

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-SB55)**

Received: 06/21/2001

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus 7-4887

By/Representing: Hughes

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact: LFB  
LFB  
LFB

Addl. Drafters:

Subject: Public Assistance - med. assist.

Extra Copies:

~~MGD~~  
~~Flr~~  
~~PG~~  
~~DAK~~  
~~PG~~  
~~DAK~~  
~~DAK~~  
~~DAK~~  
~~PG~~  
~~ISR~~  
~~ISR~~  
ISR

Submit via email: NO

Requester's email:

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**Pre Topic:**

ARC:.....Hughes -

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**Topic:**

AM22--Provider fraud and abuse

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 06/22/2001	wjackson 06/23/2001		_____			
/1			jfrantze 06/23/2001	_____	lrb_docadmin 06/23/2001		
/2	kenneda 06/28/2001	wjackson 06/28/2001	rschluet 06/28/2001	_____	lrb_docadmin 06/28/2001		

FE Sent For:

<END>

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~~PG~~  
~~ISR~~  
~~ISR~~  
~~ISR~~

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Extra Copies: **ISR**

Submit via email: NO

Requester's email:

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**Pre Topic:**

ARC:.....Hughes -

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**Topic:**

AM22--Provider fraud and abuse - 019314

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**Instructions:**

See Attached

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1/?	kenneda	1 Wlj 6/23	J 6/23	J/Kg 6/23			

FE Sent For:

<END>

# Memorandum

H

**To:** Fred Ammerman – Fiscal Bureau  
Cathlene Hanaman – Reference Bureau

**CC:** Heather Smith – Assembly Republican Caucus

**From:** Paul Tessmer – Assembly Republican Caucus

**Date:** 06/21/01

**Re:** ARC Amendments – Passed 6-20-01

Please find enclosed copies of the budget amendments passed by the Assembly Republicans in Caucus on Tuesday, June 20, 2001. The amendments are provided in the following four areas:

- The Health Care Working Group Package. Associated freestanding amendments incorporated in this package are also provided. Contact Carolyn Hughes (ARC) at 7-4887.
- The Agriculture Working Group Package. Associated freestanding amendments incorporated in this package are also provided. Contact Mark Jefferson (ARC) at 7-0900.
- The Higher Education Working Group Package. Associated freestanding amendments incorporated in this package are also provided. Contact Jim Emerson (ARC) at 7-0904.
- Other Freestanding Amendments. Contact the ARC analyst listed on the amendment at 6-1452.

**NOTE:** The Working Group Package document takes precedence over its associated freestanding amendments. Please call the contact person listed above (or the ARC analyst listed on the amendment) for supporting documentation.

**Hard copies of the Working Group Packages are also being sent to your office. The hard copies may contain supporting documentation not included in the Word document.**

I am also available to help answer questions at 4-8587.

	<p>the general fund.</p> <p>JFC lapsed \$5,702,000.</p> <p>This motion lapses the remaining \$1.3 million.</p>	\$1.3 million GPR
MM	<p>4. Milwaukee Child Welfare (Paper 507, Alternative 3): Reduces funding in the bill by \$1.4 million GPR to provide a 100% increase to base funding for supplies and services.</p>	\$1.4 million GPR
AK	<p>5. Provider Fraud and Abuse (LFB Paper 478, Alternative 1): Governor's Recommended Statutory Changes-</p> <ul style="list-style-type: none"> <li>- Limit on the Number of Certified MA Providers</li> <li>- Recoveries and Opportunity for a Hearing</li> <li>- Fees for Repeat Offenders</li> <li>- Restriction on Provider's Participation</li> <li>- Require Surety Bond as a Condition of Certification</li> <li>- Certification of Overpayments to DOR</li> <li>- Transfer of Business Operations</li> <li>- DHFS Access to Provider Personnel and Records</li> <li>- DHFS Authority to Subpoena Providers</li> </ul> <p>Approve all of the Governor's recommended statutory changes and reduce MA benefits finding by \$86,600 GPR and \$120,900 FED in 2002-03 to reflect projected savings in MA benefit costs that would be realized with these changes.</p>	\$86,600 GPR
SZ	<p>6. Income Limit for Medically Needy Recipients (LFB Paper 481, Alternative 2): Deletes Alternative 2 and language related to income limit for medically needy recipients.</p>	\$500,000 GPR
AK	<p>7. Community Support Program: This county-administered program provides community-based, individualized services, including coordinated care, treatment, rehabilitation and support services, to adults with severe and persistent mental illness. Currently, there are 112 community support programs in Wisconsin, of which 82 are MA certified. Deletes JFC provision, Page 445.</p>	\$2 million GPR
AK	<p>8. Substance Abuse Service Grants: Remove \$2 million from Joint Finance budget to the Substance Abuse Services Grants. (LFB Summary Page 445, #7)</p>	\$2 million GPR
SR	<p>9. Asset Limit for Low-Income Families: Remove JFC language eliminating the MA Asset Limit for Low Income Families (LFB pg. 393, #13)</p>	\$736,000 GPR
JK	<p>10. Percentage-Expressed Child Support Orders: Include LRBs0112/3 relating to Percentage-Expressed Child Support Orders and change language to appropriate \$1 million GPR for this provision. <i>Without this provision, Wisconsin will continue to lose federal performance incentive money.</i></p>	(\$1 million GPR)
MM	<p>11. Child Care Resource and Referral Agencies: Restore \$400,000 per year to the Child Care Resource and Referral Agencies in order to bring spending back to base. (99-00 base with a \$55,000 per year increase)</p>	(\$800,000 GPR)
AK	<p>12. Provide \$200,000 in 2002-2003 for enhanced care for people with AIDS Allocate these dollars to the Life Care Services Grant within DHFS</p>	(\$200,000 GPR)

2001

Date (time)  
needed

Soon - credit 6/22

LRB b 1385/1

**ARC CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

DAK : Wlj :

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

IS NOTE

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

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

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

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

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

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

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

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



AMENDMENTS

LRB \_\_\_\_\_ / \_\_\_\_\_

\$\$\$ INCREASE/DECREASE

In the component bar, for a "regular" amendment item:

For the item text, execute: ..... create -> item: -> m: -> \$inc-dec

#. Page 208, line 6...: in(de)crease the dollar amount for fiscal year 2001-02 by \$ 2,222,222,222 and in(de)crease the dollar amount for fiscal year 2002-03 by \$ 86,600. to increase funding for the purpose [purposes] for which the appropriation is made to decrease funding for medical assistance program benefits

#. Page ..., line ...: in(de)crease the dollar amount for fiscal year 2001-02 by \$ ..., ..., and in(de)crease the dollar amount for fiscal year 2002-03 by \$ ..., ..., [to ...crease funding for the [purpose] [purposes] for which the appropriation is made] [to ...crease funding for ... ]\*

In the component bar, for a "frozen" amendment item (used in amendments to amendments):

For the item text, execute: ..... create -> item: -> afterline [or the applicable item] For the "frozen" item text, execute: create -> item: -> frz: -> m: -> \$inc-dec

#. Page ..., line ...: ..... Page ..., line ...: in(de)crease the dollar amount for fiscal year 2001-02 by \$ ..., ..., and in(de)crease the dollar amount for fiscal year 2002-03 by \$ ..., ..., [to ...crease funding for the [purpose] [purposes] for which the appropriation is made] [to ...crease funding for ... ]\*

\* Use the 2nd alternative if the purpose of the increase or decrease is more limited than the purpose or purposes of the appropriation as currently shown in the text of ch. 20, stats.

2001

LRB \_\_\_\_\_ / \_\_\_\_\_

File With Statute **20.005 (3)** Schedule

\$\$\$ SCHEDULE

In the component bar:

For the action phrase, execute: ..... create → action: → ch20

For the table layout, execute: ..... create → <Table> → \$sched

# : Page 209, line 3: after that line insert :

**SECTION #.** 20.005 (3) (schedule) of the statutes: at the appropriate place,

insert the following amounts for the purposes indicated:

2001-02      2002-03

20. \_\_\_\_\_ .....

.....

( ) .....

.....

" (iL) Medical assistance

Provider

fees

PR C ..... -0- ..... -0- ....."

20. \_\_\_\_\_ .....

.....

( ) .....

.....

( ) .....

.....

.....

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.

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

# Page 358, line 18: after that line insert <sup>7</sup>

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). <sup>10</sup>

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

# Page 621, line 12: after that line insert <sup>10</sup>

5 SECTION 2. 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10. a. and  
6 amended to read: <sup>1750d</sup>

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. <sup>1750f</sup> 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  
1750h

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.

1750j ⑥

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 4.** 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.

1750p (b)

11 SECTION 4. 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.

1750r (b)

17 SECTION 4. 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. <sup>(1750 E 6)</sup> 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~~ 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.

1750v (b)

10 SECTION ~~18.~~ 49.45 (3) (h) 1. of the statutes is repealed.

1750x (b)

11 SECTION ~~19.~~ 49.45 (3) (h) 2. of the statutes is repealed.

1750z (b)

12 SECTION ~~19.~~ 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 ✓ # . Page 628, line 21: after that line insert ✓  
 SECTION ~~14.~~ 49.45 (21) (title) of the statutes is amended to read:

1786g (b)

1           49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR TAKING OVER PROVIDER'S~~  
2           ~~OPERATION; REPAYMENTS REQUIRED.~~ (1786h (b))

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. (1786i (b))

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 ~~18~~ 49.45 (21) (b) of the statutes is amended to read: 1786j (B)

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.~~ V

19           # . Page 648, line 12 ; after that line insert V  
20           SECTION ~~18~~ 49.85 (2) (a) of the statutes is amended to read: 1838w (B)

21           49.85 (2) (a) At least annually, the department of health and family services  
22 shall certify to the department of revenue the amounts that, based on the  
23 notifications received under sub. (1) and on other information received by the  
24 department of health and family services, the department of health and family  
25 services has determined that it may recover under s. 49.45 (2) (a) 10. or 49.497, except  
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. ✓

# . Page 648, line 21: after that line insert:  
 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. ✓

# . Page 653, line 10: after that line insert:  
 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). ✓  
 # . Page 831, line 23: after that line insert:  
 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. ✓

# Page 1399, line 20: after that line insert:

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

1  
2 <sup>18k</sup> (2) 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 <sup>18m</sup> (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 <sup>18n</sup> (2) 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. <sup>18o</sup>

13

(END)

D-NOTE

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

LRBb1385/3dn

DAK: /:....

Wlj

Under s. 49.45 (2) (b) 9., DHFS is permitted to charge a fee, after reasonable notice and opportunity for a hearing, to a provider "that repeatedly has been subject to recoveries under [s. 49.45 (2) (a) 10. a.] 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 be no more than \$1,000 or 200% of the amount of any such repeated recovery made, whichever is greater. The fee is to be used to defray in part the costs of audits and investigations by DHFS of medical assistance provider overpayments. This "fee" looks very much like a forfeiture; I can find no other instance in the statutes in which the imposition of a fee that is not related to licensure is subject to a hearing. The fee is not in a set amount, nor does it have restrictions, such as "reasonable expenses of the department." There is, in fact, no express linkage between the amount of the fee and any costs of DHFS of investigation, audit, etc. Its purpose, therefore, appears to be punitive only. Whether, if the statute were challenged, a court would decide that it is a forfeiture masquerading as a fee is at least a possibility (moneys from forfeitures are required, under Article X, Section 2 of the Wisconsin Constitution, to be deposited in the school fund).

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

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

LRBb1385/1dn  
DAK:wlj:jf

June 23, 2001

Under s. 49.45 (2) (b) 9., DHFS is permitted to charge a fee, after reasonable notice and opportunity for a hearing, to a provider "that repeatedly has been subject to recoveries under [s. 49.45 (2) (a) 10. a.] 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 be no more than \$1,000 or 200% of the amount of any such repeated recovery made, whichever is greater. The fee is to be used to defray in part the costs of audits and investigations by DHFS of medical assistance provider overpayments. This "fee" looks very much like a forfeiture; I can find no other instance in the statutes in which the imposition of a fee that is not related to licensure is subject to a hearing. The fee is not in a set amount, nor does it have restrictions, such as "reasonable expenses of the department." There is, in fact, no express linkage between the amount of the fee and any costs of DHFS of investigation, audit, etc. Its purpose, therefore, appears to be punitive only. Whether, if the statute were challenged, a court would decide that it is a forfeiture masquerading as a fee is at least a possibility (moneys from forfeitures are required, under article X, section 2, of the Wisconsin Constitution, to be deposited in the school fund).

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



## Kennedy, Debora

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**From:** Hughes, Carolyn  
**Sent:** Thursday, June 28, 2001 9:06 AM  
**To:** Kennedy, Debora  
**Subject:** FW: drafter's note

Just passing on these comments...

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

**From:** Kussow, Matt  
**Sent:** Thursday, June 28, 2001 8:31 AM  
**To:** Hughes, Carolyn  
**Subject:** FW: drafter's note

This is re: fraud and abuse language. DHFS says it is fine but you may want to forward the note to the drafter.

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

**From:** Kiesow, John  
**Sent:** Tuesday, June 26, 2001 4:01 PM  
**To:** Kussow, Matt  
**Subject:** Fwd: drafter's note



MA fraud legn fee  
dn.doc

Matt, we don't think there is a problem. See Attached.

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

**Date:** 06/26/2001 03:30 pm -0500 (Tuesday)  
**From:** Neil Gebhart  
**To:** Kiesow, John  
**Subject:** drafter's note

I'm attaching a draft response to the drafter's note that calls into question the use of fees for cost of enforcement rather than depositing them in the school fund.

Please let me know if you have any questions or would like to see any changes.

## **RESPONSE TO DRAFTER'S NOTE ON REPEATED RECOVERY FEE**

The section in question provides:

After providing reasonable notice and opportunity for a hearing, [the department may] charge a fee to a provider that repeatedly has been subject to recoveries ... because of the provider's failure to follow identical or similar billing procedures or to follow other identical or similar program requirements. The fee shall be used to defray in part the costs of audits and investigations by the department ... The department shall credit all fees received under this subdivision to the appropriation account under s. 20.435(4)(iL).

Proposed s. 49.45(2)(b)9., Stats.

The drafter's note states:

... This "fee" looks very much like a forfeiture; I can find no other instance in the statutes in which the imposition of a fee that is not related to licensure is subject to a hearing. The fee is not in a set amount, nor does it have restrictions, such as "reasonable expenses of the department." There is, in fact, no express linkage between the amount of the fee and any costs of DHFS of investigation, audit, etc. Its purpose, therefore, appears to be punitive only. Whether, if the statute were challenged, a court would decide that it is a forfeiture masquerading as a fee is at least a possibility (moneys from forfeitures are required, under article X, section 2, of the Wisconsin Constitution, to be deposited in the school fund).

The referenced section of the Wisconsin constitution provides in part as follows:

School fund created; income applied. The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes ... and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws ... shall be set apart as a separate fund to be called "the school fund," ...

Wis. Const. Art. X, s. 2.

The statutes provide for literally dozens of different varieties of "surcharges" and "assessments" that are imposed in connection with various types of enforcement actions.<sup>1</sup>

---

<sup>1</sup> Examples include: s. 757.05, penalty assessment surcharge; s. 165.755, crime laboratories and drug law enforcement assessment; s. 167.31 (5), weapons assessment; s. 973.045, crime victim and witness assistance surcharge; s. 938.34 (8d), delinquency victim and witness assistance surcharge; s. 973.046, deoxyribonucleic acid analysis surcharge; s. 961.41 (5), drug abuse program improvement surcharge; s. 100.261, consumer information assessment; s. 971.37 (1m) (c) 1. or s. 973.055 (1), domestic abuse assessment; s. 253.06 (4) (c), WIC enforcement assessment; ss. 346.177, 346.495 and 346.65 (4r), railroad crossing improvement assessment; s. 346.655 (2) (a) and (b), driver improvement surcharge; s. 102.85 (4),

The proceeds of these "surcharges" and "assessments" are not deposited in the school fund. Rather, they are used to help pay the costs of the applicable enforcement mechanism, and in some cases certain costs of programs for victims of the type of wrongdoing for which the particular surcharge or assessment is imposed. Many of these "surcharges" and "assessments" are imposed only in connection with statutory fines or forfeitures. There is seldom any "express linkage" between the statutorily-mandated amount of these charges and the enforcement costs they are used to defray. Nevertheless, none of these statutory charges has been determined to be a "forfeiture masquerading" as an assessment or surcharge for purposes of the constitutional school fund provision. The use of the term "fcc" should not make any difference in this result, but if the drafter feels that the term "assessment" is preferable, that term could be substituted.

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uninsured employer assessment; s. 299.93, environmental assessment; s. 29.983, wild animal protection assessment; s. 29.987, natural resources assessment surcharge; s. 29.985, fishing shelter removal assessment; s. 350.115, snowmobile registration restitution payment; s. 29.989, natural resources restitution payments.



TODAY  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBb1385/2  
DAK:wlj#

D-NOTE

ARC:.....Hughes - AM22—Provider fraud and abuse

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

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

2 1. Page 208, line 6: decrease the dollar amount for fiscal year 2002-03 by  
3 \$86,600 to decrease funding for medical assistance program benefits.

4 2. Page 209, line 3: after that line insert:

assessments

5 “(iL) Medical assistance provider ~~fees~~ PR C -0- -0-”.

6 3. Page 358, line 18: after that line insert:

I assessments

7 “SECTION 709j. 20.435 (4) (iL) of the statutes is created to read:

8 20.435 (4) (iL) *Medical assistance provider ~~fees~~*. All moneys received from ~~fees~~  
9 charged under s. 49.45 (2) (b) 9., for performance by the department of audits and  
10 investigations under s. 49.45 (3) (g).”

assessments

1           **4.** Page 621, line 12: after that line insert:

2           “**SECTION 1750d.** 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10.

3           a. and amended to read:

4           49.45 (2) (a) 10. a. After reasonable notice and opportunity for hearing the  
5           provider to present information and argument to department staff, recover money  
6           improperly or erroneously paid, or overpayments to a provider either by offsetting  
7           or adjusting amounts owed the provider under the program, crediting against a  
8           provider’s future claims for reimbursement for other services or items furnished by  
9           the provider under the program, or ~~by~~ requiring the provider to make direct payment  
10          to the department or its fiscal intermediary.

11          **SECTION 1750f.** 49.45 (2) (a) 10. b. of the statutes is created to read:

12          49.45 (2) (a) 10. b. Establish a deadline for payment of a recovery imposed  
13          under this subdivision and, if a provider fails to pay all of the amount to be recovered  
14          by the deadline, require payment, by the provider, of interest on any delinquent  
15          amount at the rate of 1% per month or fraction of a month from the date of the  
16          overpayment.

17          **SECTION 1750h.** 49.45 (2) (a) 11. of the statutes is amended to read:

18          49.45 (2) (a) 11. Establish criteria for the certification of eligible providers of  
19          ~~services under Title XIX of the social security act~~ medical assistance and, except as  
20          provided in par. (b) 6m. and s. 49.48, and subject to par. (b) 7. and 8., certify such  
21          eligible providers who meet the criteria.

22          **SECTION 1750j.** 49.45 (2) (a) 12. of the statutes is amended to read:

23          49.45 (2) (a) 12. ~~Decertify or suspend under this subdivision a provider from~~  
24          or restrict a provider’s participation in the medical assistance program, if after

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

14 **SECTION 1750L.** 49.45 (2) (b) 6m. of the statutes is created to read:

15 49.45 (2) (b) 6m. Limit the number of providers of particular services that may  
16 be certified under par. (a) 11. or the amount of resources, including employees and  
17 equipment, that a certified provider may use to provide particular services to medical  
18 assistance recipients, if the department finds all of the following:

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

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

24 **SECTION 1750n.** 49.45 (2) (b) 7. of the statutes is created to read:

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

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

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

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

21           **SECTION 1750p.** 49.45 (2) (b) 8. of the statutes is created to read:

22           49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
23 (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
24 of the provider, regardless of whether the person is currently certified. The

1 department may withhold the certification required under this subdivision until any  
2 outstanding repayment under sub. (21) is made.

3 **SECTION 1750r.** 49.45 (2) (b) 9. of the statutes is created to read:

4 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
5 charge ~~a fee~~ to a provider that repeatedly has been subject to recoveries under par.  
6 (a) 10. a. because of the provider's failure to follow identical or similar billing  
7 procedures or to follow other identical or similar program requirements. The ~~fee~~  
8 shall be used to defray in part the costs of audits and investigations by the  
9 department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount of  
10 any such repeated recovery made, whichever is greater. The provider shall pay the  
11 ~~fee~~ to the department within 10 days after receipt of notice of the ~~fee~~ or the final  
12 decision after administrative hearing, whichever is later. The department may  
13 recover any part of ~~a fee~~ not timely paid by offsetting the ~~fee~~ against any medical  
14 assistance payment owed to the provider and may refer any such unpaid ~~fees~~ not  
15 collected in this manner to the attorney general, who may proceed with collection  
16 under this subdivision. Failure to timely pay in any manner ~~a fee~~ charged under this  
17 subdivision, other than ~~a fee~~ that is offset against any medical assistance payment  
18 owed to the provider, is grounds for decertification under subd. 12. A provider's  
19 payment of ~~a fee~~ does not relieve the provider of any other legal liability incurred in  
20 connection with the recovery for which the ~~fee~~ is charged, but is not evidence of  
21 violation of a statute or rule. The department shall credit all ~~fees~~ received under this  
22 subdivision to the appropriation account under s. 20.435 (4) (iL).

23 **SECTION 1750t.** 49.45 (3) (g) of the statutes is amended to read:

24 49.45 (3) (g) The secretary may ~~appoint~~ authorize personnel to audit or  
25 investigate and report to the department on any matter involving violations or

an assessment

assessment

an assessment

assessments

assessments



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

21 **SECTION 1750v.** 49.45 (3) (h) 1. of the statutes is repealed.

22 **SECTION 1750x.** 49.45 (3) (h) 2. of the statutes is repealed.

23 **SECTION 1750z.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
24 amended to read:

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

11           **5.** Page 628, line 21: after that line insert:

12           “**SECTION 1786g.** 49.45 (21) (title) of the statutes is amended to read:

13           49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
14 OPERATION; REPAYMENTS REQUIRED.

15           **SECTION 1786h.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
16 amended to read:

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

1 the provider or the person that intends to take over the operation of the provider as  
2 to whether the provider is liable under this paragraph.

3 **SECTION 1786i.** 49.45 (21) (ag) of the statutes is created to read:

4 49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
5 respect to an aspect of a provider’s business for which the provider has filed claims  
6 for medical assistance reimbursement, any of the following:

7 1. Ownership of the provider’s business or all or substantially all of the assets  
8 of the business.

9 2. Majority control over decisions.

10 3. The right to any profits or income.

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

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

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

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

20 **SECTION 1786j.** 49.45 (21) (b) of the statutes is amended to read:

21 49.45 (21) (b) ~~If a transfer occurs~~ If, notwithstanding the prohibition under par.  
22 (ar), a person takes over the operation of a provider and the applicable amount under  
23 par. (a) (ar) has not been repaid, the department may, in addition to withholding  
24 certification as authorized under sub. (2) (b) 8., proceed against either the transferor  
25 or the transferee the provider or the person. Within 30 days after receiving the

1 ~~certified provider receives~~ notice from the department, the ~~transferor or the~~  
2 ~~transferee shall pay the amount~~ shall be repaid in full. ~~Upon failure to comply~~ If the  
3 amount is not repaid in full, the department may bring an action to compel payment.  
4 ~~If a transferor fails to pay within 90 days after receiving notice from the department,~~  
5 ~~the department, may proceed under sub. (2) (a) 12., or may do both."~~

6 **6.** Page 648, line 12: after that line insert:

7 "SECTION 1838w. 49.85 (2) (a) of the statutes is amended to read:

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

16 **7.** Page 648, line 21: after that line insert:

17 "SECTION 1840e. 49.85 (3) (a) 1. of the statutes is amended to read:

18 49.85 (3) (a) 1. Inform the person that the department of health and family  
19 services intends to certify to the department of revenue an amount that the  
20 department of health and family services has determined to be due under s. 49.45  
21 (2) (a) 10, or 49.497, for setoff from any state tax refund that may be due the person."

22 **8.** Page 653, line 10: after that line insert:

23 "SECTION 1877p. 50.03 (13) (a) of the statutes is amended to read:

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

14           **9.** Page 831, line 23: after that line insert:

15           “**SECTION 2200b.** 71.93 (1) (a) 3. of the statutes is amended to read:

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

19           **10.** Page 1399, line 20: after that line insert:

20           “(18k) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment  
21 of sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), and (b), and 50.03 (13) (a) of the  
22 statutes first applies to sales or other transfers completed on the effective date of this  
23 subsection.

ASSESSMENT

1

(18m) ~~RE~~ FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE.

2

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

4

5

(18n) DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE. The

6

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."

7

8

9

(END)

D-NOTE

D-NOTE

This redraft changes the term "fee" to  
"assessment". This has been okayed by R. J. Perlot.

DAK

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

LRBb1385/2dn  
DAK:wlj:rs

June 28, 2001

This redraft changes the term "fee" to "assessment." This has been okayed by R. J. Perlot.

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ARC:.....Hughes - AM22—Provider fraud and abuse

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS ASSEMBLY AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2001 SENATE BILL 55**

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

2 **1.** Page 208, line 6: decrease the dollar amount for fiscal year 2002-03 by  
3 \$86,600 to decrease funding for medical assistance program benefits.

4 **2.** Page 209, line 3: after that line insert:

5 “(iL) Medical assistance provider

6 assessments PR C -0- -0-”.

7 **3.** Page 358, line 18: after that line insert:

8 “SECTION 709j. 20.435 (4) (iL) of the statutes is created to read:

1           20.435 (4) (iL) *Medical assistance provider assessments*. All moneys received  
2 from assessments charged under s. 49.45 (2) (b) 9., for performance by the  
3 department of audits and investigations under s. 49.45 (3) (g).”

4           **4.** Page 621, line 12: after that line insert:

5           “**SECTION 1750d.** 49.45 (2) (a) 10. of the statutes is renumbered 49.45 (2) (a) 10.  
6 a. and 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 1750f.** 49.45 (2) (a) 10. b. of the statutes is created to read:

15           49.45 (2) (a) 10. b. Establish a deadline for payment of a recovery imposed  
16 under this subdivision and, if a provider fails to pay all of the amount to be recovered  
17 by the deadline, require payment, by the provider, of interest on any delinquent  
18 amount at the rate of 1% per month or fraction of a month from the date of the  
19 overpayment.

20           **SECTION 1750h.** 49.45 (2) (a) 11. of the statutes is amended to read:

21           49.45 (2) (a) 11. Establish criteria for ~~the~~ certification of eligible providers of  
22 ~~services under Title XIX of the social security act~~ medical assistance and, except as  
23 provided in par. (b) 6m. and s. 49.48, and subject to par. (b) 7. and 8., certify such  
24 eligible providers who meet the criteria.

1           **SECTION 1750j.** 49.45 (2) (a) 12. of the statutes is amended to read:

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

17          **SECTION 1750L.** 49.45 (2) (b) 6m. of the statutes is created to read:

18          49.45 (2) (b) 6m. Limit the number of providers of particular services that may  
19          be certified under par. (a) 11. or the amount of resources, including employees and  
20          equipment, that a certified provider may use to provide particular services to medical  
21          assistance recipients, if the department finds all of the following:

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

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

3           **SECTION 1750n.** 49.45 (2) (b) 7. of the statutes is created to read:

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

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

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

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

24           **SECTION 1750p.** 49.45 (2) (b) 8. of the statutes is created to read:

1           49.45 (2) (b) 8. Require a person who takes over the operation, as defined in sub.  
2           (21) (ag), of a provider, to first obtain certification under par. (a) 11. for the operation  
3           of the provider, regardless of whether the person is currently certified. The  
4           department may withhold the certification required under this subdivision until any  
5           outstanding repayment under sub. (21) is made.

6           **SECTION 1750r.** 49.45 (2) (b) 9. of the statutes is created to read:

7           49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
8           charge an assessment to a provider that repeatedly has been subject to recoveries  
9           under par. (a) 10. a. because of the provider's failure to follow identical or similar  
10          billing procedures or to follow other identical or similar program requirements. The  
11          assessment shall be used to defray in part the costs of audits and investigations by  
12          the department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount  
13          of any such repeated recovery made, whichever is greater. The provider shall pay the  
14          assessment to the department within 10 days after receipt of notice of the assessment  
15          or the final decision after administrative hearing, whichever is later. The  
16          department may recover any part of an assessment not timely paid by offsetting the  
17          assessment against any medical assistance payment owed to the provider and may  
18          refer any such unpaid assessments not collected in this manner to the attorney  
19          general, who may proceed with collection under this subdivision. Failure to timely  
20          pay in any manner an assessment charged under this subdivision, other than an  
21          assessment that is offset against any medical assistance payment owed to the  
22          provider, is grounds for decertification under subd. 12. A provider's payment of an  
23          assessment does not relieve the provider of any other legal liability incurred in  
24          connection with the recovery for which the assessment is charged, but is not evidence

1 of violation of a statute or rule. The department shall credit all assessments received  
2 under this subdivision to the appropriation account under s. 20.435 (4) (iL).

3 **SECTION 1750t.** 49.45 (3) (g) of the statutes is amended to read:

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

1           **SECTION 1750v.** 49.45 (3) (h) 1. of the statutes is repealed.

2           **SECTION 1750x.** 49.45 (3) (h) 2. of the statutes is repealed.

3           **SECTION 1750z.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) and  
4 amended to read:

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

15           **5.** Page 628, line 21: after that line insert:

16           “**SECTION 1786g.** 49.45 (21) (title) of the statutes is amended to read:

17           49.45 (21) (title) ~~TRANSFER OF BUSINESS, LIABILITY FOR~~ TAKING OVER PROVIDER'S  
18 OPERATION; REPAYMENTS REQUIRED.

19           **SECTION 1786h.** 49.45 (21) (a) of the statutes is renumbered 49.45 (21) (ar) and  
20 amended to read:

21           49.45 (21) (ar) ~~If any provider~~ Before a person may take over the operation of  
22 a provider that is liable for repayment of improper or erroneous payments or  
23 overpayments under ss. 49.43 to 49.497 ~~sells or otherwise transfers ownership of his~~  
24 ~~or her business or all or substantially all of the assets of the business, the transferor~~

1 ~~and transferee are each liable for the repayment. Prior to final transfer, the~~  
2 ~~transferee is responsible for contacting the department and ascertaining if the~~  
3 ~~transferor, full repayment shall be made. Upon request, the department shall notify~~  
4 ~~the provider or the person that intends to take over the operation of the provider as~~  
5 ~~to whether the provider is liable under this paragraph.~~

6 **SECTION 1786i.** 49.45 (21) (ag) of the statutes is created to read:

7 49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
8 respect to an aspect of a provider’s business for which the provider has filed claims  
9 for medical assistance reimbursement, any of the following:

10 1. Ownership of the provider’s business or all or substantially all of the assets  
11 of the business.

12 2. Majority control over decisions.

13 3. The right to any profits or income.

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

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

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

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

23 **SECTION 1786j.** 49.45 (21) (b) of the statutes is amended to read:

24 49.45 (21) (b) ~~If a transfer occurs~~ If, notwithstanding the prohibition under par.  
25 (ar), a person takes over the operation of a provider and the applicable amount under



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

9 **6.** Page 648, line 12: after that line insert:

10 “SECTION 1838w. 49.85 (2) (a) of the statutes is amended to read:

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

19 **7.** Page 648, line 21: after that line insert:

20 “SECTION 1840e. 49.85 (3) (a) 1. of the statutes is amended to read:

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

1           **8.** Page 653, line 10: after that line insert:

2           “**SECTION 1877p.** 50.03 (13) (a) of the statutes is amended to read:

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

16           **9.** Page 831, line 23: after that line insert:

17           “**SECTION 2200b.** 71.93 (1) (a) 3. of the statutes is amended to read:

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

21           **10.** Page 1399, line 20: after that line insert:

22           “(18k) **TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER.** The treatment  
23 of 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 (18m) ASSESSMENT FOR CERTAIN RECOVERIES AGAINST PROVIDERS OF MEDICAL  
4 ASSISTANCE. The treatment of section 49.45 (2) (b) 9. of the statutes first applies to  
5 repeated recoveries from the identical provider that are made on the effective date  
6 of this subsection.

7 (18n) DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE. The  
8 treatment of section 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)