

**2001 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB55)**

Received: 07/09/2001

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 266-8017**

By/Representing: **Carabell**

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

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies: **ISR**

Submit via email: **NO**

Requester's email:

**Pre Topic:**

LFB:.....Carabell -

**Topic:**

MA provider fraud and abuse

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 07/13/2001	wjackson 07/13/2001		_____			
/1			pgreensl 07/13/2001	_____	gretskl 07/13/2001		

FE Sent For:

<END>

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17	kenneda	(1 WJ 7/13	7/13 PS	7/13 PS			

FE Sent For:

&lt;END&gt;

7/9 From Rachel Carabell

Make sure that DAPS can't implement the requirements without first promulgating rules.

2001

Date (time) needed soon - credit 7/13

LRB b 2027 / 1

**BUDGET AMENDMENT**

DAK : Wlj : \_\_\_\_\_

D-NOTE

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

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

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

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

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

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

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

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

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

~~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:

RESTORE TO  
PLAIN TEXT

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.

renumbered 49.45 (2) (a) 11. a.  
and

INSERT 2-19

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

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

INSERT 2-24

renumbered 49.45(2)(a) 12. a. and

Please fix comp.

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

2 49.45 (2) (a) 12. <sup>a.</sup> 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.

INSERT 3-16

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 ~~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; and if the department finds



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

INSERT  
4-2

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 <sup>to implement</sup> 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~~ 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. INSERT 5-5

~~INSERT 5-5~~

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

7 49.45 (2) (b) 9. ~~After~~ 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

INSERT 6-2

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).

INSERT 6-2

re-numbered 49.45 (3)  
(g) 1. and

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

LPS:  
Please  
fix com.

4 49.45 (3) (g) <sup>(1.)</sup> 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.

INSERT 6-25

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) <sup>lm.</sup> 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).

INSER 7-14

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.~~ ~~///~~

INSERT 9-8

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

and (e)

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

3 (18m) ASSESSMENT FOR ~~RECOVERIES~~ <sup>(6)</sup> 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. *repealing and amendment*

7 (18n) DECERTIFICATION OR SUSPENSION OF PROVIDERS OF MEDICAL ASSISTANCE. The  
8 ~~treatment~~ of section 49.45 (2) (a) 12. of the statutes first <sup>apply</sup> applies to violations of  
9 federal statutes or regulations or state statutes or rules committed on the effective  
10 date of this subsection.     

INSERT 11-10

11

(END)

*and the creation of  
section 49.45 (2) (a)  
12.b. ✓ of the statutes*

D-NOTE

1 **INSERT 2-19**

2 **SECTION 1750g.** 49.45 (2) (a) 10. c. of the statutes is created to read:  
3 49.45 (2) (a) 10. c. ~~The department shall~~ <sup>7</sup> promulgate rules to implement this  
4 subdivision. ✓

5 **INSERT 2-24**

6 **SECTION 1750i.** 49.45 (2) (a) 11. b. ✓ of the statutes is created to read:  
7 49.45 (2) (a) 11. b. ~~The department shall~~ <sup>7</sup> promulgate rules to implement this  
8 subdivision. ✓

9 **INSERT 3-16**

10 **SECTION 1750k.** 49.45 (2) (a) 12. b. of the statutes is created to read:  
11 49.45 (2) (a) 12. b. ~~The department shall~~ <sup>7</sup> promulgate rules to implement this  
12 subdivision. ✓

13 **INSERT 4-2** ✓

14 ~~No~~ ~~11.~~ *Restored to plain* ~~The department shall~~ promulgate rules to implement this subdivision.

15 **INSERT 5-5**

16 ~~No~~ ~~11.~~ ~~The department shall~~ promulgate rules to implement this subdivision.

17 **INSERT 6-2**

18 ~~No~~ ~~11.~~ ~~The department shall~~ promulgate rules to implement this subdivision.

19 **INSERT 6-25**

20 **SECTION 1750td.** 49.45 (3) (g) 2. ✓ of the statutes is created to read:  
21 49.45 (3) (g) 2. The department shall promulgate rules to implement this  
22 paragraph. ✓

23 **INSERT 7-14**



1 SECTION 1750zb. 49.45 (3) (h) 1n. of the statutes is created to read:

2 49.45 (3) (h) 1n. The department shall promulgate rules to implement this  
3 paragraph. ”

4 INSERT 9-8

5 SECTION 1786k. 49.45 (21) (e) of the statutes is created to read:

6 49.45 (21) (e) The department shall promulgate rules to implement this  
7 subsection.”

8 INSERT 10-20

9 # 11. Page 1338, line 20: after that line insert:

10 NONSTATS  
SUB

# 11  
15K

11 “(11) MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE; RULES. The department of  
12 health and family services shall submit in proposed form the rules required under  
13 sections 49.45 (2) (a) 10. c., 11. b., and 12. b. (b) 6m., 7., 8., and 9., (3) (g) 2. and  
14 (h) 1n., and (21) (e) of the statutes, as created by this act, to the legislative council  
15 staff under section 227.15 (1) of the statutes no later than the first day of the 10th  
16 month beginning after the effective date of this subsection.”

17 INSERT 11-10

18 (18p) CERTIFICATION OF PROVIDERS OF MEDICAL ASSISTANCE. The renumbering and  
19 amendment of section 49.45 (2) (a) 11. of the statutes and the creation of section 49.45  
20 (2) (a) 11. b. and (b) 7. of the statutes first apply to applications for certification  
received on the effective date of this subsection.

21 (18pk) RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The treatment of  
22 sections 49.85 (2) (a) and (3) (a) 1. and 71.93 (1) (a) 3. of the statutes, the  
23 renumbering and amendment of section 49.45 (2) (a) 10. of the statutes, and the

1 creation of section 49.45 (2) (a) 10. b. and c. of the statutes first apply to recoveries  
2 imposed on the effective date of this subsection.

3 (18<sup>pm</sup>) AUDITS AND ACCESS TO RECORDS OF PROVIDERS OF MEDICAL ASSISTANCE. The  
4 repeal of section 49.45 (3) (h) 1. and 2. of the statutes, the renumbering and  
5 amendment of section 49.45 (3) (g) and (h) 3. of the statutes, and the creation of  
6 section 49.45 (3) (g) 2. and (h) 1n. of the statutes first apply to audits or investigations  
7 performed on or access requested on the effective date of this subsection.

8 (18<sup>pn</sup>) LIMIT ON NUMBER OF CERTIFIED MEDICAL ASSISTANCE PROVIDERS. The  
9 treatment of sections 49.45 (2) (b) 6m. of the statutes first applies to certifications  
10 made on the effective date of this subsection.”

20.435 (4) (i L)

NONSTRES  
SUB

2. Page 1420, line 19: after that line insert:

12 (18<sup>18k</sup>) MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE. The treatment of sections  
13 49.45 (21) (title) and (b), 49.85 (2) (a) and (3) (a) 1., 50.03 13) (a), and 71.93 (1) (a) 3.  
14 of the statutes, the repeal of section 49.45 (3) (h) 1. and 2. of the statutes, the  
15 renumbering and amendment of section 49.45 (2) (a) 10., 11., and 12., (3) (g) and (h)  
16 3., and (21) (a) of the statutes, and the creation of section 49.45 (2) (a) 10. b. and c.,  
17 11. b., and 12. b. and (b) 6m., 7., 8., and 9., (3) (g) 2. and (h) 1n., (21) (ag) and (e) of  
18 the statutes and the creation of SECTION 9323 (18<sup>pk</sup>k), (18<sup>pk</sup>m), (18<sup>pk</sup>n), (18<sup>pk</sup>p), (18<sup>pk</sup>q),  
19 (18<sup>pm</sup>r), and (18<sup>pn</sup>s) of this act take effect on January 1, 2003.”

Please fix font

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

LRBb2027/?dn

.....  
DAK: WLJ :

To Rachel Carabell:

<sup>9</sup>  
\* In order to carry out the Committee's intent, I have in this amendment created, for each  
\* requirement, a provision that requires rulemaking by DHFS in order to implement the  
requirement (see, for example, the creation of s. 49.45 (2) (a) 11. b.); I then have  
required that DHFS submit these required rules as proposed rules to the Legislative  
Council staff by the first day of the <sup>tenth</sup> (10th) month beginning after the effective date of the  
budget bill. I have created initial applicability sections for all of the requirements that  
are keyed to the effective date of the requirements. Lastly, I have made all of the  
requirements effective on January 1, 2003, which is my best guess as to how long it will  
\* take DHFS to complete the rulemaking process. This is the best way I know to avoid  
a potentially unconstitutional delegation of legislative authority and yet force DHFS  
to promulgate rules before implementing the requirements; it is also standard drafting  
procedure in such a circumstance.

It has been unnecessary in this amendment to promulgate rules to implement s.  
20.435 (4) (iL), 49.85 (2) (a) or (3) (a) 1., 50.03 (13) (a), or 71.93 (1) (a) 3., stats., because  
these provisions merely reflect cross-reference changes, but I gave the delayed  
effective date to all of these treated statutes.

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

LRBb2027/1dn  
DAK:wlj:pg

July 13, 2001

To Rachel Carabell:

To carry out the Committee's intent, I have in this amendment created, for each requirement, a provision that requires rule making by DHFS in order to implement the requirement (see, for example, the creation of s. 49.45 (2) (a) 11. b.); I then have required that DHFS submit these required rules as proposed rules to the Legislative Council staff by the first day of the tenth month beginning after the effective date of the budget bill. I have created initial applicability sections for all of the requirements that are keyed to the effective date of the requirements. Lastly, I have made all of the requirements effective on January 1, 2003, which is my best guess as to how long it will take DHFS to complete the rule-making process. This is the best way I know to avoid a potentially unconstitutional delegation of legislative authority and yet force DHFS to promulgate rules before implementing the requirements; it is also standard drafting procedure in such a circumstance.

It has been unnecessary in this amendment to promulgate rules to implement s. 20.435 (4) (iL), 49.85 (2) (a) or (3) (a) 1., 50.03 (13) (a), or 71.93 (1) (a) 3., stats., because these provisions merely reflect cross-reference changes, but I gave the delayed effective date to all of these treated statutes.

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LFB:.....Carabell – MA provider fraud and abuse

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**SENATE AMENDMENT**

**TO SENATE 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, recover  
8 money improperly or erroneously paid, or overpayments to a provider either by  
9 offsetting or adjusting amounts owed the provider under the program, crediting  
10 against a provider’s future claims for reimbursement for other services or items  
11 furnished by the provider under the program, or by requiring the provider to make  
12 direct payment to the department or its fiscal intermediary.

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

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

19           **SECTION 1750g.** 49.45 (2) (a) 10. c. of the statutes is created to read:

20           49.45 (2) (a) 10. c. Promulgate rules to implement this subdivision.

21           **SECTION 1750h.** 49.45 (2) (a) 11. of the statutes is renumbered 49.45 (2) (a) 11.

22 a. and amended to read:

23           49.45 (2) (a) 11. a. Establish criteria for the certification of eligible providers  
24 of services under ~~Title XIX of the social security act~~ medical assistance and, except

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

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

4 49.45 (2) (a) 11. b. Promulgate rules to implement this subdivision.

5 **SECTION 1750j.** 49.45 (2) (a) 12. of the statutes is renumbered 49.45 (2) (a) 12.  
6 a. and amended to read:

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

22 **SECTION 1750k.** 49.45 (2) (a) 12. b. of the statutes is created to read:

23 49.45 (2) (a) 12. b. Promulgate rules to implement this subdivision.

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

1           49.45 (2) (b) 6m. Limit the number of providers of particular services that may  
2 be certified under par. (a) 11. or the amount of resources, including employees and  
3 equipment, that a certified provider may use to provide particular services to medical  
4 assistance recipients, if the department finds that existing certified providers and  
5 resources provide services that are adequate in quality and amount to meet the need  
6 of medical assistance recipients for the particular services; and if the department  
7 finds that the potential for medical assistance fraud or abuse exists if additional  
8 providers are certified or additional resources are used by certified providers. The  
9 department shall promulgate rules to implement this subdivision.

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

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

23           a. Services under medical assistance for which providers have demonstrated  
24 significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a),



1 or (4m) (a), to require recovery under par. (a) 10., or to need additional sanctions  
2 under par. (a) 13.

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

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

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

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

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

15 49.45 (2) (b) 9. After providing reasonable notice and opportunity for a hearing,  
16 charge an assessment to a provider that repeatedly has been subject to recoveries  
17 under par. (a) 10. a. because of the provider's failure to follow identical or similar  
18 billing procedures or to follow other identical or similar program requirements. The  
19 assessment shall be used to defray in part the costs of audits and investigations by  
20 the department under sub. (3) (g) and may not exceed \$1,000 or 200% of the amount  
21 of any such repeated recovery made, whichever is greater. The provider shall pay the  
22 assessment to the department within 10 days after receipt of notice of the assessment  
23 or the final decision after administrative hearing, whichever is later. The  
24 department may recover any part of an assessment not timely paid by offsetting the  
25 assessment against any medical assistance payment owed to the provider and may

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

11 **SECTION 1750t.** 49.45 (3) (g) of the statutes is renumbered 49.45 (3) (g) 1. and  
12 amended to read:

13 49.45 (3) (g) 1. The secretary may ~~appoint~~ authorize personnel to audit or  
14 investigate and report to the department on any matter involving violations or  
15 complaints alleging violations of ~~laws~~ statutes, regulations, or rules applicable to  
16 Title XIX of the federal ~~social security act~~ or the medical assistance program and to  
17 perform such investigations or audits as are required to verify the actual provision  
18 of services or items available under the medical assistance program and the  
19 appropriateness and accuracy of claims for reimbursement submitted by providers  
20 participating in the program. Department employees ~~appointed~~ authorized by the  
21 secretary under this paragraph shall be issued, and shall possess at all times ~~during~~  
22 ~~which~~ while they are performing their investigatory or audit functions under this  
23 section, identification, signed by the secretary ~~which~~, that specifically designates the  
24 bearer as possessing the authorization to conduct medical assistance investigations  
25 or audits. ~~Pursuant to~~ Under the request of a designated person and upon

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

10 **SECTION 1750td.** 49.45 (3) (g) 2. of the statutes is created to read:

11 49.45 (3) (g) 2. The department shall promulgate rules to implement this  
12 paragraph.

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

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

15 **SECTION 1750z.** 49.45 (3) (h) 3. of the statutes is renumbered 49.45 (3) (h) 1m.  
16 and amended to read:

17 49.45 (3) (h) 1m. The failure or refusal of a ~~person to purge himself or herself~~  
18 ~~of contempt found under s. 885.12 and perform the act as required by law shall~~  
19 constitute provider to accord department auditors or investigators access as required  
20 under par. (g) to any provider personnel, records, books, patient health care records  
21 of medical assistance recipients, or documents or other information requested  
22 constitutes grounds for decertification or suspension of that person the provider from  
23 participation in the medical assistance program ~~and no.~~ No payment may be made  
24 for services rendered by ~~that person subsequent to~~ the provider following

1 decertification ~~or~~, during the period of suspension, or during any period of provider  
2 failure or refusal to accord access as required under par. (g).

3 **SECTION 1750zb.** 49.45 (3) (h) 1n. of the statutes is created to read:

4 49.45 (3) (h) 1n. The department shall promulgate rules to implement this  
5 paragraph.”.

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

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

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

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

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

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

22 49.45 (21) (ag) In this subsection, “take over the operation” means obtain, with  
23 respect to an aspect of a provider’s business for which the provider has filed claims  
24 for medical assistance reimbursement, any of the following:

- 1           1. Ownership of the provider's business or all or substantially all of the assets
- 2 of the business.
- 3           2. Majority control over decisions.
- 4           3. The right to any profits or income.
- 5           4. The right to contact and offer services to patients, clients, or residents served
- 6 by the provider.
- 7           5. An agreement that the provider will not compete with the person at all or
- 8 with respect to a patient, client, resident, service, geographical area, or other part
- 9 of the provider's business.
- 10          6. The right to perform services that are substantially similar to services
- 11 performed by the provider at the same location as those performed by the provider.
- 12          7. The right to use any distinctive name or symbol by which the provider is
- 13 known in connection with services to be provided by the person.

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

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

25           **SECTION 1786k.** 49.45 (21) (e) of the statutes is created to read:

1           49.45 (21) (e) The department shall promulgate rules to implement this  
2 subsection.”.

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

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

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

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

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

15           49.85 (3) (a) 1. Inform the person that the department of health and family  
16 services intends to certify to the department of revenue an amount that the  
17 department of health and family services has determined to be due under s. 49.45  
18 (2) (a) 10. or 49.497, for setoff from any state tax refund that may be due the person.”.

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

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

21           50.03 (13) (a) *New license.* Whenever ownership of a facility is transferred from  
22 the person or persons named in the license to any other person or persons, the  
23 transferee must obtain a new license. The license may be a probationary license.  
24 Penalties under sub. (1) shall apply to violations of this subsection. The transferee

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

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

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

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

15 **10.** Page 1338, line 20: after that line insert:

16 “(15k) MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE; RULES. The department  
17 of health and family services shall submit in proposed form the rules required under  
18 sections 49.45 (2) (a) 10. c., 11. b., and 12. b. and (b) 6m., 7., 8., and 9., (3) (g) 2. and  
19 (h) 1n., and (21) (e) of the statutes, as created by this act, to the legislative council  
20 staff under section 227.15 (1) of the statutes no later than the first day of the 10th  
21 month beginning after the effective date of this subsection.”.

22 **11.** Page 1399, line 20: after that line insert:

23 “(18k) TAKING OVER OPERATION OF MEDICAL ASSISTANCE PROVIDER. The treatment  
24 of sections 49.45 (2) (b) 8. and (21) (title), (a), (ag), (b), and (e) and 50.03 (13) (a) of

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

3 (18m) ASSESSMENT FOR REPEATED 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 renumbering and amendment of section 49.45 (2) (a) 12. of the statutes and the  
9 creation of section 49.45 (2) (a) 12. b. of the statutes first apply to violations of federal  
10 statutes or regulations or state statutes or rules committed on the effective date of  
11 this subsection.

12 (18p) CERTIFICATION OF PROVIDERS OF MEDICAL ASSISTANCE. The renumbering and  
13 amendment of section 49.45 (2) (a) 11. of the statutes and the creation of section 49.45  
14 (2) (a) 11. b. and (b) 7. of the statutes first apply to applications for certification  
15 received on the effective date of this subsection.

16 (18pk) RECOVERIES AGAINST PROVIDERS OF MEDICAL ASSISTANCE. The treatment of  
17 sections 49.85 (2) (a) and (3) (a) 1. and 71.93 (1) (a) 3. of the statutes, the renumbering  
18 and amendment of section 49.45 (2) (a) 10. of the statutes, and the creation of section  
19 49.45 (2) (a) 10. b. and c. of the statutes first apply to recoveries imposed on the  
20 effective date of this subsection.

21 (18pm) AUDITS AND ACCESS TO RECORDS OF PROVIDERS OF MEDICAL ASSISTANCE. The  
22 repeal of section 49.45 (3) (h) 1. and 2. of the statutes, the renumbering and  
23 amendment of section 49.45 (3) (g) and (h) 3. of the statutes, and the creation of  
24 section 49.45 (3) (g) 2. and (h) 1n. of the statutes first apply to audits or investigations  
25 performed on or access requested on the effective date of this subsection.



1           (18pn) LIMIT ON NUMBER OF CERTIFIED MEDICAL ASSISTANCE PROVIDERS. The  
2 treatment of sections 49.45 (2) (b) 6m. of the statutes first applies to certifications  
3 made on the effective date of this subsection.”

4           **12.** Page 1420, line 19: after that line insert:

5           “(18k) MEDICAL ASSISTANCE PROVIDER FRAUD AND ABUSE. The treatment of  
6 sections 49.45 (21) (title) and (b), 49.85 (2) (a) and (3) (a) 1., 50.03 13) (a), and 71.93  
7 (1) (a) 3. of the statutes, the repeal of section 49.45 (3) (h) 1. and 2. of the statutes,  
8 the renumbering and amendment of section 49.45 (2) (a) 10., 11., and 12., (3) (g) and  
9 (h) 3., and (21) (a) of the statutes, and the creation of section 20.435 (4) (iL), 49.45 (2)  
10 (a) 10. b. and c., 11. b., and 12. b. and (b) 6m., 7., 8., and 9., (3) (g) 2. and (h) 1n., (21)  
11 (ag) and (e) of the statutes and SECTION 9323 (18k), (18m), (18n), (18p), (18pk),  
12 (18pm), and (18pn) of this act take effect on January 1, 2003.”

13

(END)