23 section, identification, signed by the secretary ~~which~~, that specifically designates the  
24 bearer as possessing the authorization to conduct medical assistance investigations  
25 or audits. ~~Pursuant to~~ Under the request of a designated person and upon

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

10 **SECTION 11.** 49.45 (3) (h) 1. of the statutes is repealed.

11 **SECTION 12.** 49.45 (3) (h) 2. of the statutes is repealed.

12 **SECTION 13.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
13 amended to read:

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

24 **SECTION 14.** 49.45 (21) (title) of the statutes is amended to read:

1           49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
2           ~~OPERATION; REPAYMENTS REQUIRED.~~

3           **SECTION 15.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
4           amended to read:

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

14          **SECTION 16.** 49.45 (21) (ag) of the statutes is created to read:

15          49.45 (21) (ag) In this subsection, "take over the operation" means obtain, with  
16          respect to an aspect of a provider's business for which the provider has filed claims  
17          for medical assistance reimbursement, any of the following:

- 18           1. Ownership of the provider's business or all or substantially all of the assets  
19           of the business.
- 20           2. Majority control over decisions.
- 21           3. The right to any profits or income.
- 22           4. The right to contact and offer services to patients, clients, or residents served  
23           by the provider.

1           5. An agreement that the provider will not compete with the person at all or  
2 with respect to a patient, client, resident, service, geographical area, or other part  
3 of the provider's business.

4           6. The right to perform services that are substantially similar to services  
5 performed by the provider at the same location as those performed by the provider.

6           7. The right to use any distinctive name or symbol by which the provider is  
7 known in connection with services to be provided by the person.

8           **SECTION 17.** 49.45 (21) (b) of the statutes is amended to read:

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

19           **SECTION 18.** 49.85 (2) (a) of the statutes is amended to read:

20           49.85 (2) (a) At least annually, the department of health and family services  
21 shall certify to the department of revenue the amounts that, based on the  
22 notifications received under sub. (1) and on other information received by the  
23 department of health and family services, the department of health and family  
24 services has determined that it may recover under s. 49.45 (2) (a) 10. or 49.497, except  
25 that the department of health and family services may not certify an amount under

1 this subsection unless it has met the notice requirements under sub. (3) and unless  
2 its determination has either not been appealed or is no longer under appeal.

3 **SECTION 19.** 49.85 (3) (a) 1. of the statutes is amended to read:

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

8 **SECTION 20.** 50.03 (13) (a) of the statutes is amended to read:

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

22 **SECTION 21.** 71.93 (1) (a) 3. of the statutes is amended to read:

23 71.93 (1) (a) 3. An amount that the department of health and family services  
24 may recover under s. 49.45 (2) (a) 10. or 49.497, if the department of health and  
25 family services has certified the amount under s. 49.85.

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

2           (1) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment of  
3 sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b), and 50.03 (13) (a) of the  
4 statutes first applies to sales or other transfers completed on the effective date of this  
5 subsection.

6           (2) **FEE FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE.** The  
7 treatment of section 49.45 (2) (b) 9. of the statutes first applies to repeated recoveries  
8 from the identical provider that are made on the effective date of this subsection.

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

13

(END)