Chapter HSS 108

GENERAL ADMINISTRATION

HSS 108.01 Safeguarded information. (1) Except for purposes directly related to direct program administration, the department may not use or disclose any information concerning past or present applicants and recipients of MA.

(2) In this section, "direct program administration" means:

(a) Determining initial eligibility of the applicant and continuing eligibility of the recipient;

(b) Determining appropriate services to be covered;

(c) Providing services for recipients;

(d) Processing provider claims for reimbursement;

(e) Auditing provider claims for reimbursement;

(f) Investigating or prosecuting criminal or civil proceedings conducted in connection with program administration;

(g) Seeking third-party payment for services provided to a recipient; and

(h) Other activities determined by the department to be necessary for proper and efficient administration of MA.

(3) The department shall request the attorney general to institute appropriate action when necessary to enforce provisions of this section.

(4) Safeguarded information concerning an individual applicant or recipient shall include but not be limited to:

(a) Name and address;

(b) Social data, including but not limited to:

1. Marital status;

2. Age;

3. Race;

4. Names and MA numbers of family members;

5. Paternity status of children; and

6. Unique identifying characteristics;

(c) Economic data, including but not limited to:

1. Assets;

2. Amount of assistance received;

3. Amount of medical expenses incurred;

4. Sources of payment or support;

5. Past or present employment;

6. Income, regardless of source;

7. Social security number; and

8. Income expense deductions;

(d) Agency evaluation information, including but not limited to:

1. Verification of client information; and

2. Identity of verification sources; and

(e) Medical data, including but not limited to:

1. Past history and medical record content;

2. Diagnosis;

3. Drugs prescribed;

4. Course of treatment prescribed; and

5. Name of provider.

(5) For purposes of direct program administration, the department may permit disclosure to, or use of safeguarded information by, legally qualified persons or agency representatives outside the department. Governmental authorities, the courts, and law enforcement officers are persons outside the department who shall comply with sub. (6).

(6) Persons or agency representatives outside the department to whom the department may disclose or permit use of safeguarded information shall meet the following qualifications:

(a) The purpose for use or disclosure shall involve direct program administration; and

(b) The person or the person's agency shall be bound by law or other legally enforceable obligation to observe confidentiality standards comparable to those observed by the department.

(7) Unless it is related to direct program administration, the department shall respond to a subpoena for a case record or for agency representative testimony regarding an applicant or recipient as follows:

(a) The department shall provide the court and all parties to the proceeding with a copy of this section;

(b) The department shall request that the attorney general intervene in the proceeding in a manner which will give effect to this section; and

(c) The department shall notify in writing applicants or recipients affected by a subpoena for safeguarded information.

(8) The department shall publicize this section as follows:

(a) Publication in the Wisconsin administrative code;

(b) Incorporation by reference in certification procedures for all providers; and

(c) Incorporation in information provided to recipients regarding their rights and responsibilities.

(9) The secretary or a designee shall determine the appropriate application of this section to circumstances not covered expressly by this section. Use or disclosure not expressly provided for in this section may not occur prior to this determination.

History: Cr. Register, December, 1979, No. 288, eff. 2-1-80; am. Register, February, 1986, No. 362, eff. 3-1-86.

HSS 108.02 Department rights and responsibilities. (1) DIFFERENT BENEFITS FOR DIFFERENT GROUPS. The department may offer MA benefits to the categorically needy which are different from the benefits offered to the medically needy, subject to ss. 49.46 (2) (a) and 49.47 (6) (a), Stats. For the categorically needy, benefits shall meet federal minimum standards of coverage under 42 CFR 435.100-135. The department need not provide the same benefits that the categorically needy receive to individuals who are determined to be medically needy. The department is not required to provide the same amount, duration and scope of services to all the different groups who make up the medically needy population.

(2) REIMBURSEMENT METHODS AND PAYMENT LEVELS. The department may establish the reimbursement methods and payment levels for program services subject to the requirements of federal and state statutes, regulations and chs. HSS 101 to 107 and this chapter. Notice of specific changes or updates to payment levels shall be communicated to the service providers by the department through periodic publication of provider handbooks.

(3) ADVISORY COMMITTEES. The department may appoint and make use of professional advisory committees on an ad hoc basis to provide expertise for development of service or reimbursement policies.

(4) PROVIDER HANDBOOKS AND BULLETINS. The department shall publish provider handbooks, bulletins and periodic updates to inform providers of changes in state or federal law, policy, reimbursement rates and formulas, departmental interpretation, and procedural directives such as billing and prior authorization procedures, specific reimbursement changes and items of general information. The department shall inform providers in a handbook, bulletin or other publication of specific services requiring collection of benefits from medicare or other health care plans under s. HSS 106.03 (7) before benefits are claimed from the MA program. Information regarding eligibility for medicare or for another health care plan as identified on the recipient's MA identification card shall also be included in these publications.

(5) NOTIFICATION OF RECIPIENTS. The department shall publish periodic notification to eligible recipients, as necessary, to provide general information regarding MA program benefits and procedural requirements, and to notify recipients of any benefit or eligibility changes.

(6) NOTICE OF CHANGE IN METHOD OR LEVEL OF REIMBURSEMENT. (a) Except as provided in par. (b), the department shall publish a public notice in the Wisconsin administrative register of any significant proposed change in the statewide method or level of reimbursement for a service, in compliance with 42 CFR 447.205. This notice shall include information on the procedure for obtaining details of the proposed change, why the change is proposed and how to provide public comment to the department.

(b) Changes for which no public notice is required include the following:

1. Changes to conform with medicare methods and federally-invoked upper limits on reimbursement;

2. Changes required of the department by court order; and

3. Changes in wholesalers' or manufacturers' prices of drugs or materials, if the department's method of reimbursement is based on direct or wholesale prices as reported in a national standard such as the American druggist blue book, plus a pharmacy dispensing fee.

(c) Notice in the Wisconsin administrative register shall constitute official notice by the department to its contracted health service providers of a contractual change.

(7) MAILINGS AND DISTRIBUTIONS. The department shall mail or distribute materials to applicants, recipients or medical providers, as follows:

(a) All materials shall be limited to purposes directly related to program administration.

(b) Materials which may not be mailed or distributed include:

1. "Holiday" greetings;

2. General public announcements;

3. Voting information;

4. Alien registration notices;

5. Names of individuals, unless:

a. The named individual is connected with direct program administration; or

b. The named individual is identified only in an official agency capacity; and

6. Any material with political implications.

(c) Materials which may be mailed or distributed include:

1. Information of immediate interest to applicants' or recipients' health and welfare;

2. Information regarding the deletion or reduction of covered services; and

3. Consumer protection information.

(8) THIRD PARTY LIABILITY FOR COST OF SERVICES. (a) The department shall make reasonable efforts to identify

any third party insurer, including medicare, legally liable to contribute in whole or in part to the cost of services provided to a recipient under the MA program.

(b) When the department has determined that medicare or any other health care plan provides health care coverage to the recipient which is primary to MA, as stated in s. 632.755 (2), Stats., the medicare or other insurance coverage shall be identified on the recipient's MA identification card by specific codes.

(c) In the event payment for services otherwise covered by medicare or by another health care plan is unavailable, the provider may bill the department's MA fiscal agent, identifying the efforts to seek reimbursement from medicare or the other health care plan, on condition that the provider complies with the instructions issued by the department under sub. (4).

(9) DEPARTMENTAL RECOUPMENT OF OVERPAYMENTS. (a) *Recoupment methods.* If the department finds that a provider has received an overpayment, including but not limited to erroneous, excess, duplicative and improper payments regardless of cause, under the program, the department may recover the amount of the overpayment by any of the following methods, at its discretion:

1. Offsetting or making an appropriate adjustment against other amounts owed the provider for covered services;

2. Offsetting or crediting against amounts determined to be owed the provider for subsequent services provided under the program if:

a. The amount owed the provider at the time of the department's finding is insufficient to recover in whole the amount of the overpayment; and

b. The provider is claiming and receiving MA reimbursement in amounts sufficient to reasonably ensure full recovery of the overpayment within a reasonable period of time; or

3. Requiring the provider to pay directly to the department the amount of the overpayment.

(b) *Written notice.* No recovery by offset, adjustment or demand for payment may be made by the department under par. (a), except as provided under par. (c), unless the department gives the provider prior written notice of the department's intention to recover the amount determined to have been overpaid. The notice shall set forth the amount of the intended recovery, identify the claim or claims in question or other basis for recovery, summarize the basis for the department's finding that the provider has received amounts to which the provider is not entitled or in excess of that to which the provider is entitled, and inform the provider of a right to appeal the intended action under par. (e). Payment due the department shall be made by the provider within 30 days after the date of service of the notice of intent to recover. Final notices of intent to recover shall be sent by certified mail.

(c) *Exception.* The department need not provide prior written notice under par. (b) when the overpayment was made as a result of a computer processing or clerical error, for a recoupment of a manual partial payment, or when the provider requested or authorized the recovery to be made. In any of these cases the department or its fiscal agent shall provide written notice of any payment adjustments made on the next remittance issued the provider. This notice shall specify the amount of the adjustment made and the claim or claims which were the subject of the adjustments.

(d) *Withholding of payment involving fraud or willful misrepresentation.* 1. The department may withhold MA payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for withholding of payments involve fraud or willful misrepresentation under the MA program. Reliable evidence of fraud or willful misrepresentation includes, but is not limited to, the filing of criminal charges for those activities against the provider or one of its agents or employes by a prosecuting attorney. The department may withhold payments without first notifying the provider of its intention to withhold the payments. A provider is entitled to a hearing under s. HSS 106.12.

2. The department shall send written notice to the provider of the department's withholding of MA program payments within 5 days after taking that action. The notice shall generally set forth the allegations leading to the withholding, but need not disclose any specific information concerning the ongoing investigation of allegations of fraud and willful misrepresentation. The notice shall:

a. State that payments are being withheld in accordance with this paragraph;

b. State that the withholding action is for a temporary period, as defined under subd. 3, and cite the circumstances under which withholding will be terminated;

c. Specify, when appropriate, to which type or types of MA claims withholding is effective; and

d. Inform the provider that the provider has a right to submit to the department written evidence regarding the allegations of fraud and willful misrepresentation for consideration by the department.

3. Withholding of the provider's payments shall be temporary. Withholding of payment may not continue after:

a. The department determines after a preliminary investigation that there is not sufficient evidence of fraud or willful misrepresentation by the provider to require referral of the matter to an appropriate law enforcement agency pursuant to 42 CFR 455.15 and, to the extent of the department's knowledge, the matter is not already the subject of an investigation or a prosecution by a law enforcement agency or a prosecuting authority;

b. Any law enforcement agency or prosecuting authority which has investigated or commenced prosecution of the matter determines that there is insufficient evidence of fraud or misrepresentation by the provider to pursue criminal charges or civil forfeitures; or

c. Legal proceedings relating to the provider's alleged fraud or willful misrepresentation are completed and charges against the provider have been dismissed. In the case of a conviction of a provider for criminal or civil forfeiture offenses, those proceedings shall not be regarded as being completed until all appeals are exhausted. In the case of an acquittal in or dismissal of criminal or civil forfeiture proceedings against a provider, the proceedings shall be regarded as complete at the time of dismissal or

acquittal regardless of any opportunities for appeal which the prosecuting authority may have.

(e) *Request for hearing on recovery action.* If a provider chooses to contest the propriety of a proposed recovery under par. (a), the provider shall, within 20 days after receipt of the department's notice of intent to recover, request a hearing on the matter. The request shall be in writing and shall briefly identify the basis for contesting the proposed recovery. Receipt of a timely request for hearing shall prevent the department from making the proposed recovery while the hearing proceeding is pending. If a timely request for hearing is not received, the department may recover from current or future obligations of the program to the provider the amount specified in the notice of intent to recover and may take such other legal action as it deems appropriate to collect the amount specified. All hearings on recovery actions by the department shall be held in accordance with the provisions of ch. 227, Stats. The date of service of a provider's request for a hearing shall be the date on which the department's office of administrative hearings receives the request.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (4), cr. (8) and (9), eff. 7-1-92; am. (4), cr. (8) and (9), Register, February, 1993, No. 446, eff. 3-1-93; correction in (6) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1994, No. 462.

HSS 108.03 County responsibilities. (1) DETERMINATION OF ELIGIBILITY. Agencies shall be responsible for determination of eligibility for MA. These determinations shall comply with standards for eligibility found in ss. 49.46 (1) and 49.47 (4), Stats., and ch. HSS 103.

(2) INFORMING RECIPIENTS OF RIGHTS AND DUTIES. Agencies shall inform recipients of the recipients' rights and duties under the program, including those rights enumerated in s. HSS 106.04 (3).

(3) RECOVERY OF INCORRECT PAYMENTS. (a) Agencies shall begin recovery action, as provided by statute for civil liabilities, on behalf of the department against any MA recipient to whom or on whose behalf an incorrect payment was made.

(b) The incorrect payment shall have resulted from a misstatement or omission of fact by the person supplying information during an application for MA benefits, or failure by the recipient, or any other person responsible for giving information on the recipient's behalf, to report income or assets in an amount which would affect the recipient's eligibility for benefits.

(c) The amount of recovery may not exceed the amount of the MA benefits incorrectly provided.

(d) Records of payment for the period of ineligibility, provided to the agency by the MA fiscal agent, shall be evidence of the amounts paid on behalf of the recipient.

(e) The agency shall notify the recipient or the recipient's representative of the period of ineligibility and the amounts incorrectly paid, and shall request arrangement of repayment within a specified period of time.

(f) If the effort to recover incorrect payments under par. (e) is not successful, the agency shall refer cases of possible recovery to the district attorney or corporation counsel for investigation and the district attorney or corporation counsel may bring whatever action may be appropriate for prosecution for fraud or collection under civil liability statutes. Judgments obtained in these actions shall be filed as liens against property in any county in which the recipient is known to possess assets, if not satisfied at the time the judgment or order for restitution is rendered. Execution may be taken on the judgments as otherwise provided in statute.

(g) The agency may seek recovery through an order for restitution by the court of jurisdiction in which the recipient or former recipient is being prosecuted for fraud.

(h) The agency's decision concerning ineligibility and amounts owed may be appealed pursuant to ch. HSS 225. During the appeal process the agency may take no further recovery actions pending a decision. Benefits shall be continued pending the decision on the appeal. When the hearing decision is subsequently adverse to the client the benefits paid pending a decision on the appeal shall be collectable as incorrect payments.

(i) The agency shall immediately deposit monies collected under this subsection to a designated bank account. The collection shall be reported to the department in the manner and on forms designated by the department within 30 days following the end of the month in which the collection is made, and shall be transmitted to the state in accordance with departmental instructions.

(4) ESTABLISHING A PROGRAM OF MEDICAL SUPPORT LIABILITY. Pursuant to s. 59.07 (97), Stats., counties shall contract with the department to implement and administer the child support collection program under Title IV-D of the Social Security Act of 1935, as amended. One of the responsibilities of a county's child support agency defined in s. HSS 215.02 (1) is to establish a program of medical support liability along with the child and spousal support and paternity establishment program.

(5) INCENTIVE PAYMENTS FOR INSURANCE REPORTING. (a) Pursuant to approval by the federal health care financing administration, the department shall make payments under s. 49.45 (3) (am), Stats., to county and tribal agencies under this subsection, including agencies subject to the requirements under sub. (4), to encourage identification and reporting by these agencies of MA applicants and recipients who are covered by other medical insurance. Unless par. (b) applies, an agency shall receive an incentive payment if:

1. The agency identifies an MA applicant or recipient who is medically insured, identifies the person's insurance carrier providing the medical insurance coverage, and supplies information describing the person's insurance plan. The department's requirement for reporting specific information necessary to receive payment is further described in the *Medical Assistance Eligibility Handbook:* and

2. The department makes a reasonable effort to verify with the insurance carrier that the person's medical insurance was in effect during a coverage period corresponding to a period of MA eligibility occurring within the period of 12 months prior to the month in which the department received the county agency's information report for any MA applicant or recipient.

(b) Insurance policies which do not qualify for payment under this subsection shall be identified by the depart-

ment based on factors that include cost effectiveness and the limitation of coverage. Policies which do not qualify under this subsection include the following:

1. A policy with coverage limited to specific diagnoses unless the policyholder has a diagnosis covered by the policy;

2. A policy limiting benefits to specific circumstances such as accidental injury;

3. A policy limiting benefits to the extent that coordinating benefits is administratively unfeasible; and

4. A policy not primarily intended as providing medical insurance coverage, such as a policy providing periodic benefits for disability or hospitalization, a policy providing liability insurance with payment for medical benefits or a policy which does not specifically cover medical services.

History: Cr. Register, December, 1979, No. 288, eff. 2-1-80; renum. from HSS 108.02 and am. Register, February, 1986, No. 362, eff. 3-1-86; cr. (6), Register, December, 1988, No. 396, eff. 1-1-89; r. (4), renum. (5) and (6) to be (4) and (5), Register, September, 1991, No. 429, eff. 10-1-91; correction in (5) made under s. 13.93 (am) (b) 7, Stats., Register, September, 1991, No. 429; **correction in (3) (h) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1995, No. 473.**