

2001 DRAFTING REQUEST

Bill

Received: **09/08/2000**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 266-2288**

By/Representing: **Fossum**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact: **DHFS**

Alt. Drafters:

Subject: **Health - long-term care**

Extra Copies: **ISR**

Pre Topic:

DOA:.....Fossum -

Topic:

Family care hearing rights

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kenneda 09/26/2000	hhagen 09/27/2000	martykr 09/28/2000	_____	lrb_docadmin 09/28/2000		S&L

FE Sent For:

<END>

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/?	kenneda	IP1 kmh 9/27/00	<i>[Signature]</i> 9/28	<i>[Signature]</i> 9/28			S&L

FE Sent For:

<END>

Title: Family Care Hearing Rights

Current Language

46.287 Hearings.

(2) HEARING. (a) 1. Except as provided in subd. 2., a client may contest any of the following applicable matters by filing, within 45 days of the failure of a resource center or care management organization to act on the contested matter within the time frames specified by rule by the department or within 45 days after receipt of notice of a decision in a contested matter, a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1):

- a. Denial of eligibility under s. 46.286 (1) or (1m).
- b. Determination of cost sharing under s. 46.286 (2).
- c. Denial of entitlement under s. 46.286 (3).
- d. Failure to provide timely services and support items that are included in the plan of care.
- e. Reduction of services or support items under the family care benefit.
- f. Development of a plan of care that is unacceptable because the plan of care requires the enrollee to live in a place that is unacceptable to the enrollee or the plan of care provides care, treatment or support items that are insufficient to meet the enrollee's needs, are unnecessarily restrictive or are unwanted by the enrollee.
- g. Termination of the family care benefit.
- h. Imposition of ineligibility for the family care benefit under s. 46.286 (4).
- i. Denial of eligibility or reduction of the amounts of the family care benefit under s. 46.286 (5).
- j. Determinations similar to those specified under s. 49.455 (8) (a), made under s. 46.286 (6).
- k. Recovery of family care benefit payments under s. 46.286 (7).

Proposed Change

46.287 (2) (a) 1. is amended to read:

(2) HEARING. (a) 1. Except as provided in subd. 2., a client may contest any of the following applicable matters by filing, within 45 days of the effective date of an adverse action specified in this subsection ~~the failure of a resource center or care management organization to act on the contested matter within the time frames specified by rule by the department or within 45 days after receipt of notice of a decision in a contested matter~~, a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1):

46.287 (2) (a) 1. k. is repealed:

Effect of the Change

- Makes the timeframes during which a Family Care recipient may file an appeal consistent with Division of Hearings and Appeals rules.
- Makes Family Care recipient rights to hearings related to estate recovery consistent with the rights of recipients in Medicaid and COP.

Rationale for the Change

Act 9 erroneously created the following recipient rights in Family Care that are not consistent with other statutes, rules or programs:

- Different timelines for filing an appeal, and
- Different recipient rights to appeal estate recovery through Family Care

Desired Effective Date: Upon enactment
Agency: DHFS
Agency Contact: Charles Jones
Phone: 266-0991



SOON - In edit 9/26
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0202/ P 1

DAK...
hnh
cjs

D-NOTE

DOA:.....Fossum – Family care hearing rights

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do Not Generate

1

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

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

✓ LONG-TERM CARE; FAMILY CARE

STET

Under family care, a program of financial assistance in providing long-term care and support items, a client may contest specified matters by filing a written request for a hearing with the division of hearings and appeals of DOA. The actions that may be contested are a denial of eligibility or entitlement, a determination of cost sharing, the failure to provide timely services and support items, a reduction of amounts of the family care benefit or services or support items, the development of an unacceptable plan of care, the termination of or imposition of ineligibility for the family care benefit, a divestment determination and the recovery of family care correctly paid benefit payments (commonly referred to as "estate recovery") and incorrectly paid benefit payments. The client must file the request within 45 days of receiving notice of a decision in a contested matter or within 45 days of the failure by a resource center or care management organization under family care to act on the matter under time frames specified by rule by DHFS.

SK

This bill changes the time by which a family care client may contest certain actions under family care to be within 45 days after the effective date of the action. Further, the bill eliminates recovery of family care benefit payments as a matter that may be contested within this time limitation.

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. 46.287 (2) (a) ^X 1. (intro.) of the statutes is amended to read:

2 46.287 (2) (a) 1. (intro.) Except as provided in subd. 2., a client may contest any
3 of the following applicable matters by filing, within 45 days of the failure of a resource
4 center or care management organization to act on the contested matter within the
5 time frames specified by rule by the department or within 45 days after receipt of
6 notice of a decision in a contested matter after the effective date of the matter, a
7 written request for a hearing under s. 227.44 to the division of hearings and appeals
8 created under s. 15.103 (1):

History: 1999 a. 9.

9 SECTION 2. 46.287 (2) (a) ^X 1. k. of the statutes is repealed. ✓

10

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0202/ldn

DAK

nmh

2
gjs

Deadline

To Charles Jones and Gretchen Fossum:

This draft repeals the authority for a family care client to appeal, under s. 46.287 (2) (a) 1. k., stats., the recovery of correctly and incorrectly paid family care benefits. The request indicates that the effect of this change is to make "...Family Care recipient rights to hearings related to estate recovery consistent with the rights of recipients in Medicaid and COP." The request makes no mention of recovery of incorrectly paid family care benefits. I have assumed that, by eliminating this right under s. 46.287 (2) (a) 1. k., stats., DHFS intends that the right be served under other current statutory provisions. Currently, language concerning estate recovery for medical assistance benefits, under s. 49.496 (3) (a), stats., and concerning recovery of incorrect medical assistance payments, under s. 49.497, stats., appears to be broad enough to encompass a person who is receiving medical assistance services as part of a family care benefit. However, the language under s. 46.27 (7g), stats., for *gpr*-funded COP clients is far less clear; s. 46.27 (7g) (a) 1., stats., defines a "client" as a person who receives services funded under s. 46.27 (7) (am), stats., which in turn refers to the appropriation under s. 20.435 (7) (bd), stats. That appropriation clearly distinguishes between COP and the family care benefit. Moreover, s. 46.27 (7m), stats., which sets forth a right to hearing, states that the hearing right is for "[A] person who is denied eligibility for services or whose services are *reduced or terminated* under this section." ~~That~~ That language does not appear to encompass appeals of payment recovery decisions for COP, let alone the family care benefit; and the language under s. 227.43 (1) (bu), stats., that requires the DOA division of hearings and appeals' hearing examiner to preside over a hearing applies only to any hearing of a contested case "... that is *required* to be conducted by the department of health and family services and that is not conducted by the secretary of health and family services." It appears, then, that the effect of the draft's change "to make Family Care recipient rights to hearings related to estate recovery consistent with the rights of recipients in . . . COP" is to grant no hearing right. Is that the intent? Are you relying on a *constitutional* right to hearing and do not contemplate a statutory right? Please review.

The rationale of your request indicates that "Act 9 erroneously created [different timelines for filing an appeal and different recipient rights to appeal estate recovery] . . . in Family Care that are not consistent with other statutes, rules or programs." In

* light of the changes proposed in the request, I do not understand the rationale. Section 46.2887 (2) (a) 2., stats., indicates that, although two hearing procedures (under s. 46.287, stats., and under federal regulations) exist for medical assistance recipients, only one may be used. Clearly, then, a hearing right for medical assistance recipients who receive family care benefits exists under s. 46.287, stats; if DHFS objects to this, why, then, is only the right to a hearing on payment recovery sought to be eliminated? What about, for example, eligibility determinations? I am puzzled by the rationale; if I ~~like~~ better understand it, I would be better able to provide language to fulfill the request. could

I have assumed that s. 46.287 (2) (b), stats., does not separately provide a hearing right concerning estate recovery, because a care management organization would not be performing estate recovery. Is that correct?

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

LRB-0202/P1dn
DAK:hmh&cjs:km

September 28, 2000

To Charles Jones and Gretchen Fossum:

This draft repeals the authority for a family care client to appeal, under s. 46.287 (2) (a) 1. k., stats., the recovery of correctly and incorrectly paid family care benefits. The request indicates that the effect of this change is to make "...Family Care recipient rights to hearings related to estate recovery consistent with the rights of recipients in Medicaid and COP." The request makes no mention of recovery of incorrectly paid family care benefits. I have assumed that, by eliminating this right under s. 46.287 (2) (a) 1. k., stats., DHFS intends that the right be served under other current statutory provisions. Currently, language concerning estate recovery for medical assistance benefits, under s. 49.496 (3) (a), stats., and concerning recovery of incorrect medical assistance payments, under s. 49.497, stats., appears to be broad enough to encompass a person who is receiving medical assistance services as part of a family care benefit. However, the language under s. 46.27 (7g), stats., for *gpr*-funded COP clients is far less clear; s. 46.27 (7g) (a) 1., stats., defines a "client" as a person who receives services funded under s. 46.27 (7) (am), stats., which in turn refers to the appropriation under s. 20.435 (7) (bd), stats. That appropriation clearly distinguishes between COP and the family care benefit. Moreover, s. 46.27 (7m), stats., which sets forth a right to hearing, states that the hearing right is for "[A] person who is denied eligibility for services or whose services are *reduced or terminated* under this section." That language does not appear to encompass appeals of payment recovery decisions for COP, let alone the family care benefit; and the language under s. 227.43 (1) (bu), stats., that requires the DOA division of hearings and appeals' hearing examiner to preside over a hearing applies only to any hearing of a contested case "... that is *required* to be conducted by the department of health and family services and that is not conducted by the secretary of health and family services." It appears, then, that the effect of the draft's change "to make Family Care recipient rights to hearings related to estate recovery consistent with the rights of recipients in . . . COP" is to grant no hearing right. Is that the intent? Are you relying on a *constitutional* right to hearing and do not contemplate a statutory right? Please review.

The rationale of your request indicates that "Act 9 erroneously created [different timelines for filing an appeal and different recipient rights to appeal estate recovery] . . . in Family Care that are not consistent with other statutes, rules or programs." In light of the changes proposed in the request, I do not understand the rationale. Section

46.287 (2) (a) 2., stats., indicates that, although two hearing procedures (under s. 46.287, stats., and under federal regulations) exist for medical assistance recipients, only one may be used. Clearly, then, a hearing right for medical assistance recipients who receive family care benefits exists under s. 46.287, stats; if DHFS objects to this, why, then, is only the right to a hearing on payment recovery sought to be eliminated? What about, for example, eligibility determinations? I am puzzled by the rationale; if I could better understand it, I would be better able to provide language to fulfill the request.

I have assumed that s. 46.287 (2) (b), stats., does not separately provide a hearing right concerning estate recovery, because a care management organization would not be performing estate recovery. Is that correct?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Jones, Charles
Sent: Monday, October 02, 2000 7:56 AM
To: Kennedy, Debora
Subject: LRB*0202/P1

It was our intent that all Family Care recipients should have the same hearing rights to contest recovery of either correctly or incorrectly paid benefits as Medicaid recipients. It sounds like the language changes we requested do not accomplish this. Do you have any suggestions for changes that will?

Charles Jones, OSF / CDSD
Phone: (608) 266-0991
FAX: (608) 266-5629
e-mail: jonescm@dhfs.state.wi.us

Gretchen: what should I do?

10/11 She thinks they want me to write a memo - will get back to me

Kennedy, Debora

From: Fossum, Gretchen
Sent: Wednesday, November 22, 2000 2:51 PM
To: Kennedy, Debora
Subject: Family Care Draft Update:

Debora, this is an update on the Family Care drafts.

Pending the Governor's decisions, the following drafts are fine:

0197/1 Family Care facility referrals
0198/2 Family Care phase-in for non-MA eligibles
0200/1 Family Care hospital referrals
0201/1 Family Care estate recovery appropriations
0204/1 Council on Long-Term Care - sunset

For draft 0196/1, Family Care eligibility:

Draft is fine. In addition, please amend s. 46.286(1m) to extend the sunset date for the developmentally disabled to July 1, 2003 (page 3, line 1). This will extend the date for the pilots that did not begin operation in the current biennium (Kenosha County).

For draft 0202/P1, Family Care hearing rights

The department wishes that all enrollees in Family Care have the same hearing rights related to recovery of correctly or incorrectly paid benefits as Medicaid recipients. It acknowledges that its drafting request did not make this clear. The department responses to your drafter questions are the following:

The LRB has requested more information on the reasoning behind ERP's request to repeal s. 46.487(2)(a)1.k., Stats., which grants hearing rights under FC to "Recovery of family care benefit payment under s. 46.286(7)."

The primary reason is that ERP has rights for 3 different types of hearings, each of which needs to be treated differently than the language in s. 46.487(2)(a)1, Stats., provides. That language provides for a straight HA 3 hearing and that is not what is needed in any of the 3 types of ERP hearings. The FC statutes in s. 46.286(7), Stats., simply provide that the department shall write rules for the handling of correctly and incorrectly paid FC benefits that are substantially similar to applicable provisions under ss. 49.496 and 49.497. That is what was done and the rules reflect the differences needed between the different hearing rights. The 3 are as follows:

1. Hearings regarding the department's claims filed in estates are conducted as part of the probate process in circuit court. See s. 49.46(3). Estate claims are not given administrative hearings; they are heard in court. These therefore need to be taken out of s. 46.487(2) because they cannot have administrative hearings. This applies to both MA and non-MA enrollees. See Wis. Adm. Code s. HFS 10.62(1) which states that all recoveries shall be made in accordance with s. 49.496(1), (3), (6m) and (7) and s. 867.035 and s. HFS 108.02(11) and (12).
2. The process regarding the placement of a lien is spelled out in s. 49.496(2). There is a procedure that is different from other administrative hearings that needs to be followed. In the FC rules the lien process and hearing rights are spelled out in HFS s. 10.62(4). It provides that an enrollee's hearing rights regarding liens are provided in s. 49.496(2), Stats., and in ch. HA. This applies to both MA and non-MA enrollees.
3. The process regarding hardship waiver requests is also treated specifically in the rules. This applies to both MA and non-MA enrollees. There are specific rights and procedures regarding requests for hardship waivers that need to be followed. The rules state that the right to hardship waivers and hearings regarding hardship waivers are as provided in s. 49.496(6m), Stats., and s. HFS 108.02(12). See s. HFS 10.62(1) and (4).

A question is also raised regarding recovery of incorrect payments. The FC rules also address that question. In s. HFS 10.61 it states that incorrect payments are to be handled as provided in s. 49.497, Stats., and in s. HFS 108.03. That applies to both MA and non-MA enrollees and refers them to the same process as currently exists for all other MA programs.

The repeal of s. 46.287(2)(a)1.k., Stats., simply completes the directive in s. 46.286(7) to treat correctly and incorrectly

No, there is an exception in MA

paid FC in a manner that is substantially similar to applicable provisions in s. 49.496 and 49.497, State.

All rights are provided to both MA and non-MA enrollees but they are provided through the rules and through cross-references to currently existing provisions that are used to recover correctly and incorrectly paid MA.

For draft 0203/1, Family Care district:

The draft is fine. The department believes that, in view of quality assurance monitoring and contractual provisions for sanctions, that the draft adequately addresses potential conflicts of interest.

For draft 0205/1, Family Care miscellaneous changes:

I am waiting to get a response from the department and get a recommendation for the definition of a family member. I did like your suggestion for using the definition under s. 157.061(7) with possibly using the first degree of kinship, rather than the third degree.

I will be sending Steve Miller a request for an additional Family Care draft relating to home health agencies.

If you have any questions, please contact me at 266-2288.

DAK seems to be ok



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0202/P1
DAK:hmh&cjs:km

DOA:.....Fossum - Family care hearing rights

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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HEALTH AND HUMAN SERVICES

LONG-TERM CARE; FAMILY CARE

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