



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 4

TO: MEMBERS OF THE DRAFTING SUBCOMMITTEE OF THE SPECIAL COMMITTEE
ON PUBLIC ASSISTANCE PROGRAM INTEGRITY

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Introduction to the Process for Recodification of Provisions of Ch. 49, Stats., Public
Assistance and Children and Family Services

DATE: September 30, 2010

The Special Committee on Public Assistance Program Integrity has established a working group to develop recommendations to recodify provisions of ch. 49, Stats., relating to fraud investigation, identification and collection of benefit overpayments, sanctions for program violations, and the procedures for imposing and appealing sanctions. The recommendations of the working group will be considered by the full committee in addition to any recommendations developed by the full committee.

This Memo:

- Discusses the recodification process and the general scope of questions for consideration in recodifying ch. 49, Stats.
- Sets forth recommendations for the working group that have been presented to the full committee.
- Includes in an *Enclosure*, the current table of contents of ch. 49, Stats.

The *Enclosure* to this Memo contains the Table of Contents of ch. 49, Stats., from the unofficial text of the updated 2007-08 Wisconsin Statutes database, which includes 2009 session laws affecting the chapter.

RECODIFICATION PROCESS

Scope of Recodification

A statutory recodification may entail one or more of the following:

1. Reorganizing a body of law in a logical fashion by: (a) renumbering and retitling sections and section subunits; (b) grouping related parts of the body of law (e.g., using subchapters or creating new chapters); (c) consolidating related provisions; (d) incorporating appropriate statutes found elsewhere; or (f) renumbering statutes more appropriately placed elsewhere.
2. Modernizing language to reflect current drafting style and word usage.
3. Resolving ambiguities in the language of the current law.
4. Filling gaps in specific substantive areas where the law is silent.
5. Eliminating archaic, anachronistic, unnecessary, or unconstitutional provisions of the law.
6. Codifying relevant decisions of the supreme court and court of appeals and Attorney General opinions interpreting the laws in question.
7. Making minor substantive changes to, for example, codify current practice or reconcile conflicts in current law.

Use of Explanatory Notes

An important component of a recodification process is the preparation of explanatory notes, which are incorporated into the body of draft legislation produced by the recodification project. The notes serve to provide the legislative history of the recodified law. The notes will, among other things:

- Identify the source of the recodified law (i.e., previous law, court decision, decision by the Special Committee) and, if previous law, the previous location of the provisions;
- Identify archaic, anachronistic, unnecessary, or unconstitutional provisions of previous law which have been deleted; and
- Identify and articulate the basis for substantive changes.

The explanatory notes are prepared by committee staff as part of the redrafting process and will be reviewed by the working group.

GENERAL QUESTIONS FOR CONSIDERATION IN RECODIFYING CH. 49

In considering the possible scope of the recodification of ch. 49, the following general questions might be considered:

1. What provisions in ch. 49 are in need of substantial rewriting that can be redrafted without controversy? For example:
 - a. Rewriting complicated provisions to clarify the provisions and make them more readable and understandable.
 - b. Rewriting provisions to modernize the language to reflect current drafting style and word usage.

2. What provisions in ch. 49 should **not** be rewritten (e.g., either because: (a) they are too controversial among the various interest groups, such as state agencies, counties, and advocacy groups; or (b) court decisions interpreting statutory language adequately deal with the issues raised and a codification of those decisions would be too complex and serve little purpose)?

3. What provisions in ch. 49 should be considered for repeal (e.g., to eliminate archaic, anachronistic, unnecessary, or unconstitutional provisions of the law)?

4. What minor substantive changes in ch. 49 are desirable?

RECOMMENDATIONS FOR RECODIFICATION OF CH. 49, STATS.

The following recommendations for changes to ch. 49, Stats., have been raised in meetings of the Special Committee in correspondence from committee members, or by committee staff:

1. Delete references to the Aid to Families with Dependent Children (AFDC) Program because benefits are no longer provided under this program. [See, e.g., s. 49.19 and references to AFDC in ss. 49.197 (1m), 49.32, 49.46, 49.78, and 49.845, Stats.]
2. Place the provisions governing each public assistance program in one section with clear program integrity language.
3. Where appropriate, replace references to the "food stamp program" and "food coupons," respectively with references to FoodShare and "Quest cards." [See e.g., ss. 46.215 (1) (k), 46.22 (1) (b) 2., and 49.795.]
4. Where appropriate in Medical Assistance (MA) provisions: (a) clarify which provisions apply to both regular MA and BadgerCare and any differences between the two programs; and (b) eliminate references to the federal Health Care Financing Administration which is now called the federal Centers for Medicare and Medicaid. [See, e.g., ss. 49.497 (1) (a) 2. and 49.45 (6h).]
5. Update and clarify processes for state and local program integrity responsibilities and activities.
6. Centralize criminal penalties contained in ch. 49, Stats., and consider placing criminal penalties in the Criminal Code. [See, e.g., s. 49.95, Stats.]
7. Standardize fraud provisions across public assistance programs.
8. Provide statutory definitions of "fraud" and other relevant terminology.

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Enclosure

CHAPTER 49

PUBLIC ASSISTANCE AND CHILDREN AND FAMILY SERVICES

SUBCHAPTER I		49.38	Menominee Enterprises, Inc., bonds, acquisition.
DEFINITIONS		49.385	No action against members of the Menominee Indian tribe in certain cases.
SUBCHAPTER II		SUBCHAPTER IV	
RELIEF BLOCK GRANTS		MEDICAL ASSISTANCE	
49.001	Definitions.	49.43	Definitions.
49.002	Legislative declaration.	49.45	Medical assistance; administration.
49.01	Definitions.	49.453	Divestment of assets.
49.015	Relief eligibility.	49.454	Treatment of trust amounts.
49.02	Relief block grant administration.	49.455	Protection of income and resources of couple for maintenance of community spouse.
49.025	Relief block grants to counties with a population of 500,000 or more; medical relief.	49.46	Medical assistance; recipients of social security aids.
49.027	Relief block grants to counties having a population of less than 500,000; medical and nonmedical relief.	49.465	Presumptive medical assistance eligibility.
49.029	Block grants to tribal governing bodies; medical relief.	49.468	Expanded medicare buy-in.
49.031	Payment of relief block grants to counties.	49.47	Medical assistance; medically indigent.
49.08	Recovery of relief and other assistance.	49.471	BadgerCare Plus.
SUBCHAPTER III		49.472	Medical assistance purchase plan.
CHILDREN AND FAMILY SUPPORT SERVICES		49.473	Medical assistance; women diagnosed with breast or cervical cancer or precancerous conditions.
49.11	Definitions.	49.475	Information about medical assistance beneficiaries.
49.114	Contract powers of the department.	49.48	Denial, nonrenewal and suspension of certification of service providers based on certain delinquency in payment.
49.131	Electronic transfer of benefits.	49.485	False claims.
49.133	Refusal to pay child care providers.	49.49	Medical assistance offenses.
49.134	Child care resource and referral service grants.	49.493	Benefits under uninsured health plans.
49.136	Child care start-up and expansion.	49.495	Jurisdiction of the department of justice.
49.137	Child care quality improvement.	49.496	Recovery of correct medical assistance payments.
49.1375	Early childhood excellence initiative.	49.497	Recovery of incorrect Medical Assistance or Badger Care payments and of unpaid employer penalties.
49.138	Emergency assistance for families with needy children.	49.498	Requirements for skilled nursing facilities.
49.139	Emergency shelter funding.	49.499	Nursing facility resident protection.
49.141	Wisconsin works; general provisions.	SUBCHAPTER V	
49.143	Wisconsin works; agency contracts.	OTHER SUPPORT AND MEDICAL PROGRAMS	
49.145	Wisconsin works; eligibility for employment positions.	49.66	Definitions.
49.1452	Payment of support arrears.	49.665	Badger care.
49.1455	Child support demonstration project.	49.67	BadgerCare Plus Basic Plan.
49.146	Employer criteria.	49.68	Aid for treatment of kidney disease.
49.147	Wisconsin works; work programs and job access loans.	49.682	Recovery from estates.
49.1473	Wisconsin works; domestic abuse screening and training.	49.683	Cystic fibrosis aids.
49.1475	Follow-up services.	49.685	Hemophilia treatment services.
49.148	Wisconsin works; wages and benefits.	49.686	AZT and pentamidine reimbursement program.
49.149	Wisconsin works; education and training.	49.687	Disease aids; patient requirements; rebate agreements; cost containment.
49.15	Wisconsin works; 2-parent families.	49.688	Prescription drug assistance for elderly persons.
49.151	Wisconsin works; sanctions.	49.70	County home; establishment.
49.1515	Determining nonparticipation without good cause.	49.703	County homes; commitments; admissions.
49.152	Review of agency decisions.	49.71	County hospitals; establishment.
49.153	Notice before taking certain actions.	49.713	County hospitals; admissions.
49.155	Wisconsin Shares; child care subsidy.	49.72	County infirmaries; establishment.
49.157	Wisconsin works; transportation assistance.	49.723	County infirmaries; admissions; standards.
49.159	Wisconsin works; noncustodial and minor and other custodial parents.	49.726	County infirmaries; cost of treatment, care and maintenance of patients.
49.161	Wisconsin works; overpayments.	49.729	County infirmaries; fees and expenses of proceedings.
49.162	Transitional jobs demonstration project.	49.73	Residential care institutions; establishment.
49.1635	Wisconsin Trust Account Foundation.	49.74	Institutions subject to chapter 150.
49.165	Domestic abuse grants.	49.76	Department duties relating to hunger prevention.
49.167	Alcohol and other drug abuse treatment grant program.	49.77	State supplemental payments.
49.169	Literacy grants.	49.775	Payments for the support of children of supplemental security income recipients.
49.173	Workforce attachment and advancement program.	49.776	Payment of support arrears.
49.175	Public assistance and local assistance allocations.	49.78	Income maintenance administration.
49.19	Aid to families with dependent children.	49.785	Funeral expenses.
49.195	Recovery of aid to families with dependent children and Wisconsin works benefits.	49.79	Food stamp administration.
49.197	Fraud investigation and reduction and error reduction.	49.793	Recovery of food stamps.
49.22	Child and spousal support; establishment of paternity; medical liability.	49.795	Food stamp offenses.
49.225	Ordering genetic tests.	49.797	Electronic benefit transfer.
49.227	Program for publication of delinquent child support obligors.	SUBCHAPTER VI	
49.24	Child support incentive payments.	GENERAL PROVISIONS	
49.25	Incentive payments for identifying children with health insurance.	49.81	Public assistance recipients' bill of rights.
49.26	Learnfare program.	49.82	Administration of public assistance programs.
49.265	Community action agencies.	49.825	Department administration in Milwaukee County.
49.27	Legal actions.	49.826	Administration of child care provider services in certain counties.
49.273	Research, investigations.	49.83	Limitation on giving information.
49.275	Cooperation with federal government.	49.84	Verification of public assistance applications.
49.29	Loss of eligibility.	49.845	Fraud investigation and error reduction.
49.32	Department; powers and duties.	49.847	Recovery of incorrect payments under certain public assistance programs.
49.325	County department budgets and contracts.	49.85	Certification of certain public assistance overpayments and delinquent loan repayments.
49.34	Purchase of care and services.	49.852	Delinquent support payments; pension plans.
49.343	Rates for residential care centers, group homes, and child welfare agencies.	49.853	Financial record matching program.
49.345	Cost of care and maintenance; liability; collection and deportation counsel; collections; court actions; recovery.	49.854	Liens against property for delinquent support payments.
49.35	Public assistance; supervisory functions of department.	49.855	Certification of delinquent payments.
49.36	Work experience program for noncustodial parents.		

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49.856	Notification of delinquent payments.	49.89	Third party liability.
49.857	Administrative enforcement of support; denial, nonrenewal, restriction and suspension of licenses.	49.90	Liability of relatives; enforcement.
49.858	General provisions related to administrative support enforcement.	49.95	Penalties; evidence.
49.86	Disbursement of funds and facsimile signatures.	49.96	Assistance grants exempt from levy.