

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

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Text from the 2007–08 Wis. Stats. database updated by the Legislative Reference Bureau. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1–2–10 are printed as if currently in effect. Statutory changes effective on or after 1–2–10 are designated by NOTES. Report errors at (608) 266–3561, FAX 264–6948, http://www.legis.state.wi.us/rsb/stats.html

PUBLIC ASSISTANCE AND CHILDREN AND FAMILY

Updated 07–08 Wis. Stats. Database Not certified under s. 35.18 (2), stats.

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