

2005 DRAFTING REQUEST

Bill

Received: 11/16/2004

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 7-7980

By/Representing: Blaine

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Public Assistance - med. assist.

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Blaine, BB0258 -

Topic:

Allow DHFS to recover incorrect payments under MA and BadgerCare based on failure to report nonfinancial information

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>
/?	pkahler 12/02/2004	jdyer 12/04/2004		_____			State
/P1			pgreensl 12/06/2004	_____	Inorthro 12/06/2004		State
/P2	pkahler 12/29/2004	jdyer 12/29/2004	rschluet 12/29/2004	_____	Inorthro 12/29/2004		State
/1	pkahler 01/17/2005	jdyer 01/18/2005	pgreensl 01/18/2005	_____	Inorthro 01/18/2005		State
/2	pkahler	jdyer	chaugen	_____	lemery		State

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	01/21/2005	01/21/2005	01/21/2005	_____	01/21/2005		
/3	pkahler 01/24/2005	jdye 01/24/2005	rschluet 01/24/2005	_____	lnorthro 01/24/2005		State
/4	pkahler 01/26/2005	jdye 01/26/2005	rschluet 01/26/2005	_____	lnorthro 01/26/2005		

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Handwritten notes:
1/2 1/21 JLD
OK 1-21
OK 1-21

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/P2	pkahler 12/29/2004	jdyer 12/29/2004	rschluet 12/29/2004	<u>ps</u>	Inorthro 12/29/2004		

FE Sent For:

1/18 jkd *Y/18 ps*

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/?	pkahler	PI 12/4 jld	12/6 PK	12/6 zllb			

FE Sent For:

<END>

2003-05 Budget Bill Statutory Language Drafting Request

579

- Topic: Recovery of BadgerCare and Medical Assistance Payments
- Tracking Code: (Assigned by Government Operations Team)
- SBO team: Health and Insurance
- SBO analyst: Robert Blaine
 - Phone: 267-7980
 - Email: robert.blaine@doa.state.wi.us
- Agency acronym: DHFS
- Agency number: 435

BB0258

See attachment.

Recovery of Incorrect BadgerCare and MA Payments

49.855
46.10

Current Language

Under s.49.497 the Department seeks recovery of incorrectly paid Medicaid or BadgerCare benefits if the incorrect payment resulted from 1) a misstatement or omission of fact at application or review; or 2) a failure to report the receipt of income or assets, during the benefit period, that would have affected eligibility.

Proposed Change

Revise the Statutes to: 1) authorize the Department to recover overpayments from Medicaid and BadgerCare clients who do not report changes in non-financial criteria, and 2) provide the Department the authority to submit an uncontested order for a recovery to the circuit court and provide that the court shall, without notice, render a judgement in accordance with the order.

Effect of the Change

The first change would allow the Department to recover for overpayments when a recipient fails to report changes in non-financial criteria as well as financial changes.

The second change would allow the Department to obtain a court order in a expedited procedure to use tax intercept as a means of collecting incorrect Medicaid and BadgerCare payments

Rationale for the Change

Non-financial criteria include changes in residency, household composition and, in the case of BadgerCare, insurance coverage. Revising the statutes to allow the Department to recover for incorrectly paid Medicaid or BadgerCare benefits if an individual did not report a non-financial change that would have affected eligibility will help to ensure that only eligible individuals are receiving Medicaid and BadgerCare benefits.

It is estimated this change would result in an additional 330 overpayment claims annually which would generate an additional \$256,000 PR in recoveries. This funding would be allocated \$38,400 PR to counties, \$89,600 PR to the state, and \$153,600 PR to the federal government.

In April of 2004, the Department suspended certifying cases to the Department of Revenue for tax intercept due to legal concerns. Federal law requires that the Department obtain a court order authorizing the use of tax intercept. Current statutory provisions for obtaining a court order are administratively burdensome and unless there is very blatant fraud that could yield a significant recovery, most counties will not pursue a court order for these recoveries.

Of the total SFY02 collections of \$511,259 approximately 73% was acquired through the use of tax intercept. If this statutory authority is not provided it is anticipated that collections would decrease by 73%. This will significantly reduce the amount of funding that the state can provide for county program integrity and fraud investigation.

Allowing the Department to obtain expedited court orders would allow the Department to proceed with seeking the Medicaid recovery through the tax intercept process. It is anticipated that if this language is adopted, there would be no reduction in the amount of Medicaid and BadgerCare recoveries.

Desired Effective Date:	Upon passage of the Budget Bill
Agency:	DHFS
Agency Contact:	Curtis Cunningham
Phone:	266-5362



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0879/PI

PJK:n:....

SOON

JLD

DOA:.....Blaine, BB0258 – Allow DHFS to recover incorrect payments under MA and BadgerCare based on failure to report nonfinancial information

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

D-100

do not
gen cut

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Medical Assistance (MA) program and the Badger Care (BadgerCare) health care program. Generally, under MA DHFS pays for health care services provided to eligible low-income persons, and under BadgerCare DHFS pays for health care services provided to certain low-income children who do not reside with a parent and to certain low-income families. Current law provides that DHFS may recover incorrect payments that were made for health care services under MA or BadgerCare that resulted from a misstatement or omission of fact by a person supplying information in an application for benefits or from the failure of a person to report the receipt of income or assets in an amount that would have affected a recipient's eligibility for benefits.

This bill adds that DHFS may also recover incorrect payments made for health care services under MA or BadgerCare that result from the failure of a person to report changes in a recipient's nonfinancial eligibility characteristics that would have affected the recipient's eligibility for benefits.

For further information see the [✓]state fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 49.497 (1) [✓] of the statutes is renumbered 49.497 (1) (a) (intro.) and
2 amended to read:

3 49.497 (1) (a) (intro.) The department may recover any payment made
4 incorrectly for benefits specified under s. 49.46, 49.468, or 49.47 if the incorrect
5 payment results from any [✓]of the following:

6 1. A misstatement or omission of fact by a person supplying information in an
7 application for benefits under s. 49.46, 49.468, or 49.47.

8 2. ~~The department may also recover if~~ failure of [✓]a medical assistance recipient
9 or any other person responsible for giving information on the recipient's behalf ~~fails~~
10 to report the receipt of income or assets in an amount that would have affected the
11 recipient's eligibility for benefits.

12 (b) The department's right of recovery is against any medical assistance
13 recipient to whom or on whose behalf the incorrect payment was made. The extent
14 of recovery is limited to the amount of the benefits incorrectly granted. The county
15 department under s. 46.215 or 46.22 or the governing body of a federally recognized
16 American Indian tribe administering medical assistance shall begin recovery actions
17 on behalf of the department according to rules promulgated by the department.

18 **History:** 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. ~~37~~ 173, 359.

18 SECTION 2. 49.497 (1) (a) 3. of the statutes is created to read:

19 49.497 (1) (a) 3. [✓]The failure of a medical assistance recipient or any other
20 person responsible for giving information on the recipient's behalf to report any

1 change in the recipient's nonfinancial eligibility characteristics that would have
2 affected the recipient's eligibility for benefits.

3

(END)

D. J. J. J.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/7dn

PJK:.....

SP
JKD

This preliminary draft does not include the “uncontested, expedited” order that is rendered “without notice.” I have never heard of such a thing, and neither has Bob Nelson, who drafts circuit court procedure, or Debora Kennedy, who drafts numerous health-related and medical assistance proposals for DHFS. Such an order would very likely unconstitutionally violate the due process rights of a recipient. If there are any examples in current law, please direct me to them.

An expedited procedure that I am familiar with is for income withholding for child support under ^(S.)767.265 (2m) and (2r). Can anything similar be fashioned for the MA recovery? Perhaps recovery of incorrect MA and BadgerCare benefits could be included in s. 49.855 for tax intercept after the “obligation is rendered to a judgment” in an expedited procedure like the one under s. 767.265 (2m). See s. 49.855 (2m) and (2p).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/P1dn
PJK:jld:pg

December 6, 2004

This preliminary draft does not include the “uncontested, expedited” order that is rendered “without notice.” I have never heard of such a thing, and neither has Bob Nelson, who drafts circuit court procedure, or Debora Kennedy, who drafts numerous health-related and medical assistance proposals for DHFS. Such an order would very likely unconstitutionally violate the due process rights of a recipient. If there are any examples in current law, please direct me to them.

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Kahler, Pam

From: Blaine, Robert
Sent: Monday, December 20, 2004 4:49 PM
To: Kahler, Pam
Subject: FW: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare

Pam -- Below, DHFS offers an example under current law / practice of what they wish to implement with this expedited tax intercept process proposed. If this doesn't give you what you need to complete the draft (and the expedited tax intercept process is the heart of this budget proposal), we should discuss.

Thanks,
Robert

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

From: Cunningham, Curtis
Sent: Monday, December 20, 2004 4:29 PM
To: Blaine, Robert
Cc: Riedasch, Scott; Cunningham, Curtis
Subject: Re: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare

Robert,
This draft looks fine to me. Attached are Scott Riedasch's comment. He is also OK with the current draft and offers a nice explanation to the drafters concerns about the tax intercept proposal. Could you please have the drafter add in the tax intercept language and send it back to us for review.

Thanks,
Curtis

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

Date: 12/20/2004 10:39 am -0600 (Monday)
From: Scott Riedasch
To: Cunningham, Curtis
CC: Jones, James; McIlquham, Cheryl; McKenzie, Michael; Megna, Richard
Subject: Re: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare bas

The draft language in 05-0879/P1 looks ok to me.

As for the drafter's concern re: the expedited process to obtain a court order relative to tax intercept...have this person review s.46.10, specifically (4) and (5). It is a court judgement and it may be issued without prior notice by the court, but only after a series of other conditions have been met, presumably intended to meet due process requirements. In the case of Medicaid tax intercept, a series of notices from the department are sent to the person explaining that money is owed, how much and why, how to repay, whom to repay, deadlines for repayment, and consequences for not repaying (including obtaining a court order to allow tax intercept). This is the kind of authority we're looking for and if we don't get it, Medicaid tax intercept (i.e., 75% of overpayment recoveries) is history, in my opinion. Counties do not have the resources to pursue court orders in each of these cases through the regular "unexpedited" process. Please let me know if there are questions, thanks.

* * * * *

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the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this email in error, please notify the sender; delete the email; and do not use, disclose or store the information it contains.

* * * * *

Scott Riedasch
Medicaid Policy Section Chief
Bureau of Health Care Eligibility
(608) 267-3524

>>> Curtis Cunningham 12/15/04 02:13PM >>>

Attached is the stat language for recovery of incorrect MA and BC payments. Could you please review the draft and drafters notes and give me comments by 12/21.

Thanks

Kahler, Pam

From: Blaine, Robert
Sent: Monday, December 20, 2004 4:50 PM
To: Kahler, Pam
Subject: FW: Benefit Recovery Proposal

one more change to draft 0879. Thanks.

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

From: Cunningham, Curtis
Sent: Monday, December 20, 2004 2:01 PM
To: Blaine, Robert
Cc: Jones, James; McIlquham, Cheryl; Cunningham, Curtis; Megna, Richard
Subject: Fwd: Benefit Recovery Proposal

Robert,
This is an additional comment to the BadgerCare incorrect recoveries language I just sent you (DIN 5465). We would like to request that "income and assets" be changed to "financial criteria". Therefore, there would be no ambiguity of the Department's authority. The Department could recover based on any unreported financial or non-financial changes.

Please let me know if this will be a problem or need more information.

Thanks,
Curtis

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

Date: 09/17/2004 03:41 pm -0500 (Friday)
From: Scott Riedasch
To: Cunningham, Curtis
CC: Jones, James
Subject: Benefit Recovery Proposal

Curtis this is just a note to remind (us) of something that needs to be done relative to the above proposal.

We need to make sure that the statutes are changed in such a way so as to allow us to recover when people don't report changes in their expenses that may affect things like cost share (under Family Care and the HCB waivers). Currently, I think the statutes refer only to unreported changes in income and assets. One could argue that expenses are a subcategory of income, but I'd rather come up with broader language to make sure we're covered (e.g. "DHFS may recover based on any un-reported financial or non-financial change affecting eligibility or cost-share..." or something like that.)

Thanks, have a good weekend.

* * * * *

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* * * * *

Scott Riedasch
Medicaid Policy Section Chief
Bureau of Health Care Eligibility
(608) 267-3524

Kahler, Pam

From: Blaine, Robert
Sent: Tuesday, December 21, 2004 2:17 PM
To: Kahler, Pam
Subject: RE: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare

Pam -- after scanning your e-mail, I don't think I can give you a quick answer. I'm going to have to think about this. Sorry I'm not able to give you clear direction on this.

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

From: Kahler, Pam [mailto:Pam.Kahler@legis.state.wi.us]
Sent: Tuesday, December 21, 2004 1:21 PM
To: Blaine, Robert
Subject: RE: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare

Robert:

Before I go ahead and make the changes I'm considering, I want to make sure I'm not doing more than is necessary, needed, or wanted. The DHFS instructions are always so sketchy, and they act as if one should be able to read their minds when you don't give them exactly what they had in mind. Also, what one set of instructions asks for does not always seem to be what is really wanted. Anyhow...for this one, Curtis originally wanted the changes to affect both MA and BadgerCare. Currently, s. 49.497 specifically mentions only MA. Are they assuming that s. 49.497 covers both since BadgerCare is under an MA waiver, or should a cross-reference to s. 49.655 be added in s. 49.497?

Next, since Scott Riedasch seems to be saying that something similar to s. 46.10 (4) and (5) are what they want for the "expedited order" language for MA and BadgerCare incorrect payments (would have been nice if they had mentioned that in the first place), that is what I propose to add to s. 49.497. Does that seem reasonable? That would give them a judgment, so then a judgment under s. 49.497 could be added to s. 49.855, similar to what is there for s. 46.10 (see s. 49.855 (2m)). Does that seem reasonable? Section 49.85 already allows DHFS to certify incorrect payments to DOR for tax refund setoff, but no judgment appears to be required in that section.

So, in a nutshell, I would: add a cross-reference to s. 49.655 (BadgerCare) to s. 49.497; add provisions similar to s. 46.10 (4) and (5) to s. 49.497; and add certification of amounts owed under s. 49.497, if rendered to a judgment, to s. 49.855. Could you let me know if that is what is wanted?

Thanks, Pam.

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

From: Blaine, Robert
Sent: Monday, December 20, 2004 4:49 PM
To: Kahler, Pam
Subject: FW: Fwd: FW: LRB Draft: 05-0879/P1 Allow DHFS to recover incorrect payments under MA and BadgerCare

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incorrect payments under MA and BadgerCare bas

The draft language in 05-0879/P1 looks ok to me.

As for the drafter's concern re: the expedited process to obtain a court order relative to tax intercept...have this person review s.46.10, specifically (4) and (5). It is a court judgement and it may be issued without prior notice by the court, but only after a series of other conditions have been met, presumably intended to meet due process requirements. In the case of Medicaid tax intercept, a series of notices from the department are sent to the person explaining that money is owed, how much and why, how to repay, whom to repay, deadlines for repayment, and consequences for not repaying (including obtaining a court order to allow tax intercept). This is the kind of authority we're looking for and if we don't get it, Medicaid tax intercept (i.e., 75% of overpayment recoveries) is history, in my opinion. Counties do not have the resources to pursue court orders in each of these cases through the regular "unexpedited" process. Please let me know if there are questions, thanks.

* * * * *

NOTICE: This email and any attachments may contain confidential information. Use and further disclosure of the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this email in error, please notify the sender; delete the email; and do not use, disclose or store the information it contains.

* * * * *

Scott Riedasch
Medicaid Policy Section Chief
Bureau of Health Care Eligibility
(608) 267-3524

>>> Curtis Cunningham 12/15/04 02:13PM >>>
Attached is the stat language for recovery of incorrect MA and BC payments. Could you please review the draft and drafters notes and give me comments by 12/21.

Thanks



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0879/15 P2

PJK:jld:pg

r m is run

1/3

DOA:.....Blaine, BB0258 - Allow DHFS to recover incorrect payments under MA and BadgerCare based on failure to report nonfinancial information

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Intro

*do not
gen cat*

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

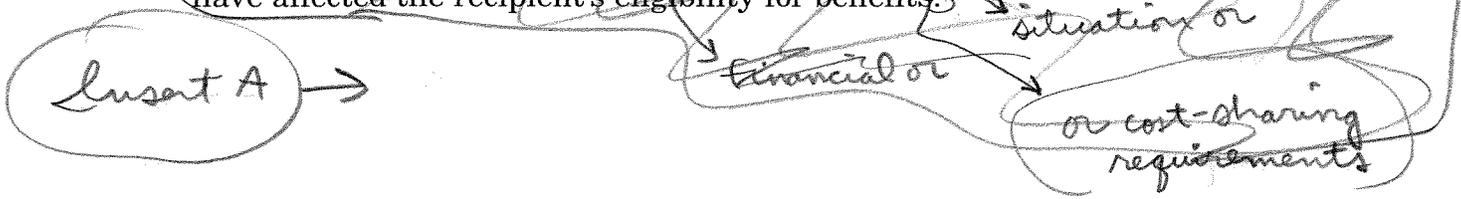
Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES *✓*

MEDICAL ASSISTANCE *✓*

Under current law, DHFS administers the Medical Assistance (MA) program and the Badger Care (BadgerCare) health care program. Generally, under MA DHFS pays for health care services provided to eligible low-income persons, and under BadgerCare DHFS pays for health care services provided to certain low-income children who do not reside with a parent and to certain low-income families. Current law provides that DHFS may recover incorrect payments that were made for health care services under MA ~~of BadgerCare~~ that resulted from a misstatement or omission of fact by a person supplying information in an application for benefits or from the failure of a person to report the receipt of income or assets in an amount that would have affected a recipient's eligibility for benefits.

2 ~~Under~~ This bill adds that DHFS may also recover incorrect payments made for health care services under MA or BadgerCare that result from the failure of a person to report changes in a recipient's nonfinancial eligibility characteristics that would have affected the recipient's eligibility for benefits.



Insert A →

For further information see the *state* 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:

Insert 2-1 →

1 SECTION 1. 49.497 (1) of the statutes is renumbered 49.497 (1) (a) (intro.) and
2 amended to read:

3 49.497 (1) (a) (intro.) The department may recover any payment made
4 incorrectly for benefits specified under s. 49.46, 49.468² or 49.47² if the incorrect
5 payment results from any of the following:

6 1. A misstatement or omission of fact by a person supplying information in an
7 application for benefits under s. 49.46, 49.468² or 49.47².

8 2. The department may also recover if failure of a medical assistance recipient
9 or any other person responsible for giving information on the recipient's behalf fails
10 to report the receipt of income or assets in an amount that would have affected the
11 recipient's eligibility for benefits.

12 (b) The department's right of recovery is against any ~~medical assistance~~
13 recipient to whom or on whose behalf the incorrect payment was made. The extent
14 of recovery is limited to the amount of the benefits incorrectly granted. The county
15 department under s. 46.215 or 46.22 or the governing body of a federally recognized
16 American Indian tribe administering ~~medical assistance~~ shall begin recovery actions
17 on behalf of the department according to rules promulgated by the department.

18 SECTION 2. 49.497 (1) (a) 3. of the statutes is created to read:
19 49.497 (1) (a) 3. The failure of a medical assistance recipient or any other
20 person responsible for giving information on the recipient's behalf to report any

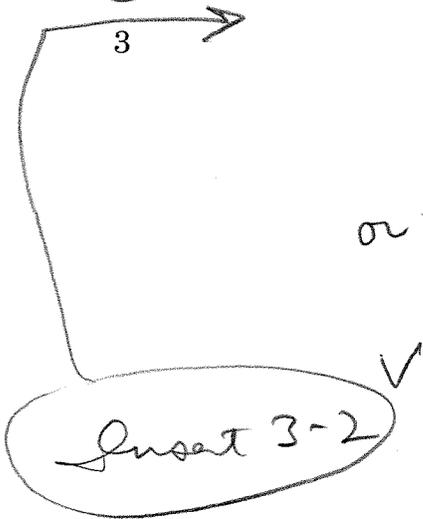
Medical Assistance or Badger Care

Medical Assistance or Badger Care

1 change in the recipient's ^{financial or} nonfinancial ^{situation or} eligibility characteristics that would have
 2 affected the recipient's eligibility for benefits

(END)

or the recipient's cost-sharing [✓] requirements



D-note

INSERT A

4 This bill adds that DHFS may also recover incorrect payments made for health care services under MA that result from the failure of a person to report changes in a recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or his or her cost-sharing requirements, and provides that DHFS may recover incorrect payments made for health care services under BadgerCare resulting from any of the same reasons.

4 The bill also provides that, if an MA or BadgerCare recipient to or for whom an incorrect payment was made fails, after notice, to repay the incorrect amount, DHFS may bring an action to enforce repayment or may issue an order to compel repayment. The recipient has 30 days to appeal the order, but if he or she does not pay the amount due under the order and does not appeal the order within 30 days, DHFS may present a certified copy of the order to the circuit court. The circuit court must render a judgment in accordance with the order without further notice to the recipient. The judgment may be enforced in the same manner as any other judgment rendered by a court. In addition, DHFS must certify the obligation to DOR for collection as a setoff against any state income tax refund that is due the recipient. This procedure for obtaining a judgment for the amount of an incorrect payment and for collecting the amount as a tax refund setoff is similar to the procedure in current law for obtaining a judgment for, and collecting, amounts owed to DHFS for various types of care, maintenance, and services that DHFS is required to provide, such as to persons committed to inpatient treatment facilities, to persons criminally committed to mental health institutions, to juveniles taken into custody for emergency detention, and to persons protectively placed or receiving protective services.

(END OF INSERT A)

INSERT 2-1

Medical Assistance

- 1 SECTION 1. 20.435 (4) (L) of the statutes is amended to read:
- 2 20.435 (4) (L) ~~Medical assistance~~ ^{Assistance} and food stamp fraud and error reduction.
- 3 All moneys received as the state's share of the recovery of overpayments and
- 4 incorrect payments under ss. 49.497 (1) and (1m) and 49.793 (2) and all moneys
- 5 received from counties and tribal governing bodies as a result of any error reduction
- 6 activities in the ~~medical assistance~~ and food stamp programs under ss. 49.45 (2) (a)
- 7 3m., 49.197, and 49.79 (9), for contracts under s. 49.197 (5), for any activities to
- 8 reduce error and fraud under ss. 49.45 (2) (a) 3m. and 49.79 (9), to pay federal

for which DHFS may recover incorrect payments made under MA

Ins 2-1 cont'd

1 sanctions under the food stamp program, and for food stamp reinvestment activities
2 under reinvestment agreements with the federal department of agriculture that are
3 designed to improve the food stamp program.

→ **NOTE: BUD**

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327.

4 **SECTION 2. 49.497 (title)** of the statutes is amended to read:

5 **49.497 (title) Recovery of incorrect ~~medical assistance~~ Medical**
6 **Assistance or Badger Care payments.**

History: 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359.
(END OF INSERT 2-1)

INSERT 3-2

1085

7 **SECTION 3. 49.497 (1m)** of the statutes is created to read:

8 **49.497 (1m) (a)** If, after notice that an incorrect payment was made, a recipient
9 who is liable for repayment of an incorrect payment fails to repay the incorrect
10 payment or enter into, or comply with, an agreement for repayment, the department
11 may bring an action to enforce the liability or may issue an order to compel payment
12 of the liability. Any person aggrieved by an order issued by the department under
13 this paragraph may appeal the order as a contested case under ch. 227 by filing with
14 the department a request for a hearing within 30 days after the date of the order.

15 (b) If any recipient named in an order to compel payment issued under par. (a)
16 fails to pay the department any amount due under the terms of the order and no
17 contested case to review the order is pending and the time for filing for a contested
18 case review has expired, the department may present a certified copy of the order to
19 the circuit court for any county. The sworn statement of the secretary shall be

Ins 3-2 cont'd 2025

1 evidence of the incorrect payment. The circuit court shall, without notice, render
2 judgment in accordance with the order. A judgment rendered under this paragraph
3 shall have the same effect and shall be entered in the judgment and lien docket and
4 may be enforced in the same manner as if the judgment had been rendered in an
5 action tried and determined by the circuit court.

6 (c) The recovery procedure under this subsection is in addition to any other
7 recovery procedure authorized by law.

8 **SECTION 4.** 49.497 (2) of the statutes is amended to read:

9 49.497 (2) A county or governing body of a federally recognized American
10 Indian tribe may retain 15% of benefits distributed under s. 49.46, 49.468 or 49.47
11 or 49.665 that are recovered under sub. (1) this section due to the efforts of an
12 employee or officer of the county or tribe.

13 History: 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359.

13 **SECTION 5.** 49.497 (3) of the statutes is amended to read:

14 49.497 (3) Cash assets of ~~medical assistance~~ Medical Assistance or Badger
15 Care recipients that exceed asset limitations shall be applied against the cost of
16 ~~medical assistance~~ Medical Assistance or Badger Care benefits provided.

17 History: 1981 c. 20; 1983 a. 27, 192; 1985 a. 176; 1987 a. 27; 1989 a. 31, 173, 359.

17 **SECTION 6.** 49.497 (4) of the statutes is created to read:

18 49.497 (4) The department may appear for the state in any and all collection
19 matters under this section, and may commence suit in the name of the department
20 to recover an incorrect payment from the recipient to whom or on whose behalf it was
21 made.

22 **SECTION 7.** 49.497 (5) of the statutes is created to read:

Plus 3-2 cont'd 385

1 49.497 (5) The department may make an agreement with a recipient who is
2 liable under sub. (1), providing for repayment of an incorrect payment at a specified
3 rate or amount.

4 **SECTION 8.** 49.855 (2m) of the statutes is amended to read:

5 49.855 (2m) At least annually, the department of health and family services
6 shall certify to the department of revenue any obligation owed to the department of
7 health and family services under s. 46.10 or 49.497 if the obligation is rendered to
8 a judgment.

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105.

9 **SECTION 9.** 49.855 (3) of the statutes is amended to read:

10 49.855 (3) Receipt of a certification by the department of revenue shall
11 constitute a lien, equal to the amount certified, on any state tax refunds or credits
12 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
13 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
14 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
15 obligor that the state intends to reduce any state tax refund or credit due the obligor
16 by the amount the obligor is delinquent under the support, maintenance, or receiving
17 and disbursing fee order or obligation, by the outstanding amount for past support,
18 medical expenses, or birth expenses under the court order, or by the amount due
19 under s. 46.10 (4), 49.497 (1m), or 301.12 (4). The notice shall provide that within
20 20 days the obligor may request a hearing before the circuit court rendering the order
21 under which the obligation arose. Within 10 days after receiving a request for
22 hearing under this subsection, the court shall set the matter for hearing. Pending
23 further order by the court or a circuit court commissioner, the department of
24 workforce development or its designee, whichever is appropriate, is prohibited from

← plus 3-2 cont'd 485

1 disbursing the obligor's state tax refund or credit. A circuit court commissioner may
2 conduct the hearing. The sole issues at that hearing shall be whether the obligor
3 owes the amount certified and, if not and it is a support or maintenance order,
4 whether the money withheld from a tax refund or credit shall be paid to the obligor
5 or held for future support or maintenance.

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 ~~a. 421~~; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, ~~17~~ 45, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105.

6 **SECTION 10. 49.855 (4m) (b)** of the statutes is amended to read:

7 **49.855 (4m) (b)** The department of revenue may provide a certification that it
8 receives under sub. (1), (2m), or (2p) to the department of administration. Upon
9 receipt of the certification, the department of administration shall determine
10 whether the obligor is a vendor or is receiving any other payments from this state,
11 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
12 45.351 (1), this chapter, or ch. 46, 108, or 301. If the department of administration
13 determines that the obligor is a vendor or is receiving payments from this state,
14 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
15 45.351 (1), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
16 certified from those payments and shall notify the obligor that the state intends to
17 reduce any payments due the obligor by the amount the obligor is delinquent under
18 the support, maintenance, or receiving and disbursing fee order or obligation, by the
19 outstanding amount for past support, medical expenses, or birth expenses under the
20 court order, or by the amount due under s. 46.10 (4), 49.497 (1m) ✓, or 301.12 (4). The
21 notice shall provide that within 20 days after receipt of the notice the obligor may
22 request a hearing before the circuit court rendering the order under which the
23 obligation arose. An obligor may, within 20 days after receiving notice, request a
24 hearing under this paragraph. Within 10 days after receiving a request for hearing

Ins 3-2 contd 585

1 under this paragraph, the court shall set the matter for hearing. A circuit court
 2 commissioner may conduct the hearing. Pending further order by the court or circuit
 3 court commissioner, the department of workforce development or its designee,
 4 whichever is appropriate, may not disburse the payments withheld from the obligor.
 5 The sole issues at the hearing are whether the obligor owes the amount certified and,
 6 if not and it is a support or maintenance order, whether the money withheld shall be
 7 paid to the obligor or held for future support or maintenance.

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105.

8 **SECTION 9321. Initial applicability; health and family services.** ✓

9 (1) RECOVERY OF INCORRECT PAYMENTS. ✓

10 (a) *BadgerCare*. ✓ The treatment of sections 49.497 (title), (2), ✓ and (3) ✓ of the
 11 statutes and the renumbering and amendment of section 49.497 (1) ✓ of the statutes
 12 first apply to ~~the recovery of~~ incorrect payments made under the Badger Care health
 13 care program on the effective date of this paragraph. ✓

14 (b) *Medical Assistance and BadgerCare*. The treatment of sections 20.435 (4) ✓
 15 (L), 49.497 (1m), ✓ (4), ✓ and (5), ✓ and 49.855 (2m), (3), and (4m) (b) ✓ of the statutes and
 16 the creation of section 49.497 (1) (a) 3. ✓ of the statutes first apply to ~~the recovery of~~ ✓
 17 incorrect payments made under Medical Assistance or the Badger Care health care
 18 program on the effective date of this paragraph. ✓

(END OF INSERT 3-2)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/P2dn
PJK:jld:pg

Robert:

I decided to add a specific reference to BadgerCare in s. 49.497. Because s. 49.497 applies to “benefits specified under s. 49.46, 49.468 or 49.47,” and because under s. 49.665 (3) DHFS is required to “provide the health services and benefits described in s. 49.46 (2),” BadgerCare, arguably, may be covered already under s. 49.497. I would feel more comfortable, however, if s. 49.665 (3) said “benefits *under* s. 49.46 (2),” instead of “benefits *described in* s. 49.46 (2).” Also, s. 49.497 (1) says that DHFS may recover incorrect payments resulting from a misstatement in an application for benefits under s. 49.46, 49.468, or 49.47. Since an application for BadgerCare would be under s. 49.665, I thought it best to specifically add it. If DHFS does not actually want BadgerCare included, I will remove all of the references.

For the “expedited order,” I added to s. 49.497 language similar to that in s. 46.10 (4), (5), and (8) (a) and (e). I left out any language related to interest, however. If DHFS wants to add interest language, someone will need to specify when the interest begins, e.g., when the incorrect payment is made, when the person is notified that an incorrect payment was made, etc., and what the rate should be.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/P2dn

PJK:jld:rs

December 29, 2004

Robert:

I decided to add a specific reference to BadgerCare in s. 49.497. Because s. 49.497 applies to “benefits specified under s. 49.46, 49.468 or 49.47,” and because under s. 49.665 (3) DHFS is required to “provide the health services and benefits described in s. 49.46 (2),” BadgerCare, arguably, may be covered already under s. 49.497. I would feel more comfortable, however, if s. 49.665 (3) said “benefits *under* s. 49.46 (2),” instead of “benefits *described in* s. 49.46 (2).” Also, s. 49.497 (1) says that DHFS may recover incorrect payments resulting from a misstatement in an application for benefits under s. 49.46, 49.468, or 49.47. Since an application for BadgerCare would be under s. 49.665, I thought it best to specifically add it. If DHFS does not actually want BadgerCare included, I will remove all of the references.

For the “expedited order,” I added to s. 49.497 language similar to that in s. 46.10 (4), (5), and (8) (a) and (e). I left out any language related to interest, however. If DHFS wants to add interest language, someone will need to specify when the interest begins, e.g., when the incorrect payment is made, when the person is notified that an incorrect payment was made, etc., and what the rate should be.

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Kahler, Pam

From: Blaine, Robert
Sent: Saturday, January 15, 2005 11:42 AM
To: Kahler, Pam
Subject: Draft 0879 -- Recovery of incorrect payments

Pam --

Some comments on this draft:

- ✓ 1) Given our intent to collect overpayments made to all Medicaid and BadgerCare recipients, we think the list of statutory references for medicaid in sections 3 and 6 should also include:

49.45(24r) [the family planning waiver]
49.472 [Medical Assistance Purchase Plan]
49.473 [Women with Breast and Cervical Cancer (Wisconsin Well Woman Medicaid)]

- 2) Shelly suggested a change to paragraph (a) in Section 5, to assure that persons still have the right to a fair hearing. Her proposed language is underlined:

"If, after notice that an incorrect payment was made and a contested case to review the determination that an incorrect payment was made is not pending and the time for filing for a contested case has expired, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment."

- ✓ 3) Section 7: please remove the reference to BadgerCare because this program does not have an asset test.

- ✓ 4) DHFS questioned whether the changes made in 49.497 may create a conflict with existing provisions in s. 49.85. Unfortunately, that's all the specificity I received in their comment e-mail, and no one is there today to talk to. Would you be willing to review this, and if you don't see any conflicts, please disregard.

Thanks,
Robert Blaine

Wisconsin State Budget Office
Department of Administration
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robert.blaine@doa.state.wi.us