

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
REPEALING AND AMENDING RULES**

The Wisconsin department of Corrections proposes an order amending DOC 316.01, 316.02(1), 316.03, 316.04(1),(2)(a) and (b), 316.04(3), 316.05 (intro.), 316.06(1), (2), and (3); and creating DOC 316.05(7) and (8), relating to medical, dental and nursing copayment charge.

Statutory Authority: ss.302.386 (3) and (4), and 227.11 (2), Stats.
Statutes Interpreted: ss.302.386 (3) and (4), Stats.

Analysis Prepared by the Department of Corrections...

Pursuant to 2001 Wisconsin Act 109, the department is required to increase the copayment charge for medical, dental or nursing services provided to inmates and juveniles. The Act provides, in relevant part, the following:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386(4)(a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386(3)(b) of the statutes. “

and,

“Notwithstanding section 302.386(3)(b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386(3)(c) of the statutes, each person to whom section 302.386(1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department’s emergency rule, effective September 3, 2002 pursuant to legislative requirement, provides for a \$7.50 copayment, increased from the previous amount of \$2.50, under such circumstances as described above. This proposed rule, among other minor changes, makes the \$7.50 copayment permanent.

This rule:

- Makes permanent the medical, dental and nursing copayment charge to \$7.50 as required by 2001 Wisconsin Act 109 and consistent with the department's current emergency rule.
- Eliminates the requirement that an inmate must "earn wages" before becoming responsible for the \$7.50 copayment, in regard to inmates who are not housed in a secured correctional facility (juvenile facility). This change is made as a result of prior legislation that removed the "earns wages" requirement from statute. See section 302.386 (3) Stats.
- Establishes criteria to exempt persons in a juvenile correctional facility who do not earn wages. The current rule effectively exempts juveniles from the copayment because they do not "earn wages" as required by the rule. However, since "earn wages" has been removed in this rule proposal, the department has created a specific exemption for persons in juvenile correctional facilities. Section 302.386(3)(c) grants the department authority to except or waive liability "under criteria that the department shall establish by rule."
- Exempts liability for medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

SECTION 1. DOC 316.01, 316.02, 316.03, 316.04, 316.05 and 316.06 are amended to read:

DOC 316.01 Applicability, purpose, authority.

This chapter applies to the department of corrections and inmates who reside in a s. 302.01, Stats., prison or juveniles who reside in a s. 938.02 (15m), Stats., secured correctional facility ~~and who earn wages during residency and who receives~~ receive medical, dental or nursing services from the department's health services staff. This chapter does not apply to inmates in a s. 301.046 (1), Stats., institution or in a s. 301.048, Stats., institution unless the inmate is housed in a s. 302.01, Stats., prison. This chapter is promulgated pursuant to authority under ss. 227.11 (2) (a), 302.386 (3) and 302.386 (4), Stats. and interprets ss. 302.386 (3) and (4), Stats.

DOC 316.02 Definitions.

In this chapter:

- (1) "Copayment" means the amount charged an inmate or a juvenile ~~who earns wages for a self-initiated~~ face-to-face contact with a member of the health services staff who provides services within the health care provider's area of practice as the result of the inmate's request.
- (2) "Dental services" includes any practice permitted under ch. 447, Stats.

- (3) "Department" means the department of corrections.
- (4) "General or trust account" means an account established by an institution to receive all funds for the benefit of an inmate or juvenile.
- (5) "Health care provider" means a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, nursing assistant, dentist, dental assistant, dental hygienist, physical therapist, optometrist, phlebotomist, radiologist technician, program assistant who is employed by the department to provide health related services or other ancillary services, or any other health care provider.
- (6) "Health services staff" includes health care providers employed by the department or independent contractors hired by the department to provide medical, dental or nursing services.
- (7) "Medical services" includes any practice permitted under chs. 448 and 449, Stats.
- (8) "Nursing services" includes any practice permitted under ch. 441, Stats.
- (9) "Request" means an application by an inmate or a juvenile through a health services request or other means as determined by the department for a face-to-face contact with a health care provider.
- (10) "Wages" includes wages under ss. 301.30, 301.31, 303.01 (4), and 303.065, Stats.

Note: DOC 316.02. In sub. (1), "copayment" is defined so as to cover situations when an inmate requests to see one kind of health care provider but is seen by another kind of health care provider. For example, an inmate requests to see a physician but is seen by a nurse who evaluates the inmate's need to see a physician. The inmate will be charged a copayment even though the inmate was evaluated by a nurse instead of a physician.

"Dental services" as defined in sub. (2) includes any practice permitted by a dentist and dental hygienist under ch. 447, Stats.

"Medical services" as defined in sub. (7) includes any practice permitted by a physician, physician assistant, and physical therapist under ch. 448, Stats., and any practice by an optometrist under ch. 449, Stats. "Medical services" include services provided by a psychiatrist.

"Nursing services" as defined in sub. (8) includes any practice permitted by a registered nurse, nurse practitioner, and licensed practical nurse under ch. 441, Stats.

DOC 316.03 Provision of medical, dental and nursing services.

Health services staff shall provide necessary medical, dental or nursing services to an inmate or a juvenile. Health services staff shall ~~determined~~ determine the level of access to medical, dental or nursing services and the need to provide medical, dental or nursing services on-site or off-site. Health services staff may not deny an inmate or a juvenile medical, dental or nursing services based only on the inmate's or the juvenile's inability to pay a copayment. An inmate or a juvenile may be subject to a copayment under s. DOC 316.04.

Note: DOC 316.03. DOC 316.03 provides that health services staff shall determine the level of access to medical, dental or nursing services and the need to provide medical, dental or nursing services on-site or off-site. DOC 316.03 recognizes the responsibility of the health services staff to make the

determination. Availability of resources may require some services to be provided off-site instead of on-site. Inmates have no right to see a health care provider of their choice.

DOC 316.04 Copayment.

(1) Except for the exclusions listed under s. DOC 316.05, an inmate or a juvenile ~~who earns wages~~ shall be charged a copayment for medical, dental or nursing services received at the request of the inmate or juvenile, including any face-to-face contact wherein the inmate or juvenile refuses to consent to a service offered in response to the inmate's or juvenile's request.

(2) (a) During the assessment and evaluation process, the inmate and juvenile shall sign a notice form acknowledging that the inmate and juvenile ~~who earn wages~~ shall be charged a copayment for non-emergency medical, dental or nursing services received at the request of the inmate or juvenile.

(b) The notice form shall include a statement identifying the medical, dental or nursing services for which the inmate or juvenile ~~who earns wages~~ will and will not be charged a copayment.

(c) If the inmate or juvenile refuses to sign the notice form, the health care provider shall make a notation that the inmate or juvenile refused to sign the notice form and the health care provider shall sign the notation.

(3) Staff shall charge a \$~~2~~7.50 copayment for each face-to-face contact for medical, dental or nursing services regardless of the number of services provided during the face-to-face contact. At the time of the face-to-face contact for medical, dental or nursing services, the inmate or juvenile shall sign a disbursement form acknowledging the receipt of health services. If the inmate or juvenile refuses to sign the disbursement form, the health care provider shall make a notation that the inmate or juvenile refused to sign the disbursement form and the health care provider shall sign the notation.

DOC 316.05 Copayment exclusions.

Health services staff shall not charge an inmate or a juvenile ~~who earns wages~~ a copayment for any of the following:

(1) A medical, dental or nurse screening provided during the assessment and evaluation process.

(2) Treatment for an actual medical or dental emergency as determined by a physician, dentist or registered nurse.

(3) A follow-up medical, dental or nursing appointment determined and scheduled by a health care provider.

(4) Any other appointment determined and scheduled by a health care provider.

(5) A written referral from one health care provider to another health care provider.

(6) A review of medical records, except the inmate or juvenile may be charged for copies of medical records according to department policy and procedures.

(7) Medical, dental or nursing services provided to persons who reside in a s. 938.02(15m), Stats., secured correctional facility and who do not have the opportunity to earn wages.

(8) Any medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

DOC 316.06 Copayment deduction from the inmate's or juvenile's general or trust account.

(1) Following the provision of medical, dental or nursing services, the business department staff shall deduct the \$~~27~~.50 copayment from the general or trust account of the inmate or juvenile ~~who earns wages~~ under procedures established by the department.

(2) If the inmate or juvenile ~~who earns wages~~ has no funds in the inmate's or juvenile's general or trust account, [the] business department shall perform an accounting transaction that reflects that the inmate or juvenile owes the copayment.

(3) If an inmate or juvenile ~~who earned wages and who~~ owes a copayment is released or discharged from a prison or a secured correctional facility, business department staff shall perform an accounting transaction that reflects that the inmate or juvenile owes the copayment. If the inmate or juvenile is recommitted to prison or to a secured correctional facility, the copayment will be deducted from the inmate's or juvenile's general or trust account.

(4) The inmate or a juvenile may ask business department staff to correct a copayment deduction which the inmate believes has been improperly deducted. An inmate may file an inmate complaint concerning an improper copayment deduction.

Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats

Dated: _____

Agency: _____
Matthew J. Frank, Secretary

Seal: