CHAPTER 49

PUBLIC ASSISTANCE

GENERAL RELIEF

49.001 Public assistance recipients' bill of rights. The department and all public assistance and relief-granting agencies shall respect rights for recipients of public assistance. The rights shall include all rights guaranteed by the U.S. constitution and the constitution of this state, and in addition shall include:

(1) The right to be treated with respect by state agents.

(2) The right to confidentiality of agency records and files on the recipient. Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes.

(3) The right to access to agency records and files relating to the recipient, except that the agency may withhold information obtained under a promise of confidentiality.

(4) The right to a speedy determination of the recipient's status or eligibility for public assistance, to notice of any proposed change in such status or eligibility, and, in the case of assistance granted under s. 49.19, 49.46 or 49.47, to a speedy appeals process for resolving contested determinations.

History: 1977 c. 29.

49.002 Legislative declaration. It is declared to be legislative policy that all recipients of general relief shall have maximum exposure to job training and job opportunities through the Wisconsin state employment service as well as other government agencies. Applicants and recipients of general relief shall comply with the established work-seeking rules of the relief-administering agency. Recipients of general relief shall also comply with the established work relief rules of the relief-administering agency. Refusal of a bona fide offer of employment or training without good cause, or acceptance and subsequent inadequate performance through wilful neglect, or failure to comply with the work-seeking or work relief rules of the relief-administering agency, shall necessitate that local, municipal or county welfare officials discontinue general relief payments to such individual for a period not to exceed 30 days. Any Wisconsin taxpayer shall have standing in the circuit court for the purpose of obtaining an injunction to enforce this section. All personnel

shall do their best to get individuals off general relief and into self-supporting productive jobs.

History: 1983 a. 27.

Administrative rule under which applicants for general relief benefits were, in effect, deemed unwilling to work if they had lost 2 jobs without justification within past 12 months created impermissible, irrebuttable presumption that otherwise eligible applicants were presently unwilling to comply with this section. Garcia v. Silverman, 393 F Supp. 590.

49.01 Definitions. As used in this chapter:

(1) "Accommodated person" means any person in a hospital or in a skilled nursing facility or intermediate care facility, as defined in Title XIX of the social security act, who would have been eligible for benefits under s. 49.177 or 49.19 or federal Title XVI if he were not in such a hospital or facility, and any person in such an institution who can be found eligible for Title XIX under the social security act.

(2) "Dependent person" or "dependent" means a person without the present available money or income or property or credit, or other means by which the same can be presently obtained, sufficient to provide the necessary commodities and services specified in sub. (8). Credit received under s. 71.09 (7) and federal home energy assistance benefits authorized under 42 USC 8621 to 8629 are not income or resources for purposes of determining dependency or the amount of relief provided.

(3) "Eligible" or "eligibility" means a dependent person who has continuously resided for one whole year in this state immediately prior to an application for relief except that temporary assistance including medical care may be granted during the initial year to meet an emergency situation pending the negotiations for the return of the applicant and family to the former place of residence or legal settlement outside this state or to meet a medical emergency developing during the initial one year period of residence. Such temporary assistance shall not extend beyond 30 days unless a medical emergency requires further extension. Notwithstanding the foregoing, whenever anyone leaves this state, and was at the time of his departure eligible as to residential requirements to receive general assistance under this section other than emergency aid, such person upon returning within one year to this state, shall be eligible to receive such general assistance in this state without limitation on the period of relief to be granted so long as the need continues.

(4) "Essential person" means any person defined as an essential person under federal Title XVI.

(5) "Federal Title XVI" means Title XVI of the federal social security act.

(6) "Municipality" means any town, city or village.

(7) "Public medical institution" has the meaning designated in Title XIX of the federal social security act.

(8) "Relief" means such services, commodities or money as are reasonable and necessary under the circumstances to provide food, housing, clothing, fuel, light, water, medicine, medical, dental, and surgical treatment (including hospital care), optometrical services, nursing, transportation, and funeral expenses, and include wages for work relief. The food furnished shall be of a kind and quantity sufficient to provide a nourishing diet. The housing provided shall be adequate for health and decency. Where there are children of school age the relief furnished shall include necessities for which no other provision is made by law. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts, as will in the discretion of the relief official or agency meet the needs of the recipient and protect the public.

(9) "Work relief" means any moneys paid to dependent persons entitled to relief who have been required by any municipality or county to work on any work relief project.

(10) "Work relief project" means any undertaking performed in whole or in part by persons receiving work relief.

History: 1973 c. 147, 333; 1979 c. 34; 1981 c. 20; 1983 a. 27; 1983 a. 189 ss. 35 to 37, 329 (19).

Cross Reference: See 46.206 (3) for definition of "county agency".

A man who quits a job for personal reasons may not be denied welfare if he is otherwise eligible. 49.002 establishes a condition for continued eligibility, not a bar to initial eligibility. State ex rel. Arteaga v. Silverman, 56 W (2d) 110, 201 NW (2d) 538.

AFDC recipient may qualify as "dependent" under (4). State ex rel. Tiner v. Milwaukee County, 81 W (2d) 277, 260 NW (2d) 393.

"Dependent person" under (4) defined. St. Michael Hosp. v. County of Milwaukee, 98 W (2d) 1, 295 NW (2d) 189 (Ct. App. 1980).

Indigent veteran's right to apply for veteran's emergency relief grant did not disqualify veteran as "dependent". Luther Hospital v. Eau Claire County, 115 W (2d) 100, 339 NW (2d) 798 (Ct. App. 1983).

Sub. (1) is not broad enough to include attorneys' fees incurred by eligible dependent person to prosecute or defend divorce action. 61 Atty. Gen. 330.

See note to Art. I, s. 1, citing Lavine v. Milne, 424 US 577.

Constitutional law: residency requirements. 53 MLR 439.

49.02 Relief administration. (1) Every municipality shall furnish relief to all eligible dependent persons therein and shall establish or designate an official or agency to administer the same. The administering agency or official shall establish written criteria to be used to determine dependency and shall establish written standards of need to be used to determine the type and amount of relief to be furnished. The agency or official shall review the standards of need at least annually. The administering

agency or official may establish work-seeking rules for relief applicants and recipients.

(2) Every county may furnish relief only to all eligible dependent persons within the county but not having a legal settlement therein, and if it elects to do so, it shall establish or designate an official or agency to administer the same.

(3) When the settlement of an eligible dependent person is unknown or in doubt relief may be initially administered by the municipality in which such person is found in need, but the matter shall be promptly investigated and reported or referred as the case may be to the county in which the municipality is situated.

(4) Nothing in this section shall prevent any county or municipality from entering into a joint or co-operative agreement under s. 66.30.

(5) (a) Except as otherwise provided in this section, a municipality or county shall be liable for the emergency hospitalization of and care rendered by a physician and surgeon to a person who is determined to be an eligible dependent person under this chapter, without previously authorizing the same, when, in the reasonable professional judgment of a physician, emergency medical treatment or hospitalization is necessary because severe physical or psychological damage to the person would result if the treatment or hospitalization was delayed pending the receipt of prior authorization from the municipality or county.

(b) A municipality or county is not liable for hospitalization or care provided under par. (a) if the hospital provides the care or hospitalization to the person as uncompensated services required under 42 USC 291c.

(c) A municipality or county is not liable for treatment or hospitalization provided under par. (a) unless:

1. Within 3 working days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital has written notice of the treatment or hospitalization delivered to the relief administering agency or official of the municipality or county in which the hospital is located and within 3 working days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital gives oral notice and mails written notice of the treatment or hospitalization to the relief administering agency or official of the municipality or county in which the patient's last-known address is located, if different than the municipality or county in which the hospital is located. Each notice provided under this subdivision shall include the patient's name and last-known address and a statement about the nature of the illness or injury and the probable duration of necessary treatment and hospitalization. Each written notice provided under this subdivision shall also include a written statement by the attending physician certifying the need for the emergency medical treatment or hospitalization;

2. Within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital mails or delivers the form required under this subdivision to the relief administering agency of the municipality or county in which the hospital is located. The hospital shall provide the information that it has obtained that is requested on a form developed and provided by the department. The hospital shall make reasonable efforts to obtain the information requested on the form either from the patient, if able, or some other person who has knowledge of the facts. The form shall, at a minimum, include the patient's phone number, the name of the patient's closest relative, the name of the patient's employer, information regarding the patient's finances including income, assets, liabilities and insurance coverage and information related to the patient's eligibility for other medical and hospital assistance programs. The form shall also include, either from the patient, if able, or some other person who has knowledge of the facts, a sworn statement of facts relating to the patient's residence and legal settlement. For 20 days after the initial information is provided under this subdivision, the hospital has a continuing obligation to seek and report information relevant to the patient's care and eligibility under this section to the relief administering agency of the municipality or county in which the hospital is located;

2m. Within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital mails or delivers to the relief administering agency or official of the municipality or county in which the hospital is located a form signed by the patient, if able, that authorizes the relief administering agency or official of the municipality or county in which the hospital is located to verify any information submitted to that agency or official by the hospital; and

3. If a municipality or a county elects to require hospitals to obtain authorization as provided in this subdivision, within 72 hours after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital obtains authorization for continued treatment or hospitalization of the patient from the municipality or county in which the hospital is located. If an agent of the hospital fails to obtain the authorization within the 72-hour period, either because he or she was unable

to reach the municipality or county or because the municipality or county has failed to grant or deny the authorization within the 72-hour period, the hospital may continue to provide the treatment or hospitalization until the authorization is denied if an agent of the hospital makes daily good faith efforts to obtain authorization from the municipality or county for continued treatment or hospitalization of the patient. A municipality or county is liable for such continued treatment and hospitalization if all other requirements under this subsection are met.

(cm) Each relief administering agency or official of a municipality or a county that elects to require hospitals to obtain authorization under par. (c) 3 shall either establish a written procedure using medical criteria for responding to requests for authorization for continued treatment or hospitalization under par. (c) 3, or it shall delegate the authorization responsibility to the requesting hospital, the attending physician or other medical personnel designated by the agency or official. Each relief administering agency or official shall inform the department as to whether it has developed a procedure for responding to requests or whether it has delegated the responsibility. Each relief administering agency or official that develops a written procedure for responding to requests shall provide a copy to the department.

(d) Any municipality or county in which a hospital is located that provides emergency medical treatment or hospitalization to a person under this subsection shall follow the procedures provided in sub. (5m) to determine liability for the treatment or hospitalization. If the municipality or county in which the hospital that provides emergency medical treatment or hospitalization is located does not comply with the requirements under sub. (5m) it shall be liable for the costs specified in sub. (5m).

(e) A municipality or county may establish written standards to be used to determine what is reasonable care for the purposes of this section.

(5m) (a) Liability for emergency medical treatment or hospitalization provided under sub. (5) and for all treatment or hospitalization provided under this section as a result of the injury or illness for which emergency medical treatment or hospitalization was provided shall be determined as follows:

1. The municipality or county in which the patient has legal settlement is liable, except that no municipality or county is liable for treatment or hospitalization provided to any person who has not resided within such municipality or county during the previous 24 months.

2. If there is no municipality or county of legal settlement, or if such municipality or county is not liable because the person has not resided within such municipality or county during the previous 24 months, the county in which the person's last-known address is located is liable.

3. If there is no municipality or county of legal settlement, or if such municipality or county is not liable because the person has not resided within such municipality or county during the previous 24 months, and the person has no known address, the county in which the injury or incident occurred for which emergency medical treatment or hospitalization was provided is liable.

(b) A municipality or county in which a hospital is located that provided emergency medical treatment or hospitalization to a person shall, within 45 days after the treatment or hospitalization was initially provided, make a good faith effort to determine all of the following:

1. The person's place of legal settlement.

2. The county in which the person's last-known address is located.

3. The county in which the injury or incident occurred for which the emergency medical treatment or hospitalization was provided.

(c) 1. If a municipality or county determines under par. (b) that the person has a place of legal settlement it shall within 45 days after the emergency medical treatment or hospitalization was initially provided send to the municipality or county determined to be the place of legal settlement a nonresident notice which shall be in the form prescribed under s. 49.11 (4) (intro.), and it shall provide to the municipality or county determined to be the place of legal settlement all facts known to it regarding the person's treatment and hospitalization and injury or illness.

2. If a municipality or county determines under par. (b) that the person has no place of settlement it shall within 45 days after the treatment or hospitalization was initially provided send a notice of that determination to the county in which the patient's last-known address is located. The notice shall also contain the patient's name, last-known address and all facts relating to the person that are known to the municipality or county in which the hospital is located regarding the patient's treatment and hospitalization, injury or illness and residence.

3. If a municipality or county determines under par. (b) that the person has no place of legal settlement and has no known address, it shall within 45 days after the treatment or hospitalization was initially provided send a notice of that determination to the county in

which the injury or incident occurred for which emergency medical treatment or hospitalization was provided. The notice shall also contain the patient's name and all facts relating to the person that are known to the municipality or county in which the hospital is located regarding the patient's treatment and hospitalization, injury or illness and residence.

(d) 1. A municipality or county that receives a notice under par. (c) shall mail a denial or acknowledgment of liability within 20 days after receipt of the notice to the relief administering agency or official of the municipality or county in which the hospital that provided the treatment or hospitalization is located. If liability is denied, the denial shall contain all the facts upon which the denial is based. Failure to timely deny liability is an acknowledgment of liability.

2. The municipality or county in which the hospital that provided the treatment or hospitalization is located shall, within 30 days after the date it mailed a notice under par. (c), notify the hospital that provided the treatment or hospitalization of an acknowledgment of liability by a municipality or county under subd. 1. The hospital shall recover the costs of the treatment or hospitalization specified under par. (a) directly from the municipality or county of acknowledged liability.

3. If liability is timely denied under subd. 1, the municipality or county in which the hospital that provided the treatment or hospitalization is located shall institute a proceeding under par. (e) within 20 days after receipt of the denial.

(e) 1. The department is vested with exclusive original jurisdiction to hear all proceedings brought under this paragraph for claims to establish liability for treatment or hospitalization specified under par. (a). The municipality or county instituting a proceeding under this paragraph shall join as parties defendant all municipalities or counties which may be liable. Each party defendant may also join as parties defendant all municipalities or counties which may be liable. The parties have a right to be represented at any hearing, by an attorney or any other authorized agent approved by the department and to present relevant testimony. The department shall appoint examiners to conduct hearings under this paragraph and the department or examiner may issue subpoenas for the hearings. The department shall, by order, determine the liability of all parties in a proceeding. The department may promulgate rules needed to implement this paragraph.

2. A proceeding under this paragraph shall be initiated by complaint. The complaint shall contain the names of the parties and matters and requests for relief as in complaints generally. The complainant shall serve the complaint and sufficient copies upon the department by registered or certified mail. The department shall note receipt of service on the original complaint and shall acknowledge receipt of service to the complainant. The department shall immediately send a copy of the complaint by registered or certified mail to all named defendants. Within 20 days after the department mailed the complaint, a defendant shall serve an answer upon the department by registered or certified mail. The department shall acknowledge receipt of an answer and shall immediately send a copy of the answer to all other parties to the proceeding by registered or certified mail. The department may allow additional defendants to be named at any point during a proceeding and may continue or adjourn a proceeding for a reasonable period of time to enable the defendant and all parties to receive notice of the joinder and an opportunity to respond. The department shall notify the parties of the time and place of hearing. The department shall make findings and issue an order and shall send a copy of the findings and order to each party by registered or certified mail as soon as possible after the hearing. The order is subject to judicial review as provided under ss. 227.16 to 227.21.

3. Any municipality or county may assert the following defenses in a proceeding under this paragraph:

a. That the patient was not a dependent person or was not in need of some or all of the treatment or hospitalization provided based upon the standards established by the municipality or county in which the hospital that provided the treatment or hospitalization is located.

b. That a notice required under this subsection was defective to the prejudice of the municipality or county.

c. That a time limitation prescribed under this subsection had expired.

d. That legal settlement or liability is not in the municipality or county as claimed.

4. When a proceeding under this paragraph is finally determined on appeal, or if no appeal is taken within the prescribed time, the department shall send a copy of the final order to the hospital that provided the treatment or hospitalization. The hospital shall recover the costs of the treatment or hospitalization specified under par. (a) directly from the municipality or county named in the order.

(6) Officials and agencies administering relief shall assist dependent persons to regain a condition of self-support through every proper means at their disposal and shall give such service and

counsel to those likely to become dependent as may prevent such dependency

(7) Whenever the authorities charged with the administration of this section have reason to believe that a person receiving relief is engaging in conduct or behavior prohibited in ch. 944 or s. 940.225, they shall promptly notify the law enforcement officials of the county thereof, including facts relating to such person's alleged misconduct or illegal behavior.

(8) Any person found ineligible for medical assistance because of the divestment provisions under s. 49.45 (17) is ineligible for medical care under this section for the same period during which ineligibility exists under s. 49.45 (17).

(9) Any municipality or county may limit its liability for medical or dental care furnished as general relief, including emergency care provided under sub. (5), by adopting income and resource limitations. This limitation applies only to medical or dental care furnished as general relief on or after the date the municipality or county acts to limit its liability.

(10) Any municipality or county may limit its liability for medical or dental care furnished as general relief, including emergency care provided under sub. (5), to the amount payable by medical assistance under ss. 49.43 to 49.47 for similar care. This limitation applies only to medical or dental care furnished as general relief on or after the date the municipality or county acts to limit its liability. No provider of medical or dental care may bill a general relief recipient for the cost of care exceeding the amount paid under this subsection by the municipality or county.

History: 1975 c. 184 s. 13; 1981 c. 20, 317; 1983 a. 27 ss. 1005 to 1011, 2202 (20); 1983 a. 205.

A county is liable under (5) for emergency services given a person who would be eligible for general relief even though that person refuses to apply therefor. Mercy Medical Center v. Winnebago County, 58 W (2d) 260, 206 NW (2d) 198.

Rule requiring surrender of automobile license plates and title, as a prerequisite to temporary assistance, violates (1) and (2). State ex rel. Sell v. Milw. County, 65 W (2d) 219, 222 NW (2d) 592.

Prerequisites for municipal liability under (5) discussed. Clintonville Community Hosp. v. Clintonville, 87 W (2d) 635, 275 NW (2d) 655 (1979).

Hospital has no duty to undertake credit investigation of apparently dependent patient prior to rendering medical services; county should investigate after receiving notice under (5). Trinity Memorial Hosp. v. Milwaukee, 98 W (2d) 220, 295 NW (2d) 814 (Ct. App. 1980).

Counties may not require relief recipient to surrender auto title and plates as condition of receipt of assistance. 61 Atty. Gen. 313.

Liability for cost of providing medical care to indigent person under arrest discussed. 67 Atty. Gen. 245.

Section 53.38 is exclusively applicable in providing relief from medical and hospital care costs incurred by indigent prisoner while receiving emergency medical treatment in hospital. 69 Atty. Gen. 230.

Rights and obligations of hospitals, counties and individual patients under Hill-Burton Act discussed. 70 Atty. Gen. 24.

Welfare applicants are entitled to a statement of reasons and administrative hearing after their application for general welfare relief is denied. Alexander v. Silverman, 356 F. Supp. 1179.

Duty of a private hospital to render emergency treatment. 1974 WLR 279.

49.03 Optional county systems. (1) The county board may, by a resolution adopted by an affirmative vote of a majority of all its members:

(a) Provide that the county shall bear the expense of maintaining all eligible dependents therein and thereupon the county shall relieve all eligible dependents in the county; and all powers conferred and duties imposed by this chapter upon municipalities shall be exercised and performed by the county, or

(b) Abolish all distinction between eligible county dependents and eligible municipal dependents as to medical, surgical, dental, hospital and nursing care and optometrical services; and have the entire expense of such care a county charge.

(2) The county board by a resolution adopted by an affirmative vote of majority of all its members may repeal any resolution adopted under sub. (1).

49.035 State aid for general relief. (1) As provided in this section, the department shall reimburse counties and municipalities for eligible general relief costs incurred on or after July 1, 1983, from the appropriation under s. 20.435 (4) (eb).

(2) A county or municipality may receive reimbursement for up to 10% of the costs of relief provided under s. 49.02, except that medical costs may not be reimbursed under this subsection.

(3) A county or municipality may receive reimbursement:

(a) For up to 10% of medical costs incurred on behalf of an individual client that are more than $500 but not more than $5,000 per claim; and

(b) For up to 50% of medical costs incurred on behalf of an individual client that are more than $5,000 per claim.

(4) Claims for reimbursement under subs. (2) and (3) shall be filed with the department by March 1 of the year immediately following the year in which the costs were incurred. If the funds available under s. 20.435 (4) (eb) are insufficient to reimburse all eligible costs, the funds shall be prorated.

(5) The department shall establish a uniform reporting system for use by counties and municipalities to provide the department with information relating to general relief costs.

(6) No county or municipality may receive reimbursement under this section unless the county or municipality does all of the following:

(a) Requires prior authorization by the relief administering agency or official for all nonemergency medical care that is provided.

(b) Develops a medical cost containment plan by October 1, 1983, which includes provisions to limit the inappropriate use of emergency room care or to provide case management services.

(c) Provides information to the department relating to general relief costs.

(7) In this section "medical costs" means costs for medicine, medical, chiropractic, surgical, dental, hospital and nursing care and optometrical services.

History: 1983 a. 27, 192.

49.037 Procedural rights. (1) Any person may apply for general relief. The agency administering general relief shall notify every applicant in writing of the disposition of the application within 15 working days after receipt of the application and the notice to each person whose application is denied shall contain the reasons for the denial, the evidence and policy relied upon in making the disposition and the method by which the applicant may petition the agency for a review of the denial.

(2) If the agency administering general relief decides to terminate, suspend or reduce a recipient's general relief in a continuing aid case, that decision becomes effective 10 working days after written notice of the decision is mailed to the recipient affected by the action. The written decision shall contain the reasons for the decision, the evidence and policies relied upon in making the decision and the method by which the recipient may petition the agency to review the decision. For the purposes of this section, a reduction of a recipient's general relief does not include a reduction of the amount of a payment or voucher if the amount of the payment or voucher is based on actual costs incurred.

(3) Any person whose application for general relief is not acted upon within the time period required under sub. (1) or is denied in whole or in part, or whose general relief is terminated, suspended or reduced, may petition the agency for a review of the action. The agency shall, upon receipt of the petition, hold a hearing at a date and place convenient to the petitioner. Unless the petitioner requests a deferral of the hearing, the agency shall hold the hearing before an impartial decision maker within 10 working days after receipt of the petition.

(4) At all hearings conducted under this section, the petitioner or a representative may do all of the following:

(a) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) At the petitioner's option, present the case personally or with the aid of others, including legal counsel.

(c) Bring witnesses.

(d) Establish all pertinent facts and circumstances.

(e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(5) The petitioner shall be notified in writing within 5 working days after the hearing of the hearing decision, of the evidence and policies relied upon in reaching the decision and of the right to judicial review. The decision shall be based exclusively on evidence and other material introduced at the hearing. Appeal of the decision is to the circuit court.

History: 1983 a. 27.

49.04 State dependents. (1) From the appropriation under s. 20.435 (4) (e), the state shall reimburse the counties for such temporary assistance as may be needed pursuant to s. 49.01 (3) for all dependent persons who do not have a settlement within any county in this state and who have resided in the state less than one year, but expenses for medical care shall be paid only in those cases in which application for benefits under ss. 49.46 and 49.47 has been made during the first 30-day period and ineligibility for such benefits has been established. No state reimbursement for medical care may be paid if the person is found ineligible for medical assistance because of the divestment provisions under s. 49.45 (17).

(2) The department shall make suitable rules and regulations governing the administration of temporary assistance under s. 49.01 (3) including the notification of reimbursement charges, the relief to be provided, the presentation of claims for reimbursement and other matters necessary to the provision of relief to such state dependent persons receiving temporary assistance. The observance of such rules and regulations by a county shall be a condition for reimbursement.

(3) The presentation of a claim for reimbursement shall be accompanied by a verified copy of the sworn statement required by s. 49.11 (1), and an affidavit that diligent effort was made to ascertain the facts relating to the dependent's legal settlement and period of residence in the state, and reciting such other facts as the department requires. Any claim for relief furnished after June 30, 1953, shall be filed with the department on the following June 30 or not to exceed 30 days thereafter. If the department is satisfied as to the correctness of the claim it

shall certify the same to the department of administration for payment to the county entitled thereto; provided that if the total amount payable to all counties exceeds the amount available under the appropriation made in s. 20.435 (4) (e) the department shall prorate the amount available among the counties according to the amounts due them. Any necessary audit adjustments for any current or prior fiscal years may be included in subsequent certifications.

(4) Any county aggrieved by the disallowance of its claim for reimbursement hereunder may petition the department for a hearing which shall be accorded after due notice. The department may of its own motion order such investigation and hearing as it deems necessary. Such hearing shall be governed by ch. 227.

History: 1971 c. 125; 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (19)

The state must continue to pay counties for 30 days' temporary assistance even though the one-year residency requirement is no longer constitutional. State ex rel. Milwaukee County v. Schmidt, 50 W. (2d) 303, 184 NW (2d) 183.

Rule-making authority under this section discussed. Brown County v. HSS Dept. 103 W. (2d) 37, 307 NW (2d) 247 (1981).

Department may not reimburse counties for administrative costs incurred in providing temporary assistance to state dependents. 70 Atty. Gen. 17.

49.043 Health insurance for unemployed persons. Any municipality or county may purchase health or dental insurance for unemployed persons residing in the municipality or county who are not eligible for medical assistance under s. 49.46 or 49.47.

History: 1983 a. 386

49.046 Relief of needy Indian persons. (1) DEFINITIONS. In this section:

(a) "American Indian" means a person who is recognized by an elected tribal governing body in this state as a member of a federally recognized Wisconsin tribe or band of Indians.

(b) "Tax-free land" means land in this state within the boundaries of a federally recognized reservation or within the bureau of Indian affairs service area for the Winnebago tribe, which is not subject to assessment or levy of a real property tax either as a general tax or as a payment in lieu of taxes.

(2) ELIGIBILITY. A person is eligible for aid under this section if all of the following conditions exist:

(a) The person is an American Indian residing on tax-free land or is the spouse or child of such a person residing in the same household.

(b) The person is ineligible to receive the type of aid needed under s. 49.177, 49.19 or 49.46.

(c) The person complies with s. 49.047.

(d) The person meets the financial standard of need as determined under s. 49.19.

(3) AID. (a) 1. From the appropriation under s. 20.435 (4) (e), the department shall pay aid to eligible persons based on family size. Payments shall be 70% of the standards specified in s. 49.19 (11) (a) 1. a (figure) and b (figure), as adjusted under s. 49.19 (11) (a) 2 and 6, if necessary.

2. In determining family size, the administering agency shall include all eligible persons living in the same household. Only one grant per household may be paid.

3. The administering agency may make the monthly payment for a household to one adult beneficiary or it may prorate the payment among all adult beneficiaries who are included in the family size.

(b) 1. Payments for medical care may be made for any benefit authorized under s. 49.46 (2).

2. Payments shall be equal to the rates established under s. 49.45.

3. Recipients of aid for medical care are subject to the copayment provisions established under s. 49.45 (18).

(4) ADMINISTRATION. (a) The department, after consulting with all elected tribal governing bodies in this state, shall adopt rules for the uniform administration of aid under this section.

(b) The department shall appoint each elected tribal governing body administering federal assistance on tax-free land to administer this section. If a tribal governing body elects not to administer this section, the department, with the consent of the elected tribal governing body, shall appoint an American Indian organization in the county or municipality, or the county department of public welfare or social services, as the administering agency.

(c) If an administering agency fails to administer this section according to the rules adopted under par. (a), the department shall notify the administering agency of the rules it has violated, give it a reasonable opportunity to correct the violations and assist it in doing so.

(d) If the violations are not corrected, the department shall notify the administering agency of its intent to appoint another administering agency and provide it with an opportunity for a hearing before the secretary. If the administering agency is an American Indian organization, the department shall notify the elected tribal governing body of its intent to remove the organization as administering agency.

(e) If the administering agency waives a hearing under par. (d) or if the secretary determines that another administering agency should be appointed, the department shall, after consulting with the elected tribal governing body,

appoint an American Indian organization in the county or municipality as the administering agency, or shall appoint the county department of public welfare or social services as the administering agency.

(f) The department, after consulting with all elected tribal governing bodies in this state, shall adopt rules establishing the allowable costs of administering this section and shall reimburse each administering agency for its allowable costs from the appropriation under s. 20.435 (4) (de).

(g) The administration of this section by any elected tribal governing body or other American Indian organization does not confer on this state jurisdiction over any American Indian tribe or organization.

(5) FAIR HEARING AND REVIEW. Any person whose application for aid under this section is not acted upon with reasonable promptness, whose application is denied in whole or in part, whose award is modified or canceled or who believes the award to be insufficient may petition the department for a fair hearing and review in the manner provided under s. 49.50 (8). The procedures described in s. 49.50 (8) apply to the fair hearing and review under this subsection, except that the rights and duties of counties and county officers that administer public assistance apply to any elected tribal governing body or American Indian organization, and to the officers of the body or organization, that administers this section. In all proceedings for judicial review arising from the administration of this section, the department is the respondent. If any elected tribal governing body, American Indian organization or officer fails to comply with a departmental decision issued under s. 49.50 (8) (b), the department may execute the order.

History: 1973 c. 147, 330, 333; 1975 c. 41; 1977 c. 29, 418; 1979 c. 32; 1979 c. 34 s. 2102 (20) (a); 1979 c. 221; 1981 c. 20 ss. 809, 2202 (20) (r); 1981 c. 392; 1983 a. 27; 1983 a. 245 s. 15; 1983 a. 404.

49.047 Work experience program. (1) The purpose of the work experience program is to provide a useful work experience, and when possible, work training opportunities which may lead to gainful employment for the persons receiving relief under s. 49.046.

(2) In this section, "work experience program" means a program authorized and sponsored by the agency appointed to administer relief under s. 49.046 for eligible recipients of relief under s. 49.046.

(3) (a) The agency administering relief under s. 49.046 shall operate a work experience program. The department may waive this requirement for any agency if it finds that requiring the agency to operate the program is not cost effective due to the low number of participants.

(b) Any county department of public welfare or social services operating a work experience program is liable to persons participating in the program for any worker's compensation benefits recoverable under ch. 102. The agency may contract with any governmental unit for whose benefit a work experience project is primarily designed to assume wholly or to share liability. Any governmental unit benefited by a work experience project may contract to assume this liability. If an elected tribal governing body or an Indian organization is operating the work experience program, liability for worker's compensation benefits attaches only if the elected tribal governing body or Indian organization contracts to assume this liability with the department.

(4) Recipients of relief under s. 49.046 shall participate in a work experience program. Nonparticipation shall be cause for terminating assistance. The department, after consultation with all elected tribal governing bodies, shall by rule provide exceptions to this policy, but the department may not exempt individuals from participation in the work experience program because of their status as students.

(5) Work experience programs shall not be operated so as to supplant regular employes of the administering entity or other municipal, county or state governmental units.

(6) Section 49.05 does not apply to this section.

History: 1977 c. 418; 1981 c. 20; 1983 a. 404.

49.05 Work relief. (1) Any municipality or county required by law to administer relief may require persons entitled to relief to labor on any work relief project authorized and sponsored by the municipality or county, at work which they are capable of performing. When a work relief project requires the employment of skilled tradesmen, and the number of such tradesmen listed on the relief rolls of the municipality or county sponsoring the project is not sufficient to meet the requirements of the project, the municipality or county may hire tradesmen who are not receiving public relief, and they shall be paid at the prevailing wage for such labor in the municipality or county.

(1m) A municipality or county that authorizes, operates or sponsors a work relief project shall establish written work relief rules.

(2) The basis of payment of persons granted work relief shall be determined by the unit of government responsible for the person's relief.

(3) Municipalities or counties may authorize work relief projects for the performance of any

work not prohibited by law, provided that such projects are not operated so as to supplant regular employes of the municipality or county or the other municipal or county units hereinafter mentioned. Municipalities or counties may, by mutual agreement, assign persons entitled to work relief to work on work relief projects operated by the state or by other municipalities, counties, school districts, drainage districts, utility districts, metropolitan sewerage areas or other governmental units. Such agreements may or may not provide for full or partial work relief reimbursement to the municipality or county loaning such persons by the municipality or county or unit to which such persons are loaned.

(4) Municipalities or counties granting work relief shall be directly liable to persons granted work relief for any benefits legally recoverable under the worker's compensation law of Wisconsin, but may contract with another governmental unit, for whose benefit such work relief project is primarily designed, to share such liability or wholly assume the same, and such other governmental unit is hereby authorized to make such contracts of sharing or total assumption of liability.

(5) Municipalities or counties may authorize the sale of products made on any work relief project to governmental units, and to religious, charitable or educational institutions.

(6) Municipalities or counties may operate work relief projects which will serve to rehabilitate disabled persons so as to enable such persons to qualify for employment in public or private industry.

(7) The value of work relief labor offsets any relief payments made.

(8) Any person assigned to or working on a work relief project shall comply with appropriate work relief rules established by the agency administering relief. If a person fails to comply with appropriate work relief rules the relief agency may discontinue or deny general relief benefits to such person for a period not to exceed 30 days.

History: 1975 c. 147 s. 54; 1983 a. 27.

49.06 Home and insurance exempt. No person shall be denied relief on the ground that he has an equity in the home in which he lives or a cash or loan value not in excess of $300 in a policy of insurance. No applicant for relief shall be required to assign such equity or insurance policy as a condition for receiving relief. Where persons are not in fact dependent, as defined by this chapter, but who, if they converted their limited holdings, real or personal, would, by reason of a fallen market or by reason of economic or other conditions, be required to suffer a substantial loss, then and in that event such persons shall be permitted, by proper assignments to the county or municipality, to render themselves qualified to receive relief. The county or municipal agency may sell, lease or transfer the property, or defend and prosecute all actions concerning it, and pay all just claims against it, and do all other things necessary for the protection, preservation and management of the property.

49.08 Recovery of relief paid. If any person is the owner of property at the time of receiving relief under this chapter or as an inmate of any county or municipal institution in which the state is not chargeable with all or a part of the inmate's maintenance or as a tuberculosis patient provided for in ch. 149 and s. 58.06, or at any time thereafter, or if such person becomes self-supporting, the authorities charged with the care of the dependent, or the board in charge of the institution, may sue for the value of the relief from such person or the person's estate; but except as hereinafter provided the 10-year statute of limitations may be pleaded in defense in any such action to recover relief. Where the relief recipient is deceased, a claim may be filed against the decedent's estate and the statute of limitations specified in s. 859.01 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse, surviving spouse or child is dependent on such property for support. The court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for such community or as fixed by the authorities of such community in charge of public assistance. The records kept by the municipality, county or institution are prima facie evidence of the value of the relief furnished. This section shall not apply to any person who receives care for pulmonary tuberculosis as provided in s. 149.04.

History: 1975 c. 94; 1975 c. 413 s. 18; 1979 c. 102 s. 237; 1983 a. 27.

Dependent of relief applicant incurs no liability to repay any portion of relief granted under the application. Claims against the recipient's estate are not limited to recovery of relief granted less than 10 years prior to death. In re Estate of Bundy, 81 W. (2d) 32, 259 NW (2d) 701.

49.085 No action against members of the Menominee Indian tribe in certain cases. No action shall be commenced under s. 46.10 or 49.08 or any other provision of law for the recovery from assets distributed to members of the Menominee Indian tribe and others by the United States pursuant to P.L. 83-399, as amended, for the value of relief or old-age assistance under s. 49.20, 1971 stats., as affected

by chapter 90, laws of 1973, and the value of maintenance in state institutions under ch. 46, furnished prior to termination date as defined in s. 70.057 (1), 1967 stats., to any legally enrolled member of the Menominee Indian tribe, his or her dependents, or lawful distributees of such member under section 3, said P.L. 83-399, as amended. For purposes of this section, "legally enrolled members of the Menominee Indian tribe" shall include only those persons whose names appear on "Final Roll-Menominee Indian Tribe of Wisconsin" as proclaimed by the secretary of the interior November 26, 1957, and published at pages 9951 et seq. of the federal register, Thursday, December 12, 1957.

History: 1973 c. 147, 243; 1983 a. 192.

49.10 Legal settlement; how determined. (1) Each married individual acquires his or her own legal settlement in the same manner as other individuals under this section.

(2) (a) Minor marital children have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal custody is made, the children have the settlement status of the parent having physical custody.

(b) Nonmarital children have the settlement of their mother, unless legal custody is awarded to the father.

(c) If parental rights are terminated, notwithstanding any disposition of custody in the same or companion proceedings, the child has no settlement.

NOTE: Sub. (1) is shown as affected by 1983 Wis. Act 186, eff. 1-1-86. Sub. (2) (a) is shown as affected by 1983 Wis. Acts 186, eff. 1-1-86, and 1983 Wis. Act 447. Sub. (2) (b) is shown as affected by 1983 Wis. Acts 186, 447 and 538. Acts 186 and 538 are eff. 1-1-86. Prior to 1-1-86, subs. (1) and (2) read:

"(1) A wife has the settlement of her husband, if he has any within the state, but if he has none, she has none. A wife living separate from her husband shall, if criminal proceedings have been instituted under s. 52.05, or support proceedings commenced under s. 52.10, begin to acquire legal settlement in her own right as of the date of instituting the criminal proceedings or commencing the support proceedings.

(2) (a) Minor marital children have the settlement status of their father if living, or of the mother if their father is deceased, or if their mother has acquired settlement in her own right under sub. (1) and has actual custody of the children; if the parents are divorced, the children have the settlement status of the parent who has legal custody awarded by a court of competent jurisdiction. If no award of legal custody is made, the children have the settlement status of the parent having actual custody but if custody is awarded to other than a parent, such children have no settlement.

(b) Nonmarital children have the settlement of their mother. If her settlement is lost, theirs is lost.

(c) If parental rights are terminated, notwithstanding any disposition of custody in the same or companion proceedings, the child has no settlement."

(3) (a) Any person, except as otherwise provided in this section, without a settlement in any municipality in a county (which is not operating on the county system), who voluntarily resides in that county one whole year without the receipt of aid, public or private, as a dependent person, gains a settlement in the county. That which interrupts residence toward the gaining or losing of settlement in a municipality likewise interrupts residence toward the gaining or losing of a county settlement. Every such settlement continues until it is lost by acquiring a new one in this state or by so residing for one whole year elsewhere than the county of settlement or by so residing one whole year in a municipality within the county of settlement, and the residence which went toward gaining the county settlement shall, if voluntarily in the municipality, be included toward the gaining of settlement in the municipality.

(b) Any person who has a settlement in any municipality in a county (which is not operating on the county system) who resides elsewhere than said municipality for one whole year so as to lose his settlement in the municipality, but does not gain a settlement in another municipality in the county, and does not reside outside the county for one whole year, so as to lose settlement, has a settlement in the county.

(c) Time spent by any person while residing on land owned, operated or controlled by another municipality or county, shall not be included as a part of the year necessary to acquire a settlement in the town, city, village or county, wherein such lands are located, but shall be included as a part of the year necessary to acquire a settlement in such other municipality or county.

(4) Every person (except as otherwise provided in this section) who voluntarily resides in any municipality or county operating on the county system one whole year without receiving aid, either public or private, as a dependent person, gains a legal settlement therein. Residence by a person within this state under the following circumstances shall not be considered as voluntary and shall be considered as interrupted, and no settlement status shall be changed:

(a) While supported as a dependent person by other than a spouse, parent or child.

(b) While employed on any governmental program as a needy person.

(c) While an inmate or under the control and supervision of any public institution or an inmate of a private institution.

(d) While residing or while employed on any Indian reservation land which is not subject to taxation by the municipality or county wherein such land is located.

(e) While under confinement or on probation or parole under the state or federal criminal statutes.

(f) While supported in whole or in part in any institution or foster home as a public charge.

(5) Time spent in the armed forces on active duty exceeding 30 days in the aggregate per year shall not be included as part of the year necessary to change settlement status.

(6) Marriage emancipates minors so that they may acquire legal settlement in their own right.

(7) Every settlement continues until it is lost by voluntarily acquiring a new one in this state or by voluntarily residing for one whole year elsewhere than the municipality or county in which such settlement exists; and upon voluntarily acquiring a new settlement or upon voluntarily residing one whole year elsewhere than the municipality or county of settlement, all former settlements are lost.

(8) Where a divorce has been granted, the date from which a new settlement may be acquired by the former spouse is the day on which the divorce is granted.

NOTE: Sub. (8) is shown as affected by 1983 Wis. Act 186, eff. 1-1-86. Prior to 1-1-86, sub. (8) reads:

"(8) Where a divorce has been granted, the date from which a new settlement may be acquired by a married woman is the day on which the divorce is granted and not the termination of the period when the divorce judgment becomes final."

(9) When any territory is organized into or attached to any municipality, every person having a settlement in such territory, and who actually dwells or has his home, or if absent, has his last dwelling place or home therein, thereafter has a settlement in such new municipality or the one to which such territory is so attached. The organization into or attachment to any municipality of any territory shall not prevent any person from acquiring a legal settlement therein within the time and by the means by which he would have gained it there if no new municipality had been organized or such territory had not been attached.

(10) This section shall not affect any commitments to institutions, payments or decisions made or actions, proceedings or petitions pending or causes of action existing on the basis of legal settlement before January 1, 1960.

(11) When this section is applied to any county operating under the county system of administering public assistance the term "municipality" as used herein means such county unless the context clearly requires otherwise.

(12) In addition to the definitions in s. 49.01, the following definitions apply to this section:

(a) "Confinement" means legal detention of a person after imposition of sentence in any prison, jail, house of correction, prison camp or similar correctional facility, and includes the provisions of s. 56.08.

(b) "Institution" means a facility within this state for congregate care or correction and includes the following:

1. Public. Waupun correctional institution; the correctional institutions authorized under s. 46.05; Fox Lake correctional institution; Green Bay correctional institution; Dodge correctional institution; Taycheedah correctional institution; Oakhill correctional institution; Kettle Moraine correctional institution; Wisconsin correctional camp system; community correctional residential centers; Lincoln Hills school; Ethan Allen school; county jails or houses of correction; centers for the developmentally disabled; Mendota and Winnebago mental health institutes; central state hospital; Wisconsin school for the visually handicapped; Wisconsin school for the deaf; federal, state, county or municipal hospitals, asylums, infirmaries, tuberculosis sanatoriums or homes for the aged; veterans' hospitals, domiciliaries and homes.

2. Private. Private or denominational centers, schools or homes for neglected, dependent or delinquent children; foster homes (licensed); nursing homes (licensed); lodge, society or benevolent homes; tuberculosis sanatoriums; mental hospitals.

(d) "Residence" is the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence shall be prima facie evidence of intent to remain.

(e) "Settlement status" includes persons with or without a legal settlement in this state.

(f) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian if incompetent.

History: 1975 c. 39; 1975 c. 189 s. 99 (1), (2); 1975 c. 224; 1977 c. 29; 1977 c. 418 ss. 332, 924 (18) (d); 1979 c. 110 s. 60 (13); 1979 c. 221; 1981 c. 20, 391; 1983 a. 186, 189, 447, 538.

49.105 Legal settlement in Menominee county. Every person who on termination date as defined in s. 70.057 (1), 1967 stats., would have legal settlement in Menominee county as determined under s. 49.10 but for the exception contained in s. 49.10 (4) for time spent while residing or while employed on an Indian reservation, shall be deemed to have legal settlement in Menominee county on termination date.

History: 1983 a. 192 s. 304.

49.11 Legal settlement; collection from. (1) LEGAL SETTLEMENT COLLECTION FROM SWORN STATEMENT OF SETTLEMENT. When relief is furnished to a dependent person, either that person, if able, or some other person who has knowledge of the facts, shall make a sworn statement of facts relating to residence and

settlement, which shall be incorporated into the nonresident notice.

(1m) RELIEF DOES NOT INCLUDE. In this section relief does not include treatment or hospitalization specified under s. 49.02 (5m) (a) that is initially provided on or after April 24, 1984.

(2) RIGHT TO COLLECT FROM PLACE OF SETTLEMENT. The county or municipality in which the relief recipient has settlement shall be chargeable with relief furnished, except that no county or municipality may be charged for relief furnished to any recipient who has not resided within such county or municipality during the previous 24 months. If the relief recipient has no settlement in this state, or if he or she has not resided in the county or municipality of legal settlement during the previous 24 months, then the county where the relief is furnished shall be chargeable with such relief. The state shall reimburse for relief charges when the person has no settlement and until such person has had residence in this state for a period of one year, under s. 49.04. All notices of claims to the department or to counties or municipalities of legal settlement for reimbursement for general relief provided by other counties or municipalities, in or outside the county of legal settlement, shall be accompanied by a sworn statement of the relief granting agency. The statement shall certify that the relief recipient has been informed of the benefits and eligibility requirements under the federally funded medical and public assistance program and that such recipient has been determined to be ineligible by the relief granting agency if the recipient is clearly ineligible or, otherwise, by the appropriate county agency, along with an explanation of the reasons for such ineligibility, or that an application for medical or public assistance is pending or approved.

(a) *When the furnishing municipality is without the county of settlement.* 1. When the relief recipient claims to have settlement outside of the county in which relief is furnished, the relief furnished shall be a charge against the county in which the relief is furnished. Such charge shall be audited by a committee designated for such purpose by the county board and shall be paid by the county of the municipality furnishing the relief within 60 days of the receipt of the voucher or claim. Thereafter such county may recover from the county of settlement, and the latter county may, except when operating under the county system of relief, recover from the municipality of settlement.

2. If the county wherein the aid is furnished fails to pay the charge to the granting municipality within 60 days after it is filed with its clerk, the municipality may proceed against said county under this section to recover for such relief furnished.

(b) *When furnishing municipality is within county of settlement.* When operating under the municipal system and the relief recipient claims to have settlement in a municipality within the same county, the relief furnished shall be a charge against such municipality and may be recovered by the furnishing municipality directly.

(c) *When county settlement or no settlement.* When the relief recipient claims to have county settlement or no settlement, the charges for the relief furnished may be recovered by the furnishing municipality directly from the county where the relief is furnished, and if such recipient has no settlement and has not resided in this state for at least one year, the county may recover from the state under s. 49.04.

(3) DEFENSES AVAILABLE. Any municipality or county may assert the following defenses in a proceeding under this section for reimbursement:

(a) That the settlement is not in the municipality or county as claimed.

(b) That the relief recipient was not a dependent person as defined in s. 49.01 (2) and was not in need of the relief furnished.

(c) That the notices required to be served or filed were defective to the prejudice of the municipality or county.

(d) That the limitations as prescribed in this section had expired.

(4) PROCEDURES FOR RECOVERY. When the municipality furnishing relief is not the municipality of settlement, a nonresident notice shall be served upon the municipality of claimed settlement. Such nonresident notice shall be on a standard form prescribed by the department and shall contain the name of the municipality or county furnishing relief; the name, residence and birth dates of the persons receiving relief and of all the members of the household; the name of the county or municipality in which settlement is claimed and the facts upon which such claim is based; the date on which relief was first furnished; and a copy of the sworn statement as described in sub. (1). The effect of this nonresident notice shall lapse when there is no general relief furnished to the person or the person's family for a period of 6 months. The effect of the nonresident notice may be reinstated, at any time, by notice, on forms prescribed by the department, by certified mail by the furnishing municipality or county to the municipality or county chargeable, within 30 days after the new relief is furnished, after such lapse of 6 months, and forwarded in the same manner as the original nonresident notice.

(a) *Reply to nonresident notice.* The municipality or county of claimed settlement shall deny or acknowledge settlement within 20 days after receipt of the nonresident notice, and if denied, such denial shall contain all the facts upon which the denial is based. Failure to deny settlement shall be considered as an acknowledgment of settlement as claimed until such denial is filed.

(b) *Transmittal of notices, replies and claims.* 1. When settlement is claimed in a county or a municipality in other than the furnishing county, the nonresident notice shall be completed by the furnishing municipality or county, and transmitted to the county clerk of the county where the relief was furnished, except in counties on the county system where the county clerk is the initiating agent, who shall transmit said notice to the county clerk of the county in which settlement is claimed. In counties operating under the municipal system of relief, the county clerk shall forward such nonresident notice to the clerk of the municipality of claimed settlement.

2. Denials or acknowledgments of responsibility shall be mailed directly to the municipality or county furnishing relief with copies being sent to all forwarding agencies.

3. When verified claims are received by the county clerk from the municipality furnishing relief and payment to the municipality is made under sub. (2) (a) 1, such clerk shall, within 75 days from the date of receipt of the claim, forward a verified claim, on forms prescribed by the department, to the clerk of the county where settlement is claimed. In counties operating under the municipal system, the county clerk shall forward such claim to the clerk of the municipality of claimed settlement within 7 days after the receipt thereof. When operating under the county system of relief, verified claims received from the county relief agency under par. (e) 3 shall be forwarded within 75 days from the date such claim is received, on forms prescribed by the department, to the clerk of the county where a settlement is claimed.

4. Allowances or disallowances shall be sent to the clerk of the furnishing county with a copy to the clerk of the county of claimed settlement. The municipality or county of claimed settlement shall, upon receipt of the claim for reimbursement, either allow or disallow such claim. Failure to allow such claim for the period hereinafter indicated shall be deemed a disallowance thereof.

(c) *Transmittal of notice, replies and claims between units in same county.* When the furnishing municipality and the municipality of claimed settlement are within the same county, all nonresident notices, denials or acknowledgments, claims and allowances or disallowances shall be filed directly with the clerks of the respective municipalities.

(cm) *Assessment of hearing costs.* The department may assess administrative costs incurred by conducting any hearing under sub. (7) against the county or municipality liable for relief. The department may waive the assessment of costs to enhance program administration. The department shall, by rule, establish procedures for determining costs under this paragraph.

(d) *Transmittal of notice, replies and claims when person has no settlement or county settlement.* When claim is made that responsibility rests with the furnishing municipality's county because the recipient has no settlement or has a county settlement, all filing shall be done directly with the county clerk and the municipal clerk. When settlement is claimed as county settlement in a county other than the county of the furnishing municipality the transmittal shall be in the same manner as if such county of claimed settlement were operating under a county system of relief.

(e) *Time and limitations for filing.* 1. All filings and mailings shall be done by certified or registered mail. The nonresident notice and statement concerning residence shall be initially filed and transmitted within 45 days of the date of furnishing relief. The forwarding agents shall forward such notices within 7 days of the receipt thereof.

2. The acknowledgment or denial of settlement shall be transmitted within 20 days of the receipt of the nonresident notice.

3. Claims for reimbursement shall be filed with the county clerk of the furnishing county within one year of the date on which the relief is furnished.

4. Disallowance or allowance of claims by the municipality or county of claimed settlement shall be transmitted within 60 days of receipt of the claim for reimbursement, and failure to allow or disallow within such period shall be deemed a disallowance.

(f) *Penalty for failure to timely file.* 1. Failure timely to initiate or transmit a nonresident notice or an acknowledgment or denial shall be a bar to recovery or a right to deny recovery until such notices are received.

2. Failure to timely initiate and transmit a claim for reimbursement shall be a complete bar to recovery on such claim not timely filed.

(5) GENERAL LIMITATIONS. In addition to the other limitations and penalties hereinbefore stated, recovery of relief granted shall be barred unless a proceeding is commenced before the department:

(a) Within 6 months after receiving written notice of a disallowance of a claim.

(b) Within one year after disallowance by failure to allow a claim.

(c) Under any other circumstances within 2 years of the date relief is first furnished under the nonresident notice which is the basis for the claim, including claims against the state.

(6) WHO MAY SUE. (a) *County.* Upon receipt of notice of the disallowance of the claim of any county, its clerk shall notify the district attorney of the county, who may institute a proceeding in the name of the county for the recovery of the disallowed portion of the claim, and in such action the county shall not be required to give bond.

(b) *Municipality.* Upon receipt of notice of disallowance of the claim of any municipality against another municipality within the same county the clerk receiving such notice shall notify the governing body of his or her municipality which may institute a proceeding under sub. (7).

(7) PROCEDURE. (a) *Jurisdiction and practice.* The department is vested with exclusive original jurisdiction to hear all proceedings brought under this section on claims that have been disallowed or which have not been acted upon as required by statute. A county which has furnished relief or paid a municipality for the relief furnished shall be plaintiff, except where the suit is between municipalities within the same county or where a municipality is suing its own county for failure to pay, and shall join as parties defendant all municipalities or counties which may be liable. The parties have a right to be represented at any hearing, by an attorney or any other authorized agent approved by the department, and to present pertinent testimony and argument. The department shall appoint examiners to conduct such hearings and the department or examiner may issue subpoenas for such purpose. The department may promulgate such rules not inconsistent with this chapter or ch. 227 as will enable it to perform its duties hereunder. The department shall, by order, determine the ultimate liability of all parties in the proceeding and may grant to the prevailing party and against the losing party witness fees of $5 per day and 5 cents per mile for travel.

(b) *Pleadings and hearing.* Such proceedings shall be commenced by complaint which shall be entitled "Before the department of health and social services of Wisconsin". The complaint shall contain the names of the parties and matters and prayers as in complaints generally. The complaint, with sufficient copies, may be served by registered or certified mail upon the department, which shall then note such service upon the original complaint and so notify the claimant. The department shall immediately transmit a copy by registered or certified mail to the defendant county or municipality, which shall have 20 days from the time of the mailing of such copy by registered or certified mail to serve an answer, with sufficient copies, upon the department. The department shall acknowledge such service and mail a copy of the answer to the claimant. The department shall notify the parties of the time and place of hearing thereon and may continue or adjourn such hearing for a reasonable period. The department shall make its findings and order and transmit copies thereof to the parties by registered or certified mail as soon as possible after such hearing.

(c) *Judicial review.* The order is subject to review under ch. 227.

(d) *Service by mail.* The mailing within such 20 days, of any notice herein provided shall be by registered or certified mail with return receipt requested.

(e) *State special charge.* When a matter is finally determined on appeal, or if no appeal is taken within the prescribed time, the amount owing by a county or municipality shall be certified by the department to the department of administration and shall thereafter be collected as are other special state charges against counties and municipalities, with interest at the rate of 6% per year to be computed to March 22 following. The state treasurer shall remit such amount to the prevailing county or municipality, as soon as possible after March 1 of each year, upon order of the department of administration.

(8) MUNICIPAL RELIEF DIRECTORS. If a municipality has a full-time relief director, the relief director may perform the functions of the municipal clerk under this section. If the relief director performs the functions of the municipal clerk, the municipal clerk shall forward filings or mailings received under this section to the relief director. If the relief director does not perform the functions of the municipal clerk under this section, but does receive filings or mailings, the relief director shall forward the filings or mailings to the municipal clerk.

History: 1977 c. 29, 187; 1979 c. 110 s. 60 (13); 1979 c. 221; 1981 c. 20; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 205.

Where dependent had been imprisoned for more than 24 months previous to receiving assistance, assisting county could not charge original county of settlement under (2). County of Dane v. Racine County, 118 W (2d) 494, 347 NW (2d) 622 (Ct. App. 1984).

49.12 Penalties; evidence. (1) Any person who, with intent to secure public assistance under this chapter, whether for himself or for some other person, wilfully makes any false

representations may, if the value of such assistance so secured does not exceed $100, be imprisoned not more than 6 months, if the value of such assistance exceeds $100 but does not exceed $500, be imprisoned not more than one year, if the value of such assistance exceeds $500, be imprisoned not more than 5 years, and if the value of such assistance exceeds $2,500, be punished as prescribed under s. 943.20 (3) (c).

(2) Any person who wilfully does any act designed to interfere with the proper administration of public assistance shall be fined not less than $10 nor more than $100 or be punished by imprisonment for not less than 10 nor more than 60 days. The acceptance of any supplies or articles furnished to any person as general relief in exchange for or in payment for any alcohol beverages shall be deemed to be a violation of this subsection, but violations of this subsection shall not be limited to such acts.

(3) Any dependent person who sells or exchanges supplies or articles furnished him as assistance or who disposes of such supplies or articles in any other way than as directed, with intent thereby to defraud the county or municipality furnishing him assistance, and any person who purchases any article knowing it to have been furnished to another person as assistance shall be punished as provided in sub. (2).

(4) Any person who without legal authority sends or brings, causes to be sent or brought, or advises any dependent person to go to any municipality for the purpose of making him a charge upon such municipality shall be punished as provided in sub. (2).

(5) Any person in charge of public assistance or any of his assistants who receives or solicits any commission or derives or seeks to obtain any personal financial gain through any purchase, sale, disbursement or contract for supplies or other property used in the administration of public assistance shall be punished as provided in s. 946.13.

(6) Where a person is originally eligible for assistance and receives any income or assets or both thereafter and fails to notify the officer or agency granting such assistance of the receipt of such assets within 10 days after such receipt and continues to receive aid, such failure to so notify the proper officer or agency of receipt of such assets or income or both shall be considered a fraud and the penalties in sub. (1) shall apply.

(7) Any dependent person who uses money, checks, share drafts, other drafts, vouchers or any other thing of value furnished to the person as relief for purposes other than as directed by the county or municipality furnishing such relief shall be punished as provided in sub. (2).

(8) Any person who makes any statement in a written application for aid under this chapter shall be considered to have made an admission as to the existence, correctness or validity of any fact stated, which shall be taken as prima facie evidence against the party making it in any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter.

(9) If any person obtains for himself or herself, or for any other person or dependents or both, assistance under this chapter on the basis of facts stated to the authorities charged with the responsibility of furnishing assistance and fails to notify said authorities within 10 days of any change in the facts as originally stated and continues to receive assistance based on the originally stated facts such failure to notify shall be considered a fraud and the penalties in sub. (1) shall apply. The negotiation of a check, share draft or other draft received in payment of such assistance by the recipient or the withdrawal of any funds credited to the recipient's account through the use of any other money transfer technique after any change in such facts which would render the person ineligible for such assistance shall be prima facie evidence of fraud in any such case.

(10) Any person who accepts a relief voucher granted as relief and fails to tender the commodities authorized by the relief authorities to the relief recipient but in lieu thereof refunds to the relief recipient cash or substitutes any alcohol beverages or cigarettes not authorized by the relief voucher shall be considered to have committed a fraud and the penalties provided in sub. (1) shall apply to said person.

(11) "Public assistance" as used in this section includes assistance obtained through the food stamp program.

History: 1971 c. 182; 1977 c. 303; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 390 s. 252; 1983 a. 368.

Sub. (9) is not unconstitutionally vague. Weber v. State, 59 W. (2d) 371, 208 NW (2d) 396.

A welfare fraud involving a sum between $100 and $500 constitutes a felony, because it authorizes imprisonment in such event for not more than one year and the section was amended after enactment of the new criminal code. Zastrow v. State, 62 W. (2d) 381, 215 NW (2d) 426.

Welfare fraud under (9) is a continuing offense. John v. State, 96 W. (2d) 183, 291 NW (2d) 502 (1980).

49.13 Verification of public assistance applications. (1) Any person who applies for any public assistance shall execute the application or self-declaration in the presence of the welfare worker or other person processing the application. This subsection does not apply to any superintendent of a mental health institute, director of a center for the developmentally disabled, superintendent of a state treatment facility or superintendent of a state correctional

facility who applies for public assistance on behalf of a patient.

(2) At the time of application, the agency administering the public assistance program shall provide the applicant with a form authorizing waiver of fees under s. 69.24 for copies of birth certificates if the applicant is required to provide a birth certificate or social security number as part of the application. The waiver applies to all persons in the applicant's household required to provide birth certificates or social security numbers. The agency shall provide written information to the applicant explaining the use of the waiver form.

History: 1971 c. 334; 1979 c. 221

49.14 County home; establishment. (1) Each county may establish a county home for the relief and support of dependent persons pursuant to s. 46.17.

(2) In all counties whose population is less than 250,000 such county home shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) No county in which a county home is established shall contract to conduct the same or to support and maintain the inmates thereof; and all agreements in violation of this subsection are void.

(4) The trustees or any person employed by the county board pursuant to subs. (1) and (2), may administer oaths concerning any matter submitted to him or them, in connection with their functions.

(5) The uniform accounting system established by s. 50.03 (10) shall be used by each county home and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75

49.15 County home; commitments; admissions. (1) Any person upon his or her application to the board of trustees may be admitted to the county home upon such terms as may be prescribed by the board. If such person or his or her relatives are unable to pay for his or her care and maintenance the person may be admitted as a charge of the municipality of his or her legal settlement or the county if he or she has no settlement, but no municipality or county may be bound without the written approval of its relief officer or agency, except as provided in sub. (2).

(2) The actual cost for care and maintenance rendered a relief recipient who has legal settlement in another county shall be a proper relief charge and a liability against the place of settlement and recoverable pursuant to s. 49.11.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons committed or admitted to the county home, and may repeal any resolution adopted under this subsection.

History: 1977 c. 428

49.16 County hospital; establishment. (1) Each county may establish a county hospital for the treatment of dependent persons, pursuant to s. 46.17, and other persons authorized under s. 46.21 (2) (b).

(2) In counties with a population of 250,000 or more such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) The uniform accounting system established by s. 50.03 (10) shall be used by each county hospital and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75

49.17 County hospitals; admissions. (1) Any person upon application to the board of trustees may be admitted to the county hospital upon such terms as may be prescribed by the board. If such person or his relatives are unable to pay for his care and maintenance he may be admitted as a charge of the municipality of his legal settlement or the county if he has no settlement, but no municipality or county shall be bound without the written approval of its relief officer or agency, except as provided in sub. (2).

(2) The actual cost for hospitalization and treatment rendered a relief recipient who has legal settlement in another county shall be a proper relief charge and a liability against the place of settlement and recoverable pursuant to s. 49.11.

(3) The county board of any county may by resolution provide that the county shall bear the expense of maintaining all dependent persons admitted to the county hospital, and may repeal any resolution adopted under this subsection.

49.171 County infirmaries; establishment. (1) Each county, or any 2 or more counties jointly, may establish, pursuant to s. 46.17 or 46.20 a county infirmary for the treatment, care and maintenance of the aged infirm.

(2) In counties with a population of 500,000 or more, such institution shall be governed pursuant to s. 46.21, but in all other counties it shall be governed pursuant to ss. 46.18, 46.19 and 46.20.

(3) As used in ss. 49.171 to 49.173:

(a) An aged infirm person is a person over the age of 65 years so incapacitated mentally by the degenerative processes of old age, or so incapac-

itated physically, as to require continuing infirmary care.

(b) A county infirmary is a county institution created pursuant to sub. (1) or (2) under the general supervision and inspection of the department pursuant to ss. 46.16 and 46.17 as to adequacy of equipment and staff to treat, care for and maintain the physical and mental needs of aged infirm persons.

(4) The uniform accounting system established by s. 50.03 (10) shall be used by each county infirmary and shall be subject to the conditions enumerated therein.

History: 1971 c. 125; 1975 c. 413 s. 18; 1977 c. 26 s. 75.

49.172 County infirmaries, admissions; standards. (1) The following standards shall apply to admissions to a county infirmary:

(a) The primary standard shall be need of infirmary care, rather than ability to pay for such care, and no person shall be excluded from an infirmary solely because of his ability or inability to pay for his care.

(b) The person admitted must be an aged infirm individual, and it must be reasonably apparent that unless admitted he will be without care adequate for his needs.

(c) Except as provided in par. (d), any person who has resided in this state for at least one year, and who meets the other standards for admission, is eligible for admission, and no person shall be excluded solely on the ground that he has no legal settlement in the county or counties which operate the infirmary. The time spent by any person in a county infirmary either as a voluntary or a committed patient shall not be included as time necessary to acquire or lose a legal settlement in any municipality.

(d) An applicant who has removed his residence to Wisconsin from a state which requires that one who has removed his residence from Wisconsin to such state, reside in the latter more than one year before being eligible for a similar type of care, shall be required to reside in this state for a like period before becoming eligible for admission.

(2) The board of trustees of a county infirmary (subject to regulations approved by the county board) shall establish rules and regulations governing the admission and discharge of voluntary patients.

(3) If it appears to the satisfaction of the circuit court for the county in which an infirmary is located, upon petition for commitment, that a person meets the standards under sub. (1), it may, after affording the person an opportunity to be heard in person or by someone on his or her behalf, commit the person to a county infirmary. The power to commit includes persons who entered an infirmary voluntarily. The court may also, on petition and after a hearing, order the discharge of any patient, upon a showing that the patient is no longer in need of infirmary care, or that the patient can be adequately cared for elsewhere.

(4) The board of trustees on receipt of an application for voluntary admission, or the circuit court on the filing of a petition for commitment, shall appoint a person licensed to practice medicine and surgery in this state to examine personally the applicant or the subject of the petition and to advise the board or court whether such person meets the standard prescribed by sub. (1) (a).

(5) The department shall prescribe and prepare the forms to be used for the voluntary admission or commitment of patients.

(6) The circuit court in the case of a commitment, and the board of trustees in the case of a voluntary admission, shall pass on the economic status of the patient at the time of commitment or admission, and in all cases in which the patient has legal settlement in another county shall notify the county of legal settlement of the fact of such commitment or admission.

History: 1977 c. 449 ss. 130, 497.

49.173 County infirmaries; cost of treatment, care and maintenance of patients. (1) In the first instance the county or counties operating an infirmary shall defray the actual per capita cost of treatment, care and maintenance. To the extent that a patient is a public charge, such county or counties shall be reimbursed for such expenditures on the following basis as determined from annual infirmary reports filed with the department under s. 46.18 (8), (9) and (10):

(a) By the state, 100% of the actual cost for each patient who has no legal settlement in this state;

(b) By the state, 50% of such cost for every other patient;

(c) If a patient has a legal settlement in some other county of this state, 50% of such cost, by the county of his legal settlement. The procedure for making such reimbursement shall be as provided by s. 46.106.

(2) To the extent that a patient is not a public charge, such cost shall be charged and paid in advance for each calendar month, and payment may be enforced by the board of trustees.

(3) The department may at any time examine any patient, the cost of whose care is charged in whole or part to the state, to determine if he is still in need of infirmary care. If the department determines such care is no longer needed, the state's liability for such cost ceases upon notice to the infirmary.

(4) Beginning with the fiscal year ending June 30, 1952, the records and accounts of each county infirmary shall be audited annually. Such audits shall be made by the department of revenue as provided in s. 73.10 (5) and (6) as soon as practicable following the close of the infirmary's fiscal year. In addition to other findings, such audits shall ascertain compliance with the mandatory uniform cost record-keeping system requirements of s. 46.18 (8), (9) and (10), and verify the actual per capita cost of maintenance, care and treatment of patients. Any resulting adjustments to settlements already made under ss. 49.173 and 46.106 shall be carried into the next such settlement.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523.

49.174 Fees and expenses of proceedings. The fees of examining physicians, witnesses and guardians ad litem and other expenses of proceedings under ss. 49.171 to 49.173 shall be governed by s. 51.20 (18).

History: 1975 c. 430 s. 80; 1977 c. 428 s. 115.

49.175 Residential care institution; establishment. (1) Any county or combination of counties may establish and staff a county residential care institution for the reception and care of dependent persons which shall be governed by the county board. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent person.

(2) Residential care institutions may be established and staffed by private vendors for the reception and care of dependent persons. The institution shall be licensed under s. 50.03 by the department before receiving or caring for any dependent persons.

(3) Any county operated or private residential care facility not certifiable as a Title XIX facility shall be licensed and governed under s. 50.03 by the department before receiving or caring for any dependent persons. State aid shall be provided according to subs. (4) and (5) for those patients presently in private facilities who were receiving a public assistance grant under s. 49.18, 49.20 or 49.61, 1971 stats., as of December 31, 1973, or for those patients who were in county-operated facilities on that date.

(4) The cost of care of such patients shall be determined by multiplying the per day patient rate for such facility as determined by applying the formula under s. 49.45 (6m) (a) 1, except that interest on capital expenditures which are reimbursable under s. 51.91 shall be excluded, times the number of days of care of such patients in the time period being considered. Any amounts received by the facility from the patient or resident shall be deducted from the costs determined under this subsection. This section shall not be construed to require that as a condition of reimbursement any facility must meet any skilled or intermediate care standards established by the department.

(5) Beginning January 1, 1974, the state shall pay 50% of the costs determined under sub. (4) if the patient has legal settlement in this state and the county of legal settlement shall pay 50% of such costs. For private residential care facilities the county of legal settlement shall pay the facility 100% of such costs under sub. (4) and shall bill the state for its 50% share under this section. State payment shall be 100% of such costs if the patient does not have legal settlement in the state. Beginning January 1, 1975, the state shall pay 100% of such costs. State payments shall be made from the appropriation under s. 20.435 (4) (d).

(6) Liability, and the collection and enforcement thereof, for care, services and supplies provided under this section, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

History: 1971 c. 216; 1973 c. 90, 333; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1977 c. 418 s. 929 (55).

49.177 State supplemental payments. (1) DEFINITION. In this section "secretary" means the secretary of the U.S. department of health and human services or the secretary of any other federal agency subsequently charged with the administration of federal Title XVI.

(2) ELIGIBILITY. (a) Persons enumerated in subds. 1 to 4 under this paragraph who meet the resource limitations of federal Title XVI are entitled to receive supplemental payments in an amount determined by the department and approved or amended by the joint committee on finance. Prior approval of a modification in the amount of supplemental payments will be deemed to be given, if within 21 calendar days after the department files a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Payment modifications approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this paragraph.

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s. 49.18, 49.20 or 49.61, 1971 stats., as affected by chapter 90, laws of 1973.

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section.

4. Any essential person.

(3) MINIMUM SUPPLEMENTAL PAYMENT IN CERTAIN CASES. The total monthly benefits received under this section and federal Title XVI by a person or couple described in sub. (2) (a) 1 shall not be less than the total state cash assistance payment amount plus gross earned and unearned income, received by such person or couple for December of 1973.

(3g) FEDERAL PAYMENTS. If federal supplemental security income payments increase, the department shall pass these increases directly to persons eligible for payments under this section without reducing payments under this section.

(3m) COST OF LIVING ADJUSTMENT. (a) Any person receiving state supplemental payments under this section, but who does not reside in a nursing home, is eligible for a cost of living adjustment under this subsection.

(b) As a cost of living adjustment, the department shall increase state supplemental payments provided under this section to any person eligible under par. (a) by 7.5% for the period from October 1, 1979 to June 30, 1980. Aid shall increase by 7.5% for the period from July 1, 1980 to June 30, 1981.

(3s) INCREASED SUPPLEMENTAL PAYMENT IN CERTAIN CASES. The department shall authorize the payment of a state supplement to any person receiving payments under this section who resides in a residential setting in an amount equal to the state supplement paid to persons living in nonmedical group homes if all of the following conditions are met:

(a) A recognized case management agency conducts an assessment and develops a case plan for the person in the manner provided under s. 46.27 (6).

(b) The person receives at least 10 hours of supportive home care per week through a department of public welfare and social services created under s. 46.22 or 49.51 or a board created under s. 46.23, 51.42 or 51.437.

(c) The person receives case management services from a recognized case management agency which include on-sight monitoring of the person and contact by the case management agency with the person and his or her provider of supportive home care at least once every 3 months.

(d) There are no more than a total of 8 persons living in the residence in which the person resides who are receiving a state supplement as provided in this subsection.

(4) OPTIONAL FEDERAL ADMINISTRATION. (a) The department may enter into an agreement with the secretary under which the secretary will provide supplemental payments to all eligible persons on behalf of the state or any of its subdivisions. Under the agreement the department shall pay to the secretary an amount specified in accordance with agreed procedures. The department may make advance payments to the secretary if the agreement so provides.

(b) The department may enter into an agreement with the secretary under which the secretary may determine eligibility for medical assistance in the case of aged, blind or disabled individuals under the state plan approved under Title XIX of the social security act.

(c) Agreements made under this subsection or modifications to such agreements require prior approval or amendment by the joint committee on finance. Prior approval will be deemed to be given if within 21 calendar days following the department filing a proposed modification with the joint committee on finance, the committee has not scheduled a public hearing or executive session to review the proposed modification. Agreements or modifications to such agreements approved by the joint committee on finance shall be subject to the approval of the governor. Following action by the joint committee on finance, the governor shall have 10 days, not including Sundays, to communicate approval or disapproval in writing. If no action is taken by the governor within that time, the decision of the joint committee on finance shall take effect. The procedures under s. 13.10 do not apply to this paragraph.

History: 1973 c. 90, 147; 1975 c. 39, 199, 224; 1977 c. 29; 1979 c. 34; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 27.

49.178 Institutions subject to chapter 150. Any institution created under the authority of s. 49.14, 49.16, 49.171 or 49.175 is subject to ch. 150.

History: 1977 c. 29.

AID TO DEPENDENT CHILDREN

49.19 Aid to families with dependent children. (1) (a) In this section, "dependent child" means a child under the age of 18 or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is rea-

sonably expected to complete the program before reaching 19, is under the age of 19, who:

1. Has been deprived of parental support or care by reason of the death, continued absence from the home other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States, unemployment or incapacity of a parent; and

2. a. Is living with a parent; a blood relative, including those of half-blood, and including first cousins, nephews or nieces and persons of preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother or stepsister; a person who legally adopts the child or is the adoptive parent of the child's parent, a natural or legally adopted child of such person or a relative of an adoptive parent; or a spouse of any person named in this subparagraph even if the marriage is terminated by death or divorce; and is living in a residence maintained by one or more of these relatives as the child's or their own home, or living in a residence maintained by one or more of these relatives as the child's or their own home because the parents of the child have been found unfit to have care and custody of the child; or

b. Is living in a foster home licensed under s. 48.62 if a license is required under that section or in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation, or is living in a child-caring institution licensed under s. 48.60, and has been placed in the foster home or institution by a county agency under ch. 48, by the department or by a federally recognized American Indian tribal governing body in this state under an agreement with a county agency.

(b) Any individual may apply for aid to families with dependent children and shall have opportunity to do so. Application for aid shall be made on forms prescribed by the department. Any person having knowledge that any child is dependent upon the public for proper support or that the interest of the public requires that such child be granted aid may bring the facts to the notice of an agency administering such aid in the county in which the child resides.

(c) 1. "Aid to families with dependent children" means money payments with respect to, or vendor payments as prescribed by the department, or medical care in behalf of or any type of remedial care recognized under subs. (1) to (10) or s. 49.46 or necessary burial expenses as defined in sub. (5) in behalf of a dependent child or dependent children.

2. "Aid to families with dependent children" also includes such aid to meet the needs of the relative with whom any dependent child is living and the spouse of the relative if:

a. The spouse is living with the relative, the relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent; or

b. The spouse is a convicted offender permitted to live at home but precluded from earning a wage because the spouse is required by a court imposed sentence to perform unpaid public work or unpaid community service.

3. "Aid to families with dependent children" also includes payments made to another individual not a relative enumerated under par. (a), pursuant to federal regulations, if:

a. The individual has been appointed by a court of competent jurisdiction as a legal representative of the dependent child; or

b. The individual who may be a caseworker has been designated by the county welfare or social services department to receive payment of the aid or cash payments to recipients who are engaged in an approved work relief or training project.

(d) The rate of payment for skilled nursing care provided under this section shall be determined by the county under guidelines established by the department pursuant to s. 49.45 (6m). Payment for limited care shall not exceed 90% of the applicable Title XIX skilled care rate. Payment for personal care shall not exceed 80% of the applicable Title XIX skilled care rate.

(e) In this section, "strike" has the meaning provided in 29 USC 142 (2).

(2) (a) A home visit may be made at the option of the county to investigate the circumstances of the child before granting aid. The department may, however, require a county to make a home visit for this purpose if the department finds that a need exists. A report upon a home visit shall be made in writing and become a part of the record in the case. Every applicant shall be promptly notified in writing of the disposition of his application. Aid shall be furnished with reasonable promptness to any eligible individual.

(b) Recipients of aid under this section shall, as a condition for continued receipt of the aid, provide accurate monthly reports of any circumstances which may affect their eligibility or the amount of assistance. The department shall, by rule, select categories of recipients who may report less frequently in order to reduce administrative expense and shall specify monthly dates by which reports shall be submitted.

(c) An alien shall provide the department with reports the department requires to determine eligibility and the amount of aid, including reports about the alien's sponsor.

(d) Eligibility for aid to families with dependent children for any month shall be based on estimated income, resources, family size and other similar relevant circumstances during that month. The amount of aid for any month shall be based on income and other relevant circumstances in the first or, at the option of the department, the 2nd month preceding such a month, except that the amount of aid in the first month or, at the option of the department, the first and 2nd months of a period of consecutive months for which aid is payable is based on estimated income and other relevant circumstances in such first month or first and 2nd months. The department may, by rule, establish payment and reporting months as needed to administer this paragraph.

(p) Any person who has conveyed, transferred or disposed of any property within 2 years prior to the date of making application for benefits under this section without receiving adequate and full consideration in money or money's worth shall, unless shown to the contrary, be presumed to have made the transfer, conveyance or disposition in contemplation of receiving benefits under this section and shall be ineligible to receive the benefits thereafter until the value of the property is expended by or on behalf of the person for his or her maintenance needs, including needs for medical care. The department shall promulgate rules for the administration of this paragraph. This paragraph shall apply to the extent permitted under federal law.

(3) (a) After the investigation and report and a finding of eligibility, aid as defined in sub. (1) shall be granted by the county welfare or social services department as the best interest of the child requires. No such aid shall be furnished any person for any period during which that person is receiving supplemental security income or for any month if, on the last day of the month, that person is participating in a strike or to any person who fails to apply for or provide such social security account numbers as required by federal law.

(b) If the county agency finds a person eligible for aid under this section, such agency shall, on a form to be prescribed by the department, direct the payment of such aid by order upon the state treasurer. Payment of aid shall be made monthly, based on a calendar month or fiscal month as defined by the department; except that the director of the county agency may, in his or her discretion for the purpose of protecting the public, direct that the monthly allowance be paid in accordance with sub. (5) (c).

(4) The aid shall be granted only upon the following conditions:

(a) There must be a dependent child who is living with the person charged with its care and custody and dependent upon the public for proper support. Aid may also be granted for minors other than to those specified, but not for a dependent child 18 years of age or older who is living in a home or institution specified under sub. (1) (a) 2. b.

(b) The person applying for aid has allowed the county agent 15 to 30 days to process his application and, if not already a resident of the county, has notified the agency of his intent to establish residence in the county. The effective date of eligibility for aid to eligible individuals is the date the applicant submits a signed and completed application to the county department of public welfare or social services, or the first date on which the applicant meets all of the eligibility criteria, whichever is later.

(bm) The person applying for aid shall document, to the department's satisfaction, actual income as claimed in the application, and shall reveal all assets. Aid is available only if the combined equity value of assets does not exceed $1,000. One automobile with an equity value not exceeding $1,500 and one home, as specified in par. (e), may not be included when determining the combined equity value of assets.

(c) The person having the care and custody of the dependent child must be fit and proper to have the child. Aid shall not be denied by the county agency on the grounds that a person is not fit and proper to have the care and custody of the child until the agency obtains a finding substantiating that fact from a court assigned to exercise jurisdiction under ch. 48 or other court of competent jurisdiction; but in appropriate cases it is the responsibility of the county agency to petition under ch. 48 or refer the case to a proper child protection agency.

(d) Aid may be granted to the mother or stepmother of a dependent child if she is without a husband or if she:

1. Is the wife of a husband who is incapacitated for gainful work by mental or physical disability; or

2. Is the wife of a husband who is incarcerated or who is a convicted offender permitted to live at home but precluded from earning a wage because the husband is required by a court imposed sentence to perform unpaid public work or unpaid community service; or

3. Is the wife of a husband who has been committed to the department pursuant to ch. 975, irrespective of the probable period of such commitment; or

4. Is the wife of a husband who has continuously abandoned or failed to support her, if the husband has been legally charged with abandonment under s. 52.05 or with failure to support under s. 52.055 or in proceedings commenced under s. 52.10; or

5. Has been divorced and is without a husband or legally separated from her husband and is unable through use of the provisions of law to compel her former husband to adequately support the child for whom aid is sought; or

6. Has commenced an action for divorce or legal separation and obtained a temporary order for support under s. 767.23 which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

7. Has obtained an order under s. 767.08 from the court to compel support, which order is either insufficient to adequately meet the needs of the child or cannot be enforced through the provisions of law; or

8. Is incapacitated and the county agency believes she is the proper payee.

(dm) Aid may be paid to parents of a dependent child if the parents are unable to supply the needs of the child because of the unemployment of the parent, in a home in which both parents live, who earned the most income during the 24-month period immediately preceding the month for which aid is granted and who meets the federal requirements as to past employment and current unemployment. Aid to dependent children of unemployed parents may be granted only if federal aid for this purpose is available to the state. No aid may be granted if the unemployed parent:

4. Qualifies for unemployment compensation but refuses to apply for or accept unemployment compensation; or

5. Fails to meet any applicable federal or state work, work registration or training requirement. The department shall, by rule, list the applicable requirements under this subdivision.

(ds) Aid may not be paid to any person who fails to meet any applicable requirements of a community work experience program established under s. 46.22 (4) (n) or 49.51 (2) (a) 15.

(e) The ownership of a home and the lands used or operated in connection therewith or, in lieu thereof, a house trailer, if such home or house trailer is used as the person's abode, by a person having the care and custody of any dependent child shall not prevent the granting of aid if the cost of maintenance of said home or house trailer does not exceed the rental which the family would be obliged to pay for living quarters.

(es) In determining eligibility for aid to families with dependent children, all earned and unearned income of the applicant shall be considered, except aid received under this section. Eligibility does not exist if the total income considered exceeds 150% of the standard of need or if the total income considered after disregards are applied exceeds the standard of need.

(et) In determining eligibility for aid, the income of a dependent child's stepparent who lives in the same home as the child shall be considered as required under P.L. 97-35, section 2306.

(ez) If an alien applies for aid, the income and resources of any person who executed an affidavit of support for the alien are deemed unearned income and resources of the alien for a 3-year period after the alien enters the United States. The income and resources of the spouse of the executor are also deemed unearned income and resources of the alien for a 3-year period after the alien enters the United States, if the spouse is living with the executor. The department may, by rule, specify the method of computing income and resources under this paragraph and may reduce the level of income and resources that are deemed unearned income and resources of the alien, to the extent required by P.L. 97-35, section 2320 (b). This paragraph does not apply if the alien is a dependent child and if the executor or the executor's spouse is the parent of the alien.

(f) Whenever better provisions, public or private, can be made for the care of such dependent child, aid under this section shall cease. Prompt notice shall be given to the appropriate law enforcement officials of the county of the furnishing of aid under this section in respect of a child who has been deserted or abandoned by a parent.

(g) 1. If the pregnancy is medically verified, a pregnant woman receiving aid under this section who notifies the county department of public welfare or social services before the 7th month of pregnancy begins shall receive a monthly payment determined under sub. (11) (a) 4 from the first day of the month in which the 7th month of pregnancy begins, in addition to the payment determined according to family size under sub. (11) (a). If the recipient provides notification after the 7th month of pregnancy begins, the woman shall receive the additional monthly payment determined under sub. (11) (a) 4 beginning with the first day of the month following notification.

2. Aid to a pregnant woman who is otherwise eligible but has no children is available from the first day of the month in which the 7th month of pregnancy begins or the date the woman sub-

mits a signed and completed application for aid to the county department of public welfare or social services, whichever is later, if the pregnancy is medically verified. The pregnant woman has a family size of one for grant determination purposes under sub. (11) (a) and is additionally eligible for a monthly payment determined under sub. (11) (a) 4.

3. Eligibility for the additional monthly payment under this paragraph continues through the month of the child's birth.

(h) 1. a. As a condition of eligibility for assistance under this section, the person charged with the care and custody of the dependent child or children shall fully cooperate in efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which that person and the dependent child or children may have rights. Such cooperation shall be in accordance with federal law, rules and regulations applicable to paternity establishment and collection of support payments.

b. When any person applies for aid under this section, any right of the parent or any dependent child to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time aid is paid under this section, is assigned to the state.

c. Notice of the requirements of this subdivision shall be provided applicants for aid under this section at the time of application.

2. If the person charged with the care and custody of the dependent child or children does not comply with the requirements of subd. 1. a, that person shall be ineligible for assistance under this section. In such instances, aid payments made on behalf of the dependent child or children shall be made in the form of protective payments.

(k) The total income of the AFDC group, including any nonrecurring lump sum payment and other income not disregarded, may not exceed the applicable standard of need under sub. (11). If the total income exceeds the standard of need, all members of the AFDC group remain ineligible for the number of months that equals the total income divided by the standard of need.

(4m) Aid under this section is unavailable to a family for any month in which the caretaker relative of the dependent child is participating in a strike on the last day of the month. Aid under this section is unavailable to any person for a month in which the person is participating in a strike on the last day of the month.

(5) (a) The aid shall be sufficient to enable the person having the care and custody of dependent children to care properly for them. The amount granted shall be determined by a budget for the family in which all income shall be considered, except:

1. All earned income of each dependent child included in the grant who is: a) a full-time student or b) a part-time student who is not a full-time employe. For purposes of this subdivision a student is an individual attending a school, college, university or a course of vocational or technical training designed to fit him or her for gainful employment.

2. The first $75, or a lesser amount specified by the department, shall be disregarded from the earned income of:

a. Any dependent child or relative applying for or receiving aid.

b. Any other person living in the same home as the dependent child whose needs are considered in determining the budget.

3. An amount equal to expenditures and not to exceed $160 per month for each dependent child or incapacitated person, or a lesser amount specified by the department, shall be disregarded from the earned income of any person listed in subd. 2 if:

a. The amount is used to provide care for a dependent child or for an incapacitated person who is living in the same home as the dependent child;

b. The person receiving care is also receiving aid under this section; and

c. The person requires care during the month that aid is received.

4. After disregarding the amounts specified under subds. 2 and 3, $30 of earned income plus an amount equal to one-third of the remaining earned income not disregarded, from the earned income of any person specified in subd. 2. This disregard does not apply to:

a. The earned income of a person who has received the disregard for 4 consecutive months, until the person ceases to receive aid for 12 consecutive months.

b. Earned income derived from a training or retraining project.

c. The earned income of a person whose income exceeds the person's need, unless the person has received aid under this section in any of the 4 months preceding the month in which the income exceeds the need.

5. The disregards specified in subds. 2 to 4 do not apply to the earned income of any person who violates 45 CFR 233.20 (a) (11) (iii).

(b) Such family budget shall be based on a standard budget, including the parents or other person who may be found eligible to receive aid under this section.

(c) The aid allowed under this subsection may be given in the form of supplies or com-

modities or vouchers for the same, in lieu of money, as a type of remedial care authorized under sub. (1) (c), whenever the giving of aid in such form is deemed advisable by the county welfare director dispensing such aid as a means either of attempting to rehabilitate a particular person having the care and custody of any such children or of preventing the misuse or mismanagement by such person of aid in the form of money payments.

(d) The department shall reimburse the county for the funeral and burial expenses of a dependent child or the child's parents as provided in s. 49.30. In addition, the department shall reimburse the county fully for actual cemetery expenses paid under this section.

(e) No aid may continue longer than 6 months without reinvestigation. The county welfare departments shall submit information, at such times and in such form as the department requires, detailing the number of redeterminations completed, the number overdue and the length of time they are overdue. The department shall recertify a 10% random sample of all recipients in person every 6 months.

(f) This subsection does not prohibit such public assistance as may legitimately accrue directly to persons other than the beneficiaries of this section who may reside in the same household.

(6) The county agency may require the child's parent to do such remunerative work as in its judgment can be done without detriment to the parent's health or the neglect of the children or the home; and may prescribe the hours during which the parent may be required to work outside of the home.

(7) The county board shall annually appropriate a sum of money sufficient to carry out the provisions of this section. The county treasurer shall pay out the amounts ordered paid under this section.

(9) If the head of a family is a veteran, as defined in s. 45.37 (1a), and is hospitalized or institutionalized because of disabilities in a county other than that of his residence or settlement at time of admission, aid shall be granted to the dependent children of such veteran by the county wherein the head of the family had his residence or settlement at the time of admission so long as he remains hospitalized or institutionalized.

(10) (a) Aid under this section may also be granted to a nonrelative who cares for a child dependent upon the public for proper support in a foster home having a license under s. 48.62 or in a foster home located within the boundaries of a federally recognized American Indian reservation in this state and licensed by the tribal governing body of the reservation, regardless of the cause or prospective period of dependency. The state shall reimburse counties pursuant to the procedure and the percentage rate of participation set forth in s. 49.52 for aid granted under this subsection except that if the child does not have legal settlement in the granting county, state reimbursement shall be at 100%. The county agency shall determine the legal settlement of the child. A child under one year of age shall be eligible for aid under this subsection irrespective of any other residence requirement for eligibility within this section.

(b) Aid under this section may also be granted on behalf of a child in the legal custody of a county agency providing child welfare services or on behalf of a child who was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason when such child is placed in a licensed child-caring institution by the county agency. Reimbursement shall be made by the state pursuant to par. (a).

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home or child-caring institution by a licensed child welfare agency or by a federally recognized American Indian tribal governing body in this state or by its designee, if the child is in the legal custody of the county agency providing child welfare services or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made pursuant to an agreement with the county agency.

(d) Aid may also be paid under this section to a foster home or to a child-care institution by the state when the child is in the custody or guardianship of the state, when the child is a ward of an American Indian tribal court in this state and the placement is made under an agreement between the department and the tribal governing body or when the child was part of the state's direct service case load and was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department.

(e) Notwithstanding pars. (a), (c) and (d), aid under this section may not be granted for placement of a child in a foster home licensed by a federally recognized American Indian tribal

governing body, for placement of a child in a foster home or child-caring institution by a tribal governing body or its designee or for the placement of a child who is a ward of a tribal court if the tribal governing body is receiving or is eligible to receive funds from the federal government for that type of placement.

(11) (a) 1. a. Monthly payments made under s. 20.435 (4) (d) to persons or to families with dependent children shall be based on family size and shall be at 85% of the total of the allowances under subds. 2 and 4 plus the following standards of assistance for the period from August 1, 1983, to June 30, 1984. [See Figure 49.19 (11) (a) 1. a. following]

Figure 49.19 (11) (a) 1. a.

Family size	Area I	Area II
1	$ 290	$ 281
2	513	498
3	604	585
4	720	699
5	827	803
6	894	867
7	968	939
8	1,026	996
9	1,075	1,042
10	1,100	1,067

b. Payments made from July 1, 1984, to June 30, 1985, shall be at 85% of the total of the allowances under subds. 2 and 4 plus the following standards of assistance: [See Figure 49.19 (11) (a) 1. b. following]

Figure 49.19 (11) (a) 1. b.

Family size	Area I	Area II
1	$ 302	$ 292
2	534	518
3	628	608
4	749	727
5	860	835
6	930	902
7	1,007	977
8	1,067	1,036
9	1,118	1,084
10	1,144	1,110

c. Grants shall vary in 2 areas which shall be groups of counties designated by the department based on variation in shelter cost.

2. A monthly allowance of $25 per person for each additional member in the family above 10 shall be added to the standard of assistance specified under subd. 1. a or b.

3. In determining family size only those who are eligible for assistance shall be included.

4. In accordance with s. 49.19 (4) (g), a monthly allowance of $71 for each person in the family who qualifies for a payment under s. 49.19 (4) (g) shall be added to the standard of assistance specified under subd. 1. a or b.

6. All payments that are not whole dollar amounts shall be rounded down to the nearest whole dollar.

(b) The department shall implement a program of emergency assistance to needy persons in cases of fire, flood or natural disaster. Eligibility shall not exceed the limitations for federal participation defined by federal regulations, including 45 CFR 233.120. The aid granted shall not exceed $150 per family member.

(c) Monthly payments for an AFDC group not containing a caretaker are 18.29% per child of the monthly payments to a family of 4, as established in par. (a) 1 and 2. This paragraph does not apply to an AFDC group with a caretaker who receives state supplemental payments under s. 49.177 or to an AFDC group with a stepparent whose income has been considered under sub. (4) (et).

(12) Monthly payments in foster care shall be provided according to the following age-related rates beginning January 1, 1983: $153 for children aged 4 and under; $198 for children aged 5 to 11; $222 for children aged 12 to 14 and $254 for children aged 15 to 17. In addition to these grants for basic maintenance, supplemental payments for special needs and initial clothing allowances shall be made according to rules which the department shall promulgate. Beginning January 1, 1984, the age-related rates shall be: $156 for children aged 4 and under; $208 for children aged 5 to 11; $243 for children aged 12 to 14 and $264 for children aged 15 to 17. Beginning January 1, 1985, the age-related rates shall be: $160 for children aged 4 and under; $217 for children aged 5 to 11; $265 for children aged 12 to 14 and $275 for children aged 15 to 17.

(13) When an agency proposes to terminate, discontinue, suspend or reduce assistance to a recipient under this section such agency shall provide at least the minimum notice required under 42 USC 601 to 613.

(14) (a) If any check or draft drawn and issued for payment of aid under this section is

lost, stolen or destroyed, the department shall request a replacement as provided under s. 20.912 (5).

(b) If the state treasurer is unable to issue a replacement check or draft requested under par. (a) because the original has been paid, the department shall promptly authorize the issuance of a replacement check or draft. If the state treasurer recovers the amount of the original check or draft that amount shall be returned to the department. If the state treasurer is unable to obtain recovery, the department may pursue recovery.

History: 1971 c. 125, 215, 217; 1973 c. 90, 147, 186, 328, 333; 1975 c. 39, 82, 94, 224, 307, 422; 1977 c. 29, 203, 271, 418, 449; 1979 c. 32 s. 92 (4); 1979 c. 34, 206, 221, 352; 1981 c. 1, 20, 93, 314, 317, 391; 1983 a. 27, 161, 192, 245, 310, 430, 447.

A mother receiving aid to dependent children is herself receiving aid so as to support a prosecution under 49.12 for failing to report a change in circumstances within 7 days. Weber v. State, 59 W. (2d) 371, 208 NW (2d) 396.

AFDC recipient whose need is both temporary and extraordinary may be entitled to general relief. See note to 49.01, citing State ex rel. Tiner v. Milwaukee County, 81 W. (2d) 277, 260 NW (2d) 393.

State may not deny aid to person eligible under federal standards unless Congress has clearly indicated that supplementary state restrictions are permissive. Woodman v. HSS Dept. 101 W. (2d) 315, 304 NW (2d) 723 (1981).

An AFDC budget must be computed on the basis of actual income. 60 Atty. Gen. 431.

Sub. (6) has not been affected by amendments to the work incentive program, nor does it violate equal protection provisions of the Fourteenth Amendment. 62 Atty. Gen. 120.

Section 49.50 (10) sanctions the use of a self-declaration application system for the AFDC program as to economic eligibility. Other factors of eligibility must be verified through a home visit, investigation and report as required by (2) and (3), before assistance may be granted. 63 Atty. Gen. 32.

"Dependent child" under AFDC does not include unborn children. Burns v. Alcala, 420 US 575.

See note to Art. I, sec. 1, citing Alvarado v. Schmidt, 317 F. Supp. 1027.

Various provisions of sub. (4) (d) are invalid as inconsistent with the Social Security Act. Doe v. Schmidt, 330 F. Supp. 159.

Unconstitutional conditions on welfare eligibility. Redlich, 1970 WLR 450.

Procedural due process and the welfare recipient: A statistical study of AFDC fair hearings in Wisconsin. Hammer and Hartley, 1978 WLR 145.

49.195 Recovery of aid to families with dependent children. (1) If any parent at the time of receiving aid under s. 49.19 or at any time thereafter acquires property by gift, inheritance, sale of assets, court judgment or settlement of any damage claim, or by winning a lottery or prize the county granting such aid may sue the parent on behalf of the department to recover the value of that portion of the aid which does not exceed the amount of the property so acquired. During the life of the parent, the 10-year statute of limitations may be pleaded in defense against any suit for recovery under this section; and if such property is his or her homestead it shall be exempt from execution on the judgment of recovery until his or her death or sale of the property, whichever occurs first. Notwithstanding the foregoing restrictions and limitations, where the aid recipient is deceased a claim may be filed against any property in his or her estate and the statute of limitations specified in s. 859.01 shall be exclusively applicable. The court may refuse to render judgment or allow the claim in any case where a parent, spouse or child is dependent on the property for support, and the court in rendering judgment shall take into account the current family budget requirement as fixed by the U.S. department of labor for the community or as fixed by the authorities of the community in charge of public assistance. The records of aid paid kept by the county or by the department are prima facie evidence of the value of the aid furnished. Liability under this section shall extend to any parent or stepparent whose family receives aid under s. 49.19 during the period he or she is a member of the same household, but his or her liability is limited to such period. This section does not apply to medical and health assistance payments for which recovery is prohibited or restricted by federal law or regulation.

(2) Amounts may be recovered pursuant to this section for aid granted both prior to and after August 31, 1969; and any amounts so recovered shall be paid to the United States, this state and its political subdivisions in the proportion in which they contributed to the payment of the aid granted, in the same manner as amounts recovered for old-age assistance are paid.

(3) Notwithstanding s. 49.41, the department shall promptly recover all overpayments made under s. 49.19 and shall adopt rules establishing policies and procedures to administer this subsection.

(4) Any county may retain 15% of state aid distributed under s. 49.19 that is recovered due to the efforts of a county employe or officer. This subsection applies only to recovery of aid that was provided as a result of fraudulent activity by a recipient.

History: 1977 c. 29; 1981 c. 93, 317; 1983 a. 27.

The words "both prior to and" as contained in (2) constitute an unconstitutional enactment and are therefore stricken from the statute. Estate of Peterson, 66 W. (2d) 535, 225 NW (2d) 644.

Recovery may be had only from parent who immediately received aid. Richland County Dept. of Soc. Serv. v. McHone, 95 W. (2d) 108, 288 NW (2d) 879 (Ct. App. 1980).

This section does not authorize recovery against child with guardianship account, where child never applied for, directly received or made representations to obtain aid. There may be common-law authority for claim against guardianship estate. In Matter of Guardianship of Kordecki, 95 W. (2d) 275, 290 NW (2d) 693 (1980).

This section does not authorize recovery against parent who acquired property by winning lottery. Kenosha County Dept. of Soc. Services v. Nelsen, 95 W. (2d) 409, 290 NW (2d) 544 (Ct. App. 1980); aff'd, 102 W. (2d) 49, 305 NW (2d) 924 (1981).

49.20 Aid to 18-year-old students. (1) PURPOSE. The purpose of this section is to provide state aid for the maintenance of 18-year-old high school students who are ineligible for assistance under s. 49.19 solely because of their age, except for those students who were eligible at age 17 under s. 49.19 (10) (a).

(2) ELIGIBILITY. A person is eligible for aid under this section if he or she:

(a) Is 18 years of age;

(b) Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;

(c) Received aid under s. 49.19, but not under s. 49.19 (10) (a), immediately prior to his or her 18th birthday; and

(d) Is living in a home situation specified in s. 49.19 (1) (a), but not including a foster home.

(3) PAYMENT. Aid under this section shall be paid from the appropriation under s. 20.435 (4) (d) and shall be in an amount equal to that to which the person would be entitled under s. 49.19 if he or she were 17 years of age, except that if the person's family became ineligible for aid under s. 49.19 on the person's 18th birthday, the amount paid shall equal the amount of aid granted to a single person under s. 49.19.

(4) RULES. The department shall promulgate rules for the administration of this program, including rules which provide for the monitoring of classroom attendance of persons receiving aid under this section.

History: 1977 c. 418.

49.30 Funeral expenses. On the death of a recipient of benefits under 42 USC 1381 to 1385, in effect on May 8, 1980, or s. 49.177 or 49.46, if the estate of the deceased is insufficient to pay the funeral and burial expenses and the actual cemetery expenses, the funeral and burial expenses and cemetery expenses shall be paid under this section by the county responsible for the burial of the recipient to those persons as the county agency directs. The state shall reimburse the county the lesser of $600 or the funeral and burial expenses not paid by the estate of the deceased and other persons. If, however, the total funeral and burial expenses exceed $600, the state may not reimburse the county for any part of the funeral and burial expenses except in unusual circumstances approved by the department. In addition, the state shall reimburse the county fully for actual cemetery expenses paid under this section.

History: 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 206; 1981 c. 20.

49.41 Assistance grants exempt from levy. All grants of aid to families with dependent children, payments made for social services, and benefits under s. 49.177 or federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and shall be inalienable.

History: 1973 c. 147.

MEDICAL ASSISTANCE

49.43 Definitions. As used in this subchapter unless the context indicates otherwise:

(1) "Charge" means the customary, usual and reasonable demand for payment as established prospectively, concurrently or retrospectively by the department for services, care or commodities which does not exceed the general level of charges by others who render such service or care, or provide such commodities, under similar or comparable circumstances within the community in which the charge is incurred.

(2) "Cost" means the reasonable cost of services, care or commodities as determined by the principles of reimbursement used under 42 USC 1395 to 1395rr, in effect on April 30, 1980.

(3) "Dentist" means a person licensed to practice dentistry.

(4) "Home health agency" has the meaning specified in s. 141.15 (1) (a).

(5) "Hospital" means an institution, approved by the appropriate state agency, providing 24-hour continuous nursing service to patients confined therein; which provides standard dietary, nursing, diagnostic and therapeutic facilities; and whose professional staff is composed only of physicians and surgeons, or of physicians and surgeons and doctors of dental surgery.

(6) "Inpatient psychiatric hospital services for individuals 21 years of age or for individuals under 22 years of age who are receiving such service immediately prior to reaching age 21" has the same meaning as provided in section 1905 (h) of the federal social security act.

(7) "Intermediate care facility" means either of the following:

(a) An institution or distinct part thereof, which is:

1. Licensed or approved under state law to provide, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designated to provide but who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(b) A public institution, or distinct part thereof, which is:

1. Licensed or approved under state law for the mentally retarded or persons with related conditions, the primary purpose of which is to provide health or rehabilitative services for mentally retarded individuals according to rules promulgated by the department; and

2. Qualifies as an "intermediate care facility" within the meaning of Title XIX of the social security act.

(8) "Medical assistance" means any services or items under ss. 49.45 to 49.47 and 49.49 to 49.497, or any payment or reimbursement made for such services or items.

(9) "Physician" means a person licensed to practice medicine and surgery, and includes graduates of osteopathic colleges holding an unlimited license to practice medicine and surgery.

(10) "Provider" means a person, corporation, partnership, unincorporated business or professional association and any agent or employe thereof who provides medical assistance under ss. 49.45 to 49.47, 49.49 and 49.495.

(11) "Skilled nursing home" means a facility or distinct part thereof, which:

(a) Is licensed or approved under state law for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care;

(b) Employs sufficient registered nursing practitioners for supervision of those giving nursing care to patients; and

(c) Qualifies as a "skilled nursing facility" within the meaning of Title XIX of the social security act.

History: 1977 c. 29 ss. 583m, 591; 1977 c. 418 s. 929 (18); 1979 c. 221; 1981 c. 20 s. 2202 (20) (m); 1981 c. 93; 1983 a. 189.

49.45 Medical assistance; administration. **(1)** PURPOSE. To provide appropriate health care for eligible persons and obtain the most benefits available under Title XIX of the federal social security act, the department shall administer medical assistance, rehabilitative and other services to help eligible individuals and families attain or retain capability for independence or self-care as hereinafter provided.

(2) DUTIES. (a) The department shall:

1. Exercise responsibility relating to fiscal matters, the eligibility for benefits under standards set forth in ss. 49.46 and 49.47 and general supervision of the medical assistance program;

2. Employ necessary personnel under the classified service for the efficient and economical performance of the program and shall supply residents of this state with information concerning the program and procedures;

3. Determine the eligibility of persons for medical assistance, rehabilitative and social services pursuant to ss. 49.46 and 49.47 and rules and policies adopted by the department and may designate this function to the county agency administering the social security aid program;

4. To the extent funds are available under s. 20.435 (1) (bm), certify all proper charges and claims for administrative services to the department of administration for payment and the department of administration shall draw its warrant forthwith;

5. Cooperate with the division for handicapped children and pupil services of the department of public instruction to carry out the provisions of Title XIX;

6. Appoint such advisory committees as are necessary and proper; and

7. Cooperate with the federal authorities for the purpose of providing the assistance and services available under Title XIX to obtain the best financial reimbursement available to the state from federal funds.

8. Periodically report to the joint committee on finance concerning projected expenditures and alternative reimbursement and cost control policies in the medical assistance program.

9. Periodically set forth conditions of participation and reimbursement in a contract with provider of service under this section.

10. After reasonable notice and opportunity for hearing, recover money improperly or erroneously paid, or overpayments to a provider either by offsetting or adjusting amounts owed the provider under the program, crediting against a provider's future claims for reimbursement for other services or items furnished by the provider under the program, or by requiring the provider to make direct payment to the department or its fiscal intermediary.

11. Establish criteria for the certification of eligible providers of services under Title XIX of the social security act and certify such eligible providers.

12. Decertify or suspend a provider from the medical assistance program, if after giving reasonable notice and opportunity for hearing, the department finds that the provider has violated federal or state law or administrative rule and such violations are by law, regulation or rule grounds for decertification or suspension. No payment may be made under the medical assistance program with respect to any service or item furnished by the provider subsequent to decertification or during the period of suspension.

13. Impose additional sanctions for noncompliance with the terms of provider agreements under subd. 9 or certification criteria established under subd. 11.

14. Assure due process in implementing subds. 12 and 13 by providing written notice, a fair hearing and a written decision.

15. Routinely provide notification to persons eligible for medical assistance under ss. 49.46 and 49.47, or such persons' guardians, of the department's access to provider records.

16. Notify the joint committee on finance and appropriate standing committees in each house of the legislature prior to renewing, extending or amending the claims processing contract under the medical assistance program.

17. Notify the governor, the joint committee on legislative organization, the joint committee on finance and appropriate standing committees, as determined by the presiding officer of each house, if the appropriation under s. 20.435 (1) (b) is insufficient to provide the state share of medical assistance.

18. Conduct outreach for the early and periodic screening, diagnosis and treatment program as required under 42 CFR 441. This activity is limited to persons under 18 years of age who are receiving or whose families are receiving cash payments under s. 49.19.

19. Determine for each community mental health board created under s. 51.42 a base level of medical assistance expenditures for inpatient psychiatric care including alcohol or other drug abuse treatment services for persons age 22 to 64, in order to implement s. 49.46 (2) (b) 7. In making this determination the department shall consider admissions by county of residence, sharing cost savings and other factors to provide incentives to control utilization of these services in hospitals other than psychiatric or mental hospitals. The department shall allocate funds to the boards from the appropriation under s. 20.435 (4) (b) equal to 20% of the base level of expenditures each year, if a county-owned or county-operated special hospital licensed under s. 50.33 (1) (c) is located within the jurisdiction of the board, or funds equal to 10% of the base level of expenditures each year, if no county-owned or county-operated special hospital is located within the jurisdiction of the board. The board may apply these funds against its liability for psychiatric services provided in any hospital. Funds applied by any board against this liability shall be transferred or credited to the appropriation under s. 20.435 (1) (b). The board may retain the funds it receives under this subdivision that it does not apply against its liability for psychiatric services provided in any hospital, if it uses the funds to provide noninstitutional community programs.

(b) The department may:

1. Designate other functions, responsibilities and services as may be appropriate to be performed by the county welfare agency in each county;

2. Contract with any organization whether or not organized for profit to administer, in full or in part, the benefits under the medical assistance program including prepaid health care. The department shall accept bids on contracts for administrative services and services evaluating the medical assistance program as provided in ch. 16, but may accept the contract deemed most advantageous for claims processing services; or contract with any insurer authorized under the insurance code of this state to insure the program in full or in part and on behalf of the department. The department shall report each December 31 to the governor, the joint committee on finance and the standing committees on health and social services regarding the effectiveness of the management information system for monitoring and analyzing medical assistance expenditures;

3. Audit all claims filed by any contractor making the payment of benefits paid under ss. 49.46 and 49.47 and make proper fiscal adjustments.

4. Audit claims filed by any provider of medical assistance, and as part of that audit, request of any such provider, and review, medical records of individuals who have received benefits under the medical assistance program, or under s. 49.046.

5. Enter into contracts with providers who donate their services at no charge or who provide services for reduced payments.

(3) PAYMENT. (a) Reimbursement shall be made to each county agency for the administrative services performed in the medical assistance program on the basis of s. 49.52. For purposes of reimbursement under this paragraph, assessments completed under s. 46.27 (6) (a) are administrative services performed in the medical assistance program.

(b) 1. The contractor, if any, administering benefits or providing prepaid health care under s. 49.46 or 49.47 shall be entitled to payment from the department for benefits so paid or prepaid health care so provided or made available when a certification of eligibility is properly on file with the contractor in addition to the payment of administrative expense incurred pursuant to the contract and as provided in sub. (2) (a) 4, but the contractor shall not be reimbursed for benefits erroneously paid where no certification is on file.

2. The contractor, if any, insuring benefits under s. 49.46 or 49.47 shall be entitled to receive a premium, in an amount and on terms

agreed, for such benefits for the persons eligible to receive them and for its services as insurer.

(c) Payment for services provided under this section shall be made directly to the hospital, skilled and intermediate nursing homes, prepaid health care group, other organization or individual providing such services or to an organization which provides such services or arranges for their availability on a prepayment basis.

(d) No payment may be made for inpatient hospital services, skilled nursing home services, intermediate care facility services, tuberculosis institution services or inpatient mental institution services, unless the facility providing such services has in operation a utilization review program and meets federal regulations governing such utilization review program.

(e) 1. The department may develop, implement and periodically update methods for reimbursing hospitals for allowable services, care or commodities provided a recipient. The methods may include standards and criteria for limiting any given hospital's total reimbursement to that which would be provided to an economically and efficiently operated facility.

2. A hospital whose reimbursement is determined on the basis of the methods developed and implemented under subd. 1 shall annually prepare a report of cost and other data in the manner prescribed by the department.

4. Total reimbursement for an entire hospital for allowable services, care or commodities provided recipients during the hospital's fiscal year may not exceed the lower of the hospital's charges for the services or the actual and reasonable allowable costs to the hospital of providing the services.

7. The daily reimbursement rate to a hospital for services provided to medical assistance recipients awaiting admission to a skilled nursing home, intermediate care facility, community-based residential facility, group home, foster home or other custodial living arrangement may not exceed the maximum reimbursement rate based on the average adjusted state skilled nursing facility rate, created under sub. (6m). This limited reimbursement rate to a hospital commences on the date the department, through its own data or information provided by hospitals, determines that continued hospitalization is no longer medically necessary or appropriate during a period where the recipient awaits placement in an alternate custodial living arrangement. The department may contract with a professional standards review organization, established under 42 USC 1320c to 1320c-22, to determine that continued hospitalization of a recipient is no longer necessary and that admission to an alternate custodial living arrangement is more appropriate for the continued care of the recipient. In addition, the department may contract with a professional standards review organization to determine the medical necessity or appropriateness of physician services or other services provided during the period when a hospital patient awaits placement in an alternate custodial living arrangement.

8. Reimbursement for outpatient hospital services may not exceed reimbursement for comparable services performed by providers not owned or operated by hospitals.

9. Hospital education and research costs that the department finds to be indirectly related to patient care are not allowable costs in establishing a hospital's reimbursement rate under subd. 1.

10. Hospital procedures on an inpatient basis that could be performed on an outpatient basis shall be reimbursed at the outpatient rate. The department shall determine which procedures this subdivision covers.

11. Notwithstanding subds. 1 to 10, the department may authorize the hospital rate-setting commission to determine reimbursement rates under ch. 54 or s. 146.60.

(f) 1. Providers of services under this section shall maintain records as required by the department for verification of provider claims for reimbursement. The department may audit such records to verify actual provision of services and the appropriateness and accuracy of claims.

2. The department may deny any provider claim for reimbursement which cannot be verified under subd. 1 or may recover the value of any payment made to a provider which cannot be so verified. The measure of recovery will be the full value of any claim if it is determined upon audit that actual provision of the service cannot be verified from the provider's records or that the service provided was not included in s. 49.46 (2). In cases of mathematical inaccuracies in computations or statements of claims, the measure of recovery will be limited to the amount of the error.

2m. The department shall adjust reimbursement claims for hospital services that are provided during a period when the recipient awaits placement in an alternate custodial living arrangement under par. (e) 7 and that fail to meet criteria the department may establish concerning medical necessity or appropriateness for hospital care. In addition, the department shall deny any provider claim for services that fail to meet criteria the department may establish concerning medical necessity or appropriateness.

3. Contractors under sub. (2) (b) shall maintain records as required by the department for

audit purposes. Contractors shall provide the department access to the records upon request of the department, and the department may audit the records.

(g) The secretary may appoint personnel to audit or investigate and report to the department on any matter involving violations or complaints alleging violations of laws, regulations, or rules applicable to Title XIX of the federal social security act or the medical assistance program and to perform such investigations or audits as are required to verify the actual provision of services or items available under the medical assistance program and the appropriateness and accuracy of claims for reimbursement submitted by providers participating in the program. Department employes appointed by the secretary under this paragraph shall be issued and shall possess at all times during which they are performing their investigatory or audit functions under this section identification signed by the secretary which specifically designates the bearer as possessing the authorization to conduct medical assistance investigations or audits. Pursuant to the request of a designated person and upon presentation of that person's authorization, providers and recipients shall accord such person access to any records, books, recipient medical records, documents or other information needed. Authorized employes shall have authority to hold hearings, administer oaths, take testimony and perform all other duties necessary to bring such matter before the department for final adjudication and determination.

(h) 1. For purposes of any audit, investigation, examination, analysis, review or other function authorized by law with respect to the medical assistance program, the secretary shall have the power to sign and issue subpoenas to any person requiring the production of any pertinent books, records, medical records or other information. Subpoenas so issued shall be served by anyone authorized by the secretary by delivering a copy thereof to the person named therein, or by registered mail or certified mail addressed to such person at his or her last-known residence or principal place of business. A verified return by the person so serving the subpoena setting forth the manner of service, or, in the event service is by registered or certified mail, the return post-office receipt signed by the person so served shall constitute proof of service.

2. In the event of contumacy or refusal to obey a subpoena issued under this paragraph and duly served upon any person, any judge in a court of record in the county where the person was served may enforce the subpoena in accordance with s. 885.12.

3. The failure or refusal of a person to purge himself or herself of contempt found under s. 885.12 and perform the act as required by law shall constitute grounds for decertification or suspension of that person from participation in the medical assistance program and no payment may be made for services rendered by that person subsequent to decertification or during the period of suspension.

(i) The department may not reimburse a provider for certain elective surgical procedures without a 2nd opinion from another provider. Second opinions are required for selected elective surgical procedures for which 2nd opinions disagree with the original opinions at demonstrably high rates. The department shall notify the providers of the surgical procedures for which a 2nd opinion is required.

(j) Reimbursement for administrative contract costs under this section is limited to the funds available under s. 20.435 (1) (bm).

(k) If a physician performs a surgical procedure that is within the scope of practice of a podiatrist, as defined in s. 448.01 (7), the allowable charge for the procedure may not exceed the charge the department determines is reasonable.

(4) INFORMATION RESTRICTED. The use or disclosure of any information concerning applicants and recipients of medical assistance not connected with the administration of this section is prohibited.

(5) APPEAL. Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in his behalf have not been properly determined may file an appeal with the department pursuant to s. 49.50 (8).

(6) PILOT PROGRAM REALLOCATING FUNDS FOR MENTAL HEALTH CARE. (a) The department may select up to 5 community mental health boards created under s. 51.42 or community human services boards created under s. 46.23 that volunteer to participate in a pilot program beginning January 1, 1984, concerning the provision of all mental health care by medical assistance. For each participating board the department shall determine a base level of medical assistance expenditures for all mental health care funded by medical assistance, including alcohol and other drug abuse treatment, for persons of all ages. The department shall transfer or credit funds from the appropriation under s. 20.435 (1) (b) to the appropriation under s. 20.435 (4) (b) equal to the state share of this base level of expenditures, for payment to participating boards. The department's method of determining each board's base level of funding and the

transfer or credit of funds are subject to the approval of the joint committee on finance.

(b) Each community mental health board or community human services board that participates in this pilot program is liable for the entire nonfederal share of medical assistance expenditures for mental health, including alcohol and other drug abuse treatment. Mental health services for medical assistance recipients may be paid by medical assistance only if authorized by the board. Each board may apply the funds it receives under par. (a) against this liability. Funds applied by each board against this liability shall be transferred or credited to the appropriation under s. 20.435 (1) (b). The board may use the funds received that it does not apply against this liability for noninstitutional community programs.

(c) In this subsection "state share" and "nonfederal share" mean that portion of the medical assistance costs for mental health services that is not reimbursed by federal funds, unless no federal financial participation is available for these services. If no federal financial participation is available for a mental health service which is a benefit and payable under s. 49.46 (2), "state share" and "nonfederal share" mean that portion of the costs which would be the state or nonfederal share if federal financial participation were available. If no federal participation is available, the costs that would be the federal share if federal participation were available shall be paid from the appropriation under s. 20.435 (1) (b).

(6m) PAYMENT TO NURSING HOMES. (a) 1. Reimbursement for nursing home care made under s. 20.435 (1) (b), (o) or (p) shall, except as provided in subd. 3, be determined according to a prospective reimbursement system established annually by the department and approved by the joint committee on finance. Any system or proposed system shall take into account and be consistent with applicable federal regulations.

2. The reimbursement system shall take effect after approval by the joint committee on finance.

3. The reimbursement rate for nursing homes reimbursed under s. 20.435 (1) (b), (o) or (p) may be suspended or modified by the joint committee on finance as may be necessary to conform to the requirements of federal Title XIX.

(b) Such charges for ancillary materials and services as would be incurred by a prudent buyer may be included as an adjustment to the rate determined by par. (a) when so determined by the department. The department may not authorize any adjustments to the rate established under par. (a) to pay for a cost overrun that the department fails to approve under s. 150.11 (3). The department may promulgate rules setting forth conditions and limitations to this paragraph.

(c) As a condition of reimbursement under this section a nursing home shall:

1. Meet the staffing standard requirements for direct patient services including the supplement contained under par. (a) 1, for which reimbursement is made, and to maintain such records as prescribed by the department to document that such level of care was actually provided.

2. Provide at the time of a patient's admission to a home, for the development and implementation of a rehabilitation plan including the development of an alternate care plan for the patient.

3. Provide, upon request, cost information relating to the overall financial operation of the facility, including, but not limited to wages and hours worked, costs of food, housekeeping, maintenance and administration.

4. Agree to admit patients 7 days of the week.

5. Admit only patients assessed or who waive assessment under s. 46.27 (6) (a).

(d) The department shall:

1. Take into account all pertinent federal regulations in establishing reimbursement under this section;

2. Terminate reimbursement to a home for such a patient, unless a utilization review team established pursuant to federal regulations upon review of the patient's needs and the implementation of a rehabilitation plan for that patient determines that the patient's need for care and services can only be provided in a nursing home and determines the appropriate level of care.

3. Establish, maintain, and periodically update a patient needs evaluation system to be used in determining the need and level of care at a nursing home, which shall include the social and rehabilitative needs of the patient, provide levels of care to correspond to the actual staff time required to provide such care, and define the contents of the services to be provided.

4. Periodically audit all nursing homes and intermediate care facilities receiving funds under this paragraph, and recover payments made where the home is not meeting the conditions under which the reimbursement was made as specified in par. (c) 1 and 2. Erroneous information provided under par. (c) 3 shall constitute grounds for recovery.

(e) The department shall establish an appeals mechanism within the department to review petitions from licensed nursing homes providing skilled, intermediate, limited, personal or residential care or providing care for the mentally retarded for modifications to any reim-

bursement under this subsection. The department may, upon the presentation of facts, modify a nursing home's reimbursement if demonstrated substantial inequities exist for the period appealed. Upon review of the department's decision the secretary may grant the modifications, which may exceed maximum reimbursement levels allowed under this subsection but may not exceed federal maximum reimbursement levels. The department shall develop specific criteria and standards for granting reimbursement modifications, and shall take into account the following, without limitation because of enumeration, in reviewing petitions for modification:

1. The efficiency and effectiveness of the facility if compared with facilities providing similar services and if valid cost variations are considered.

2. The effect of rate modifications upon compliance with federal upper limit regulations and other pertinent federal regulations governing Title XIX of the social security act.

3. The need for additional revenue to correct licensure and certification deficiencies.

4. The relationship between total revenue and total costs for all patients.

5. The existence and effectiveness of specialized programs for the chronically mentally ill or developmentally disabled.

6. Exceptional patient needs.

7. Demonstrated experience in providing high quality patient care.

(g) Reimbursement under this section to intermediate care facilities or to skilled nursing facilities may not include the cost of care reimbursable under 42 USC 1395 to 1395rr (medicare part A or part B) for persons eligible for medicare benefits under 42 USC 1395 to 1395rr. Medical assistance recipients are not liable for these costs. The department may require that intermediate care facilities or skilled nursing facilities recover these costs from the appropriate agencies. The department may, by rule, require medicare certification under 42 USC 1395 to 1395rr, in whole or in part, of skilled nursing facilities. Any intermediate care facility or skilled nursing facility is subject to a fine of not less than $10 nor more than $100 for each day it refuses to recover costs or refuses to obtain the required certification.

(h) The department may require by rule that all claims for payment of services provided nursing home residents under this chapter be submitted or countersigned by the respective nursing home administrator. The department may specify those categories of services for which reimbursement will be made only if the services are rendered or authorized in writing by a primary health care provider designated by the recipient for the particular category of services.

(i) 1. On or after October 1, 1981, medical assistance reimbursement for inpatient nursing care may only be provided for persons receiving skilled, intermediate or limited levels of nursing care as these levels are defined under Wis. Adm. Code chapter H32.

2. Reimbursement for personal or residential care is available for a person in a facility certified under 42 USC 1396 to 1396K only if the person entered a facility before the date specified in subd. 1 and has continuously resided in a facility since the date specified in subd. 1. If the person has a primary diagnosis of developmental disabilities or chronic mental illness, reimbursement for personal or residential care is available only if the person entered a facility on or before November 1, 1983.

(7) PERSONAL FUNDS. (a) To assure that patients in a public medical institution or any accommodated person, having a monthly income exceeding the payment rates established under s. 1611 (e) of federal Title XVI, has certain income available for personal needs, such individuals may retain unearned income in the amount of $42.50 prior to July 1, 1984, and $40 on and after that date. Income in excess of that allowed shall be applied toward the cost of care in the facility.

(b) Where a facility participating in the medical assistance program has been delegated in writing by a resident within that facility to manage and control the personal funds of the resident including but not limited to those funds identified in par. (a) the facility shall establish for the resident a personal fund account. All deposits and withdrawals of funds shall be documented by the facility to indicate the amount and date of deposit and amount, date and purpose of withdrawal. Such documentation shall be maintained in the resident's records.

(c) Upon the removal of a resident from the facility as a result of death or permanent transfer, the facility shall transfer the balance of the resident's trust account to the personal representative of the resident's estate, the legal guardian of the resident or if appropriate to the resident personally. A copy of the trust account records shall be transferred with the funds. No facility or any of its employes or representatives may benefit from the distribution of a deceased resident's personal funds unless they are specifically named in the resident's will or constitute an heir at law.

(d) 1. The department shall accept from any person a verified complaint concerning any violation of this subsection. The department shall forward to the accused within 10 days a

copy of such complaint. The department, upon such investigation as it deems necessary, may dismiss the complaint or may find probable cause to believe that a violation of this subsection has occurred.

2. If the department finds probable cause to believe that a violation of this subsection has occurred, it may assess a forfeiture of not less than $25 nor more than $500 for each occurrence, and in addition may order that any amount illegally charged against a resident's account be restored. The department shall immediately inform the complainant and respondent of any such decision and the amount of forfeiture or repayment, if any. If the department is not notified in writing that a party wishes to contest a decision within 15 working days after the parties are informed of such decision, the department's determination shall be deemed final and may not be appealed to a court.

3. The department shall inform the nursing home administrators examining board of all decisions made under this paragraph.

4. The department's determination of serious misconduct under this subsection shall be cause for terminating the facility's participation in the state-funded portion of the medical assistance program under ss. 49.45 to 49.47.

(e) Nursing homes shall adopt a uniform accounting system prescribed by the department for purposes of managing residents personal fund accounts.

(8) HOME HEALTH AGENCY REIMBURSEMENT. Reimbursement under s. 20.435 (1) (b) and (o) for services of home health agencies certified by the department shall be based upon actual costs up to a maximum rate determined by the department.

(9) FREE CHOICE. Any person eligible for medical assistance under ss. 49.46 and 49.47 may use the physician, chiropractor, dentist, pharmacist, hospital, skilled nursing home, health maintenance organization or other licensed, registered or certified provider of health care of his or her choice, except that free choice of a provider may be limited by the department if the department's alternate arrangements are economical and the recipient has reasonable access to health care of adequate quality. The department may also require a recipient to designate, in any or all categories of health care providers, a primary health care provider of his or her choice. After such a designation is made, the recipient may not receive services from other health care providers in the same category as the primary health care provider unless such service is rendered in an emergency or through written referral by the primary health care provider. Alternate designations by the recipient may be made in accordance with guidelines established by the department. Nothing in this subsection shall vitiate the legal responsibility of the physician, chiropractor, dentist, pharmacist, skilled nursing home, hospital, health maintenance organization or other licensed, registered or certified provider of health care to patients. All contract and tort relationships with patients shall remain, notwithstanding a written referral under this section, as though dealings are direct between the physician, chiropractor, dentist, pharmacist, skilled nursing home, hospital, health maintenance organization or other licensed, registered or certified provider of health care and the patient. No physician, chiropractor, pharmacist or dentist may be required to practice exclusively in the medical assistance program.

(9m) REFERRALS. The department may, consistent with s. 49.45 (9), specify services for which reimbursement will be made only if the services are provided in accordance with a referral, in writing, which specifies the services to be rendered and the duration of such services. The referral form shall describe the referred services as required by the department.

(9s) DISCLOSURE. Any person who is an employe of, or an owner, partner, stockholder or investor in, any legal entity providing services which are reimbursed under this section, shall notify the department, on forms provided by the department for that purpose, if such person is an employe of, or an owner, partner, stockholder or investor in, any other legal entity providing services which are reimbursed under this section.

(10) RULE-MAKING POWERS. The department is authorized to make such rules as are consistent with its duties in administering medical assistance.

(11) PENALTY. Any person who receives or assists another in receiving assistance under this section, to which he is not entitled, shall be subject to the penalties under s. 49.12.

(13) FINANCIAL REPORTS. (a) The department may require service providers to prepare and submit cost reports or financial reports for purposes of rate certification under Title XIX, cost verification, fee schedule determination or research and study purposes. These financial reports may include independently audited financial statements which shall include balance sheets and statements of revenues and expenses. The department may withhold reimbursement or may decrease or not increase reimbursement rates if a provider does not submit the reports required under this paragraph or if the costs on which the reimbursement rates are based cannot be verified from the provider's cost or

financial reports or records from which the reports are derived.

(b) The department may require any provider who fails to submit a cost report or financial report under par. (a) within the period specified by the department to forfeit not less than $10 nor more than $100 for each day the provider fails to submit the report.

(14) CHARGES IMPOSED FORBIDDEN, EXCEPTIONS. No provider may impose upon a recipient charges in addition to payments received for services under this section or impose direct charges upon a recipient in lieu of obtaining payment under this section except under the following conditions:

(a) Benefits or services are not provided under s. 49.46 (2) and the recipient is advised of this fact prior to receiving the service.

(b) If an applicant is determined to be eligible retroactively under s. 49.46 (1) (b) and a provider bills the applicant directly for services and benefits rendered during the retroactive period, the provider shall, upon notification of the applicant's retroactive eligibility, submit claims for reimbursement under this section for covered services or benefits rendered during the retroactive period. Upon receipt of payment, the provider shall reimburse the applicant or other person who has made prior payment to the provider. No provider may be required to reimburse the applicant or other person in excess of the amount reimbursed under this section.

(c) Benefits or services for which recipient copayment, coinsurance or deductible is required under sub. (18), not to exceed maximum amounts allowable under 42 CFR 447.53 to 447.58.

(15) COMMUNITY CARE ORGANIZATION PROJECT GUARANTEE. Upon termination of the community care organization demonstration projects in Barron, La Crosse and Milwaukee counties, any client who was receiving services through any of those projects may continue to receive the full range of community care organization services. The cost of the services shall continue to be paid by medical assistance.

(16) CERTIFICATION. On or after January 1, 1984, the department may only continue to certify as a medical assistance provider a community-based residential facility that is so certified on December 31, 1983. On or after January 1, 1984, no community-based residential facility may be certified for more beds than the number for which it was certified on December 31, 1983.

(17) DIVESTMENT. (a) In this subsection, "resource" does not include any resource excluded when determining eligibility for supplemental security income under 42 USC 1382b (a). For the purposes of this subsection the value of any resource is its fair market value at the time it was disposed of, minus the amount of compensation received for the resource.

(b) In determining the resources of each applicant for medical assistance or in redetermining a recipient's eligibility for medical assistance, the department shall include any resource the applicant or recipient has disposed of for less than its fair market value, if the disposal occurred within 24 months preceding the determination. The department shall presume that the disposal occurred for the purpose of establishing eligibility for medical assistance, unless the person provides convincing evidence to the contrary.

(c) 1. If the uncompensated value of resources disposed of by an applicant or recipient exceeds $12,000, the department shall find that person ineligible for medical assistance. If the department holds the person ineligible for medical assistance for a period exceeding 24 months, the period of ineligibility shall be reasonably related to the uncompensated value of the resources.

2. If the uncompensated value of resources disposed of by an applicant or recipient is less than or equal to $12,000, the department may find that person ineligible for medical assistance until the uncompensated value of these resources is expended for the person's maintenance needs. In this subdivision, "maintenance needs" include needs for medical care.

(d) Any person described in section 1917 (c) (2) (B) of the federal social security act, as created by P.L. 97-248, section 132, who disposes of a home for less than its fair market value is ineligible for medical assistance to the extent authorized by that section.

(e) This subsection is subject to the limitations specified in section 1917 (c) of the federal social security act, as created by P.L. 97-248, section 132. This subsection does not apply to the disposal of any resource before July 2, 1983.

(18) RECIPIENT COST SHARING. Except as provided in pars. (a) to (c), any person eligible for medical assistance under s. 49.46 or 49.47 shall pay up to the maximum amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided under s. 49.46 (2). The service provider shall collect the allowable copayment, coinsurance or deductible. The department shall reduce payments to each provider by the amount of the allowable copayment, coinsurance or deductible. No provider may deny care or services because the recipient is unable to share costs, but an inability to share costs specified in this subsection does not relieve the recipient of liability for these costs. Liability

under this subsection is limited by the following provisions:

(a) No person is liable under this subsection for services provided through prepayment contracts.

(b) The following services are not subject to recipient cost sharing under this subsection:

1. Any service provided to a person receiving care as an inpatient in a skilled nursing home or intermediate care facility certified under 42 USC 1396 to 1396k.

2. Any service provided to a person who is less than 18 years old.

3. Any service provided under s. 49.46 (2) to a pregnant woman, if the service relates to the pregnancy or to other conditions that may complicate the pregnancy.

4. Emergency services.

5. Family planning services.

6. Transportation by common carrier or private motor vehicle, if authorized in advance by a county department of public welfare or social services, or by specialized medical vehicle.

7. Home health services or, if a home health agency is unavailable, nursing services.

8. Physician services other than office visits. Liability for office visits is limited to 6 office visits per recipient per year, if the visits are made to the same physician.

9. Laboratory and X-ray services.

(c) The department may limit any medical assistance recipient's liability under this subsection for services it designates.

(d) No person who designates a pharmacy or pharmacist as his or her sole provider of prescription drugs and who so uses that pharmacy or pharmacist is liable under this subsection for more than $5 per month for prescription drugs received.

(19) ESTABLISHING PATERNITY AND ASSIGNING SUPPORT RIGHTS. (a) As a condition of eligibility for medical assistance, any person charged with the care and custody of a dependent child or children shall:

1. Fully cooperate in efforts directed at establishing the paternity of a nonmarital child and obtaining support payments or any other payments or property to which the person and the dependent child or children may have rights. This cooperation shall be in accordance with federal law and regulations applying to paternity establishment and collection of support payments.

2. Notwithstanding other provisions of the statutes, be deemed to have assigned to the state, by applying for or receiving medical assistance, any rights to medical support or other payment of medical expenses from any other person that the parent and the dependent child or children may have, including rights to unpaid amounts accrued at the time of application for medical assistance as well as any rights to support accruing during the time for which medical assistance is paid.

3. The county agency administering medical assistance shall notify applicants of the requirements of this subsection at the time of application.

(b) If a person charged with the care and custody of a dependent child or children does not comply with the requirements of this subsection, the person is ineligible for medical assistance. In this case, medical assistance payments shall continue to be made on behalf of the eligible child or children.

History: 1971 c. 40 s. 93; 1971 c. 42, 125; 1971 c. 213 s. 5; 1971 c. 215, 217, 307; 1973 c. 62, 90, 147; 1973 c. 333 ss. 106g, 106h, 106j, 201w; 1975 c. 39; 1975 c. 223 s. 28; 1975 c. 224 ss. 54h, 56 to 59m; 1975 c. 383 s. 4; 1975 c. 411; 1977 c. 29, 418; 1979 c. 34 ss. 837f to 838, 2102 (20) (a); 1979 c. 102, 177, 221, 355; 1981 c. 20 ss. 839 to 854, 2202 (20) (r); 1981 c. 93, 317; 1983 a. 27 ss. 1046 to 1062m, 2200 (42); 1983 a. 245, 447, 527.

A contract between the trustees of a nursing home and a medical clinic for exclusive medical services under the medical assistance act for residents of such home violates public policy of this state. 59 Atty. Gen. 68.

49.46 Medical assistance; recipients of social security aids. (1) ELIGIBILITY. (a) The following shall receive medical assistance under this section:

1. Any person included in the grant of aid to families with dependent children and any person who is ineligible to receive such aid solely because of the application of s. 49.19 (11) (a) 6.

1m. Any pregnant woman who would be eligible for aid to families with dependent children if the child was born and living with her and whose pregnancy is medically verified. Eligibility begins on the date pregnancy is verified or the date of application, whichever is later.

3. Any essential person.

4. Any person receiving benefits under s. 49.177 or federal Title XVI.

5. Any child in a subsidized adoption or foster care placement under ch. 48, as determined by the department.

(b) Any person shall be considered a recipient of aid for 3 months prior to the month of application if the proper agency determines eligibility existed during such prior month.

(c) Medical assistance shall be provided to a person or family for 4 calendar months following the month in which the person or family becomes ineligible for aid to families with dependent children because of increased income from employment if:

1. The person or family was eligible for aid to families with dependent children for at least 3 of the 6 months immediately preceding the month in which the person or family became ineligible; and

2. The person or at least one member of the family is employed.

(d) For the purposes of this section:

1. Children placed in licensed foster homes by the department and which children would be eligible for payment of aid to families with dependent children in foster homes except that such placement is not made by a county agency will be considered as recipients of aid to families with dependent children.

2. Any accommodated person or any patient in a public medical institution shall be considered a recipient for purposes of this section if such person or patient would have inadequate means to meet his need for care and services if living in his usual living arrangement.

3. Any child adopted under s. 48.48 (12) shall be considered a recipient for any medical condition which exists at the time of the adoption or develops subsequent to the adoption.

(e) If an application under s. 49.47 (3) shows that the person has income and resources within the limitations of s. 49.19, federal Title XVI or s. 49.177, or that he is an essential person, an accommodated person or a patient in a public medical institution, he shall be granted the benefits enumerated under sub. (2) whether or not he requests or receives a grant of any of such aids.

(2) BENEFITS. (a) The department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following federally mandated benefits:

1. Physicians' services, excluding services provided under par. (b) 6. f.

2. Early and periodic screening and diagnosis of persons under 21 years of age and all medical treatment and dentists' services specified in par. (b) 1. found necessary by this screening and diagnosis.

3. Rural health clinic services.

4. The following medical services if prescribed by a physician:

a. Inpatient hospital services other than services in an institution for mental diseases.

b. Services specified in this paragraph, provided by any hospital on an outpatient basis.

c. Skilled nursing home services other than in an institution for mental diseases.

d. Home health services, or nursing services if a home health agency is unavailable.

e. Laboratory and X-ray services.

f. Family planning services and supplies.

g. Nurse midwifery services.

(b) The department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following services:

1. Dentists' services, limited to complete dentures and other basic services within each of the following categories:

a. Diagnostic services.

b. Preventive services.

c. Restorative services.

d. Endodontic services.

e. Periodontic services.

f. Oral surgery.

g. Emergency treatment of dental pain.

2. Optometrists' or opticians' services.

3. Transportation by emergency medical vehicle to obtain emergency medical care, transportation by specialized medical vehicle to obtain medical care or, if authorized in advance by the county department of public welfare or social services, transportation by common carrier or private motor vehicle to obtain medical care.

4. Chiropractors' services.

5. Eyeglasses.

6. The following services if prescribed by a physician:

a. Intermediate care facility services.

b. Physical and occupational therapy.

c. Speech, hearing and language disorder services.

d. Medical supplies and equipment.

e. Inpatient hospital, skilled nursing facility and intermediate care facility services for patients of any institution for mental diseases who are under 21 years of age, are under 22 years of age and who were receiving these services immediately prior to reaching age 21, or are 65 years of age or older.

f. Medical day treatment services and other mental health services, including services provided by a psychiatrist, purchased or provided by a community mental health board created under s. 51.42 for the county in which the patient resides. The board is liable for 10% of the rate established by the department for these services. The board and the department of public welfare or social services for the county in which the patient resides shall develop a written agreement for programs for persons requiring these mental health services.

g. Nursing services.

h. Legend drugs, as listed in the Wisconsin medical assistance drug index.

i. Insulin, antacids and analgesics.

7. Inpatient psychiatric care, including alcohol and other drug abuse treatment services, for persons age 22 to 64, if the community mental health board created under s. 51.42 for the county in which the person resides authorizes payment. The board is liable for 10% of the medical assistance rate established under s. 49.45 (3) (e) if a hospital provides the care and if no county-owned or county-operated special

hospital licensed under s. 50.33 (2) (c) is located within the jurisdiction of the board. The board is liable for 20% of the medical assistance rate established under s. 49.45 (3) (e) if a hospital provides the care and if a county-owned or county-operated special hospital is located within the jurisdiction of the board. The board is liable for the state share of the amounts paid under the rates established by the department if an inpatient facility other than a hospital provides the care, limited to the care provided within the first month in which the person is admitted. In this subdivision, "state share" means the nonfederal portion of the rates established under s. 49.45 (3) (e), if federal financial participation were available for this service. In this subdivision, "hospital" has the meaning provided in s. 50.33 (2) (a), but does not include psychiatric or mental hospitals. Reimbursement for this service is limited to an episode of care occurring at least 90 days from the date of the last discharge.

8. Home or community-based services, if provided under s. 46.275 or 46.277.

(c) Medical assistance shall also include payment of any of the deductible and coinsurance portions of the above services which are not paid under Title XVIII and the monthly premiums payable under section 1839 of the social security act.

(d) Benefits authorized under this subsection may not include payment for that part of any service payable through 3rd party liability or any federal, state, county, municipal or private benefit system to which the beneficiary is entitled. "Benefit system" does not include any public assistance program such as, but not limited to, Hill-Burton benefits under 42 USC 291c (e), in effect on April 30, 1980, or general relief.

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538.

Categorically needy person applying for assistance under this section need not comply with divestment of assets provisions under 49.47 (4) (d). Sinclair v. H&SS Department, 77 W (2d) 322, 253 NW (2d) 245.

States need not fund nontherapeutic abortions. Beal v. Doe, 432 US 438.

49.47 Medical assistance; medically indigent. (1) PURPOSE. Medical assistance as set forth herein shall be provided to persons over 65, all children under 18 and, if the child is "dependent" pursuant to s. 49.19, the relatives enumerated in s. 49.19 with whom the child is living, or blind or disabled if eligible under this section.

(2) DEFINITIONS. As used in this section, unless the context indicates otherwise:

(a) "Beneficiary" means a person eligible for, and a recipient of, medical assistance under this section.

(b) "Illness" means a bodily disorder, bodily injury, disease or mental disease. All illnesses existing simultaneously which are due to the same or related causes shall be considered "one illness." Successive periods of illness less than 6 months apart, which are due to the same or related causes, shall also be considered "one illness."

(c) "Spouse" means the legal husband or wife of the beneficiary, whether or not eligible for benefits under this chapter.

(3) APPLICATION. (a) At any time any resident of this state who believes himself medically indigent and qualified for aid under this section may make application, on forms prescribed by the department. If eligibility is questionable by reason of the information contained on the application or is incomplete, further investigation shall be made to determine eligibility.

(b) The agency shall promptly review the application and shall issue a certificate to the individual showing eligibility when eligibility has been established.

(4) ELIGIBILITY. (a) Any individual who meets the limitations on income and resources under pars. (b) and (c) shall be eligible for medical assistance under this section if such individual is:

1. Under 18 years of age or, if the person resides in an intermediate care facility, skilled nursing facility or inpatient psychiatric hospital, under 21 years of age.

2. Pregnant and would be eligible for aid to families with dependent children if the child was born and living with her, and if the woman's pregnancy is medically verified. Eligibility begins on the date pregnancy is verified or the date of application, whichever is later.

3. 65 years of age or older.

4. Blind or totally and permanently disabled as defined under federal Title XVI.

(b) Eligibility exists if the applicant's property does not exceed the following:

1. A home and the land used and operated in connection therewith or in lieu thereof a mobile home if the home or mobile home is used as the person's or his or her family's place of abode.

2. Household and personal possessions.

2m. One or more motor vehicles as specified in this subdivision.

a. For persons who are eligible under par. (a) 1 or 2, one vehicle is exempt from consideration as an asset. A 2nd vehicle is exempt from consideration as an asset only if the department determines that it is necessary for the purpose of employment or to obtain medical care. The equity value of any nonexempt vehicles owned

by the applicant is an asset for the purposes of determining eligibility for medical assistance under this section.

b. For persons who are eligible under par. (a) 3 or 4, motor vehicles are exempt from consideration as an asset to the same extent as provided under 42 USC 1381 to 1385.

3. Liquid assets not exceeding $1,500, if single, $2,250 for a family of 2, plus $300 for each additional legal dependent.

4. Additional tangible personal property of reasonable value, considering the number of members in the family group, used in the production of income.

(c) 1. Except as provided in subd. 1m, eligibility exists if the individual's income does not exceed the maximum standard of need used in determining eligibility for aid to families with dependent children under s. 49.19 or state supplemental aid under s. 49.177. In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled under 42 USC 1381 to 1385. "Income" does not include earned or unearned income which would be excluded in determining eligibility for the individual or family under s. 49.177 or 49.19, or for the aged, blind or disabled individual under 42 USC 1381 to 1385.

1m. The department may not consider the income of a disabled child's parents when determining the child's eligibility for medical assistance under this section if the child meets the conditions specified in 42 USC 1396a (e) (3).

2. Whenever an applicant has excess income, no certification shall be issued until such time as the excess income above the applicable limits has been expended for medical care or for any other type of remedial care recognized under state law or for personal health insurance premiums or both.

3. No person is eligible for medical assistance under this section if the person's income exceeds the maximum income levels that the U.S. department of health and human services sets for federal financial participation under 42 USC 1396b (f).

(e) Temporary absence of a resident from the state shall not be grounds for denying the certificate or for the cancellation of an existing certificate.

(5) INVESTIGATION BY DEPARTMENT. The department may make additional investigation of eligibility:

(a) When there is reasonable ground for belief that an applicant may not be eligible or that the beneficiary may have received benefits to which the beneficiary is not entitled; or

(b) Upon the request of the secretary of the U.S. department of health and human services.

(6) BENEFITS. (a) The department shall audit and pay charges to certified providers for medical assistance on behalf of beneficiaries for those services enumerated under s. 49.46 (2) (a) and (b) 3, 6. a to d and i and for antibiotic, anticonvulsant, psychotropic and muscle relaxant legend drugs listed in the Wisconsin medical assistance drug index, but no payment shall include care for services rendered earlier than 3 months preceding the month of application.

(b) In no event may payments be made for medical assistance rendered during a period when the beneficiary would not have been eligible for benefits under this section.

(c) Benefits shall not include any payment with respect to:

1. Care or services in any private or public institution, unless the institution has been approved by a standard-setting authority responsible by law for establishing and maintaining standards for such institution.

2. That part of any service otherwise authorized under this section which is payable through 3rd party liability or any federal, state, county, municipal or private benefit systems, to which the beneficiary may otherwise be entitled.

3. Care or services for an individual who is an inmate of a public institution, except as a patient in a medical institution or a resident in an intermediate care facility.

(7) REDUCTION OF BENEFITS. If the funds appropriated become or are estimated to be insufficient to make full payment of benefits provided under this section, all charges for service so authorized shall be prorated on the basis of funds available or by limiting the benefits provided.

(8) ENROLLMENT FEE. As long as an enrollment fee or premium is required for persons receiving benefits under Title XIX of the social security act, the department shall charge the minimum enrollment fee or premium required under federal law. The fee or premium so charged shall be related to the beneficiary's income, in accordance with guidelines established by the secretary of the U.S. department of health and human services.

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245.

Sub. (4) (d) is not in conflict with the federal requirement that only "actually available" resources be considered in determining eligibility, because: (1) The statute merely provides a procedure for determining which assets are, in fact, available to meet present needs or, but for divestment, would have been available; and (2) a contrary interpretation would allow any person regardless of financial resources to become eligible for medical assistance by dispersing his assets, a result which could not have been intended by congress when it enacted Title XIX of the Social Security Act. Lerner v. H&SS Dept. 70 W (2d) 670, 235 NW (2d) 478.

Spend-down requirements discussed. Swanson v. HSS, 105 W (2d) 78, 312 NW (2d) 833 (Ct App 1981)

Regulation which "deemed" resources of one spouse to be "available" to the other was valid. Schweiker v. Gray Panthers, 453 US 34 (1981)

49.48 Aid for treatment of kidney disease. (1) DECLARATION OF POLICY. The legislature finds that effective means of treating kidney failure are available, including dialysis or artificial kidney treatment or transplants. It further finds that kidney disease treatment is prohibitively expensive for the overwhelming portion of the state's citizens. It further finds that public and private insurance coverage is inadequate in many cases to cover the cost of adequate treatment at the proper time in modern facilities. The legislature finds, in addition, that the incidence of the disease in the state is not so great that public aid may not be provided to alleviate this serious problem for a relatively modest investment. Therefore, it is declared to be the policy of this state to assure that all persons are protected from the destructive cost of kidney disease treatment by one means or another.

(2) DUTIES OF DEPARTMENT. The department shall:

(a) Adopt rules setting standards for operation and certification of dialysis and renal transplantation centers and home dialysis equipment and suppliers.

(b) Adopt rules setting standards for acceptance and certification of patients into the treatment phase of the program.

(c) Adopt rules concerning reasonable cost and length of treatment programs.

(d) Aid in preparing educational programs and materials informing the public as to chronic renal disease and the prevention and treatment thereof.

(3) AID TO KIDNEY DISEASE PATIENTS. (a) Any permanent resident of this state who suffers from chronic renal disease may be accepted into the dialysis treatment phase of the renal disease control program if he meets standards set by rule under sub. (2).

(b) The state shall pay the cost of medical treatment required as a direct result of chronic renal disease of certified patients from the date of certification, whether the treatment is rendered in an approved facility in the state or in a dialysis or transplantation center which is approved as such by a contiguous state, subject to the conditions specified under par. (d). Approved facilities may include a hospital incenter dialysis unit or a nonhospital dialysis center which is closely affiliated with a home dialysis program supervised by an approved facility. Aid shall also be provided for all reasonable expenses incurred by a potential living-related donor, including evaluation, hospitalization, surgical costs and postoperative follow-up to the extent that these costs are not reimbursable under the federal medicare program or other insurance. In addition, all expenses incurred in the procurement, transportation and preservation of cadaveric donor kidneys shall be covered to the extent that these costs are not otherwise reimbursable. All donor-related costs are chargeable to the recipient and reimbursable under this subsection.

(c) Disbursement and collection of all funds under this subsection shall be by the department or by a fiscal intermediary, in accordance with a contract with a fiscal intermediary. The costs of the fiscal intermediary under this paragraph shall be paid from the appropriation under s. 20.435 (1) (a).

(d) 1. No aid may be granted under this subsection unless the recipient has no other form of aid available from the federal medicare program or from private health, accident, sickness, medical and hospital insurance coverage. If insufficient aid is available from other sources and if the recipient has paid an amount equal to the annual medicare deductible amount specified in subd. 2, the state shall pay the difference in cost to a qualified recipient. If at any time sufficient federal or private insurance aid becomes available during the treatment period, state aid shall be terminated or appropriately reduced. Any patient who is eligible for the federal medicare program shall register and pay the premium for medicare medical insurance coverage where permitted, and shall pay an amount equal to the annual medicare deductible amounts required under 42 USC 1395e and 13951 (b), prior to becoming eligible for state aid.

2. Aid under this subsection is only available after the patient pays an annual amount equal to the annual deductible amount required under the federal medicare program. This subdivision requires an inpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 1395e and requires an outpatient who seeks aid first to pay an annual deductible amount equal to the annual medicare deductible amount specified under 42 USC 13951 (b).

(e) State aids for services provided under this section shall be equal to the allowable charges under the federal medicare program. In no case shall state rates for individual service elements exceed the federally defined allowable costs. The rate of charges for services not covered by public and private insurance shall not exceed the reasonable charges as established by medicare fee determination procedures. The state may not pay for the cost of travel, lodging or

meals for persons who must travel to receive inpatient and outpatient dialysis treatment for kidney disease. This paragraph shall not apply to donor related costs as defined in par. (b).

History: 1973 c. 308; 1975 c. 39; 1977 c. 29; 1981 c. 314; 1983 a. 27.

49.483 Cystic fibrosis aids. (1) The department may provide financial assistance for costs of medical care of financially needy persons over the age of 18 years with the diagnosis of cystic fibrosis.

(2) Approved costs for medical care under sub. (1) shall be paid from the appropriation under s. 20.435 (1) (e).

History: 1973 c. 300; 1973 c. 336 s. 55; 1975 c. 39; 1979 c. 34 s. 2102 (43) (a); 1983 a. 27 s. 1562.

49.485 Hemophilia treatment services. (1) DEFINITIONS. In this section:

(a) "Comprehensive hemophilia treatment center" means a center, and its satellite facilities, approved by the department, which provide services, including development of the maintenance program, to persons with hemophilia and other related congenital bleeding disorders.

(c) "Hemophilia" means a bleeding disorder resulting from a genetically determined plasmatic clotting factor abnormality or deficiency.

(d) "Home care" means the self-infusion of a plasmatic clotting factor on an outpatient basis by the patient or the infusion of a plasmatic clotting factor to a patient on an outpatient basis by a person trained in such procedures.

(dm) "Income" means income as defined in s. 71.09 (7) (a) 1, except that "income" does not include the following amounts that are excluded from adjusted gross income: capital gains, including capital gains excluded under section 1034 of the internal revenue code, dividends, contributions to individual retirement accounts, intangible drilling costs, depletion allowances and the amount by which the value of a share of stock at the time a qualified or restricted stock option is exercised exceeds the option price.

(e) "Maintenance program" means the individual's therapeutic and treatment regimen, including medical, dental, social and vocational rehabilitation including home health care.

(f) "Net worth" means the sum of the value of liquid assets, real property, after excluding the first $10,000 of the full value of the home derived by dividing the assessed value by the assessment ratio of the taxation district.

(g) "Physician director" means the medical director of the comprehensive hemophilia treatment center which is directly responsible for an individual's maintenance program.

(2) ASSISTANCE PROGRAM. The department shall establish a program of financial assistance to persons suffering from hemophilia and other related congenital bleeding disorders. The program shall assist such persons to purchase the blood derivatives and supplies necessary for home care. The program shall be administered through the comprehensive hemophilia treatment centers.

(4) ELIGIBILITY. Any permanent resident of this state who suffers from hemophilia or other related congenital bleeding disorder may participate in the program if that person meets the requirements of this section and the standards set by rule under this section. The department shall establish by rule eligibility standards based on net worth. The person shall enter into an agreement with the comprehensive hemophilia treatment center for a maintenance program to be followed by that person as a condition for continued eligibility. The physician director or a designee shall, at least once in each 6-month period, review the maintenance program and verify that the person is complying with the program.

(5) RECOVERY FROM OTHER SOURCES. The department is responsible for payments for blood products and supplies used in home care by persons participating in the program. The department may enter into agreements with comprehensive hemophilia treatment centers under which the treatment center assumes the responsibility for recovery of the payments from a 3rd party, including any insurer.

(6) PAYMENTS. (a) The department shall, by rule, establish a reasonable cost for blood products and supplies used in home care as a basis of reimbursement under this section.

(b) Reimbursement shall not be made under this section for any blood products or supplies which are not purchased from or provided by a comprehensive hemophilia treatment center, or a source approved by the treatment center. Reimbursement shall not be made under this section for any portion of the costs of blood products or supplies which are payable under any other state or federal program or under any grant, contract and any other contractual arrangement.

(c) The reasonable cost, determined under par. (a), of blood products and supplies used in home care for which reimbursement is not prohibited under par. (b), shall be reimbursed under this section after deduction of the patient's liability, determined under sub. (7).

(7) PATIENT'S LIABILITY. (a) 1. The percentage of the patient's liability for the reasonable costs for blood products and supplies which are determined to be eligible for reimbursement under

sub. (6) shall be based upon the income and the size of the person's family unit, according to standards to be established by rule by the department. Such percentage may not exceed 15%.

2. In determining income, only the income of the patient and persons responsible for the patient's support under s. 52.01 may be considered.

4. In determining family size, only persons who are related to the patient as parent, spouse, legal dependent or, if under the age of 18, as brother or sister may be considered.

5. In determining net worth, only the net worth of the patient and persons responsible for the patient's support under s. 52.01 will be considered.

(b) Individual liability shall be determined at the time of initial treatment and shall be redetermined annually or upon the patient's notification to the department of a change in family size or financial condition.

(8) DEPARTMENT'S DUTIES. The department shall:

(a) Extend financial assistance under this section to eligible persons suffering from hemophilia or other related congenital bleeding disorders.

(b) Employ administrative personnel to implement this section.

(c) Promulgate all rules necessary to implement this section.

History: 1977 c. 213; 1979 c. 32; 1983 a. 27; 1983 a. 189 s. 329 (10); 1983 a. 544 s. 47 (1).

49.487 Disease aids, patient liability. The department shall, on July 2, 1983, develop and implement a sliding scale of patient liability for kidney disease aid under s. 49.48, cystic fibrosis aid under s. 49.483 and hemophilia treatment under s. 49.485, based on the patient's ability to pay for treatment.

History: 1983 a. 27.

49.49 Medical assistance offenses. (1) FRAUD. (a) *Prohibited conduct.* No person, in connection with a medical assistance program, may:

1. Knowingly and wilfully make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment.

2. Knowingly and wilfully make or cause to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment.

3. Having knowledge of the occurrence of any event affecting the initial or continued right to any such benefit or payment or the initial or continued right to any such benefit or payment of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceal or fail to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and wilfully convert such benefit or payment or any part thereof to a use other than for the use and benefit of such other person.

(b) *Penalties.* Violators of this subsection may be punished as follows:

1. In the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing by that person of items or services for which medical assistance is or may be made, a person convicted of violating this subsection may be fined not more than $25,000 or imprisoned for not more than 5 years or both.

2. In the case of such a statement, representation, concealment, failure, or conversion by any other person, a person convicted of violating this subsection may be fined not more than $10,000 or imprisoned for not more than one year in the county jail or both.

(c) *Damages.* If any person is convicted under this subsection, the state shall have a cause of action for relief against such person in an amount 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under this section in a civil action shall be conclusive regarding the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages shall consist of the total amount of excess payments, any part of which is paid by state funds. In any such civil action the state may elect to file a motion in expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the action.

(2) KICKBACKS, BRIBES AND REBATES. (a) *Solicitation or receipt of remuneration.* Any person who solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which

payment may be made in whole or in part under a medical assistance program, may be fined not more than $25,000 or imprisoned for not more than 5 years or both.

(b) *Offer or payment of remuneration.* Whoever offers or pays any remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a medical assistance program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under a medical assistance program, may be fined not more than $25,000 or imprisoned for not more than 5 years or both.

(c) *Exceptions.* This subsection shall not apply to:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a medical assistance program.

2. Any amount paid by an employer to an employe who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(3) FRAUDULENT CERTIFICATION OF FACILITIES. No person may knowingly and wilfully make or cause to be made, or induce or seek to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify either upon initial certification or upon recertification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Violators of this subsection may be fined not more than $25,000 or imprisoned for not more than 5 years or both.

(4) PROHIBITED CHARGES. No person, in connection with the medical assistance program when the cost of the services provided to the patient is paid for in whole or in part by the state, may:

(a) Knowingly and wilfully charge, for any service provided to a patient under a medical assistance program, money or other consideration at a rate in excess of the rates established by the state.

(b) Knowingly and wilfully charge, solicit, accept or receive, in addition to any amount otherwise required to be paid under a medical assistance program, any gift, money, donation or other consideration, other than a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or as a requirement for the patient's continued stay in such a facility.

(c) Violators of this subsection may be fined not more than $25,000 or imprisoned for not more than 5 years or both.

(5) COUNTY COLLECTION. Any county may retain 15% of state medical assistance funds that are recovered due to the efforts of a county employe or officer or, if the county initiates action by the department of justice, due to the efforts of the department of justice under s. 49.495. This subsection applies only to recovery of medical assistance that was provided as a result of fraudulent activity by a recipient or by a provider.

History: 1977 c. 418; 1979 c. 89; 1981 c. 317.

49.495 Jurisdiction of the department of justice. The department of justice or the district attorney may institute, manage, control and direct, in the proper county, any prosecution for violation of criminal laws affecting the medical assistance program including but not limited to laws relating to medical assistance contained in this chapter and laws affecting the health, safety and welfare of recipients of medical assistance. For this purpose the department of justice shall have and exercise all powers conferred upon district attorneys in such cases.

History: 1977 c. 418.

49.497 Recovery of incorrect medical assistance payments. (1) The department may recover any payment made incorrectly for benefits specified under s. 49.46 or 49.47 if the incorrect payment results from any misstatement or omission of fact by a person supplying information in an application for benefits under s. 49.46 or 49.47. The department may also recover if a medical assistance recipient or any other person responsible for giving information on the recipient's behalf fails to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. The county agency administering aid to the recipient under s. 49.46 or 49.47 shall begin recovery actions on behalf of the department according to rules the department may adopt.

(3) Cash assets of medical assistance recipients that exceed asset limitations shall be applied against the cost of medical assistance benefits provided.

History: 1981 c. 20; 1983 a. 27, 192

ADMINISTRATION OF SECURITY AIDS

49.50 State supervision. (2) RULES AND REGULATIONS, MERIT SYSTEM. The department shall adopt rules and regulations, not in conflict with law, for the efficient administration of aid to families with dependent children in agreement with the requirement for federal aid, including the establishment and maintenance of personnel standards on a merit basis. The provisions of this section relating to personnel standards on a merit basis supersede any inconsistent provisions of any law relating to county personnel; but this subsection shall not be construed to invalidate the provisions of s. 46.22 (6).

(3) PERSONNEL EXAMINATIONS. Statewide examinations to ascertain qualifications of applicants in any county department administering aid to families with dependent children shall be given by the administrator of the division of merit recruitment and selection in the department of employment relations. The department of employment relations shall be reimbursed for actual expenditures incurred in the performance of its functions under this section from the appropriations available to the department of health and social services for administrative expenditures.

(4) PERSONNEL LISTS. All persons who are qualified as a result of examinations shall be certified to the counties in which they reside at the time of examination; if there are no resident qualified persons for any class of positions on the list certified to the county, appointments shall be made from available lists without regard to residence within the county.

(5) COUNTY PERSONNEL SYSTEMS. Pursuant to rules established under sub. (2), the department where requested by the county shall delegate to that county, without restriction because of enumeration, any or all of the department's authority under sub. (2) to establish and maintain personnel standards including salary levels.

(6) DEPARTMENT TO ADVISE COUNTIES. The department shall advise all county officers charged with the administration of such laws of these requirements and shall render all possible assistance in securing compliance therewith, including the preparation of necessary blanks and reports. The department shall also publish such information as it deems advisable to acquaint persons entitled to public assistance and the public generally with the laws governing the same.

(7) WORK INCENTIVE DEMONSTRATION PROGRAM. (a) The department shall ensure that all appropriate individuals so required by federal law and regulations as a condition of eligibility for aid to families with dependent children shall register for manpower services, training and employment under the work incentive demonstration program under 42 USC 645. The department shall administer or purchase directly or through contracts with county welfare or social services departments or the department of industry, labor and human relations, supportive and employment services provided under the work incentive demonstration program to assist individuals to obtain gainful employment. Supportive services may include, but are not limited to, counseling, child care, transportation and vocational rehabilitation services. Employment services may include, but are not limited to, job training and placement, vocational counseling, job finding clubs, grant diversion to public or private employers, contracting with private employment agencies, promotion of targeted jobs tax credit programs and performance-based job placement incentives. The department shall adopt rules to administer this program.

(b) The department shall pay the nonfederal share for such services enumerated in par. (a).

(c) The department shall reimburse county welfare or social services departments under s. 49.52 (1) and (2) for payments advanced by the county welfare departments to or in behalf of recipients of aid and potential aid recipients.

(7m) COMMUNITY WORK EXPERIENCE PROGRAM. The department shall promulgate rules for the administration of community work experience programs that are administered by county departments of public welfare and social services under s. 46.22 (4) (n) or 49.51 (2) (a) 15.

(8) FAIR HEARING AND REVIEW. (a) Any person whose application for aid to families with dependent children is not acted upon by the county agency or by the federally recognized tribal governing body with reasonable promptness after the filing of the application, or is denied in whole or in part, whose award is modified or canceled, or who believes his award to be insufficient, may petition the department for a review of such action. Review is unavailable if the decision or failure to act arose more than 45 days prior to submission of the petition for a hearing.

(b) 1. Upon receipt of a timely petition under par. (a) the department shall give the applicant or recipient reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as it deems necessary. Notice of the hearing shall be given to the

applicant and to the county clerk. The county may be represented at such hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant, the county clerk and the county officer charged with administration of such assistance. The decision of the department shall have the same effect as an order of the county officer charged with the administration of such form of assistance. Such decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for a hearing or shall refuse to grant relief if:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic grant adjustment or change for a class of recipients as required by state or federal law, unless the issue concerns the incorrect computation of a grant of aid to families with dependent children.

d. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled hearing without providing the department with good cause therefor.

2. If a recipient requests a hearing within the timely notice period specified in 45 CFR 205.10, aid shall not be suspended, reduced or discontinued until a decision is rendered after the hearing but may be recovered by the department if the contested decision or failure to act is upheld. Until a decision is rendered after the hearing, the manner or form of aid payment to the recipient shall not change to a protective, vendor or 2-party payment. Aid shall be suspended, reduced or discontinued if:

a. The recipient is contesting a state or federal law or a change in state or federal law and not the recipient's grant computation.

b. The recipient is notified of a change in his or her grant while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if aid is to be suspended, reduced or terminated pending the hearing decision.

(c) Whenever any municipality or county receives a nonresident notice under s. 49.11 and there is reasonable basis for belief that the recipient of such relief may be eligible for assistance under s. 49.19, the municipality or county may after 60 days request the county department of social services or public welfare of the county wherein the recipient of relief is residing to investigate the possible eligibility of the relief recipient for assistance under s. 49.19. If the latter county refuses to grant such assistance, the municipality or county wherein liability for paying the relief ultimately rests may petition the department for a hearing under this section to determine eligibility of the relief recipient for such assistance. Copies of the petition shall be sent to the county wherein the dependent person may be residing or receiving relief by the county or municipality liable for ultimately paying said relief. This procedure or any subsequent decision of the department shall not bar recovery of any claim under s. 49.11 to the date of the final decision.

(9) HEARING TO INSURE PROPER ADMINISTRATION. (a) The department may at any time terminate payment of state or federal aid on any grant of aid to families with dependent children which may have been improperly allowed or which is no longer warranted due to altered conditions. Such action shall be taken only after thorough investigation and after fair notice and hearing. Such notice shall be given to the recipient of the assistance, the county clerk, and the county officer charged with the administration of such assistance, and their statements may be presented either orally or in writing, or by counsel.

(b) Any decision of the department terminating the payment of state and federal aid shall be transmitted to the county treasurer. After receipt of such notice the county treasurer shall not include any payments thereafter made in such case in the certified statement of the expenditures of the county for which state or federal aid is claimed.

(10) ELIGIBILITY VERIFICATION. Proof shall be provided for each person included in an application for public assistance of his or her social security number or that an application for a social security number has been made.

(11) PERIODIC EARNINGS CHECK BY DEPARTMENT. The department shall make a periodic check of the amounts earned by public assistance recipients through a check of the amounts credited to the recipient's social security number. The department shall make an investigation into any discrepancy between the amounts credited to a social security number and amounts reported as income on the declaration application and take appropriate action under s. 49.12 when warranted. The department of industry, labor and human relations shall cooperate with the department in supplying this information.

History: 1971 c. 125, 145, 215, 307; 1973 c. 90, 147; 1975 c. 307; 1977 c. 196, 271, 418; 1979 c. 221; 1981 c. 20, 93; 1983 a. 27.

Pursuant to 49.50 (2), Stats. 1969, the department has authority to prescribe state-wide compensation standards applicable to county welfare department employes. Under 46.22 (3) and 59.15 (2) (c), any fixing of salaries of such employes by county boards of supervisors must be within the limits of the state-wide prescribed standards. 59 Atty. Gen. 126.

Sub. (5) grants authority to county boards to establish the salary levels of county welfare personnel where authority to do so is properly delegated pursuant to rules established by the department of health and social services. The requirement that federal standards must be complied with imposes a limitation on this power. 61 Atty. Gen. 434.

See note to 49.19, citing 63 Atty. Gen. 32.

Under (2), power to classify positions in a county department of social services resides solely in the state department of health and social services. 65 Atty. Gen. 123.

49.51 County administration. (2) COUNTY DEPARTMENTS OF SOCIAL SERVICES. (a) *Administration in counties having a population of 500,000.* In counties having a population of 500,000 or more the administration of welfare services shall be vested in a department of social services. Each department of social services may be placed under the jurisdiction of the county board of supervisors under s. 46.21 and in conformity with s. 49.50. The county department of social services shall have the following functions, duties and powers, and such other welfare functions as may be delegated to it:

1. To make investigations relating to relief or welfare administration and admissions to state and county institutions upon request of court, superintendent, district attorney, veterans' service commission or any other county official.

2. Furnishing services to families or persons other than the granting of financial or material aid where such services may prevent such families or persons from becoming public charges or restore them to a condition of self-support.

3. To make certification or referral of eligibles for state or federal works or other assistance programs, eligibility for which is based on need, when designated to perform such certification or referral services.

4. Making investigations which relate to welfare services upon request by the department.

5. The maintenance of administrative and reporting relationships with all pertinent state departments.

6. The administration of relief under ss. 49.02 and 49.03 in the event that the county administers relief under those sections.

7. The administration of aid to families with dependent children under s. 49.19.

8. To administer child welfare services under ss. 48.56 and 48.57, to accept custody and guardianship of children upon the order of a competent court and to place children for adoption and to make recommendations relating to the adoption of children under s. 48.85.

9. To make such investigations as are provided for in s. 48.88 (2) (a) and (c), if the court having jurisdiction so directs.

10. To make payments in such manner as the department may determine for training of recipients, former recipients and potential recipients of aid in programs established under s. 49.50 (7).

11. To certify eligibility for and issue food coupons to needy households in conformity with the federal food stamp act of 1964 as amended, and, in addition, the county department of public welfare may certify eligibility for and distribute surplus commodities and food stuffs.

12. Within the limits of available state and federal funds and of county funds appropriated to match state funds, to provide social services for:

a. Persons eligible for or receiving benefits under the supplementary security income program under federal Title XVI, the supplemental payments program under s. 49.177 or aid to families with dependent children under s. 49.19.

13. To administer the long-term support community options program, if the county board of supervisors designates the county department of social services or public welfare as the administrative agency.

14. To collect and transmit information to the department so that a federal energy assistance payment may be made to an eligible household.

15. To establish a community work experience program under 42 USC 609 if the county so elects and if the county pays the administrative costs associated with the program that are not reimbursed by the federal government. Any person participating in a community work experience program in a county is an employe of that county for purposes of worker's compensation benefits only.

16. To establish and administer the child care program under s. 46.98.

(3) PURCHASE OF CARE AND SERVICES. (a) In order to ensure the availability of a full range of care and services, the county department of social services or public welfare may contract, either directly or through the state department, with public or voluntary agencies or others to purchase, in full or in part, care and services which such county departments are authorized by any statute to furnish in any manner. Such services may be purchased from the department where the department has staff to furnish the services. If the agency has adequate staff, it may sell the care and services directly to another county or state agency.

(b) A county agency may purchase development and training services from the department or from other county agencies when such services are available. A county agency may sell such development and staff training services to another county or state agency when it has adequate staff to provide such services.

(c) County agencies shall submit to the department plans and contracts for care and services to be purchased in accordance with s.

46.031 (1). The contracts shall be developed under s. 46.036. The department shall review such contracts and approve them if they are consistent with s. 46.036 and if state or federal funds are available for such purposes. The joint committee on finance may require the department to submit such contracts to the committee for review and approval. The department shall not make any payments to a county for programs included in a contract under review by the committee. The department shall reimburse each county for such approved contracts from the appropriations under s. 20.435 (4) (b) and (o) or under s. 20.435 (4) (cd), as appropriate, according to s. 49.52.

(4) PROGRAM BUDGETS. The county agency shall submit a program plan and budget in accordance with ss. 46.031 and 46.032 for authorized services in the form and manner prescribed by the department. The approved plan and budget shall not exceed the available amount of funds.

History: 1971 c. 218; 1973 c. 90, 147, 333, 336; 1975 c. 39, 307, 421; 1977 c. 29, 271, 418; 1979 c. 34; 1981 c. 20 ss. 867m to 870, 2202 (20) (j); 1981 c. 81, 329; 1983 a. 27 ss. 1080, 2202 (20); 1983 a. 190 s. 7; 1983 a. 193.

Counties have authority to provide the funding of services under (3) (c) on their own but are not required to do so when reimbursement is unavailable. 63 Atty. Gen. 584.

49.52 Reimbursement to counties. (1) (a) The department shall reimburse each county for reasonable costs of income maintenance administration from s. 20.435 (4) (de) and (p) under a contract according to s. 46.032. The department shall reimburse each county from the appropriations under s. 20.435 (4) (b), (d) and (p) for 100% of the cost of aid to families with dependent children granted pursuant to s. 49.19, for social services as approved by the department under ss. 46.22 (4) (j) and (5m) (c) and 49.51 (2) (a), (3) (c) and (4), and for funeral expenses paid for recipients of aid under s. 49.30, except that no reimbursement may be made for the administration of or aid granted under ss. 49.02 and 49.03.

(b) The department shall distribute support collections from the appropriation under s. 20.435 (4) (g).

(d) From the appropriations under s. 20.435 (4) (b) and (o), the department shall allocate the funding for social services to county departments of public welfare and social services or to community human services boards as provided under 1983 Wisconsin Act 27, section 2020 (6) (a) and (b). For the period from January 1, 1984, to June 30, 1985, the ratio of state and federal funds to county matching funds shall equal 91 to 9. Matching funds may be from county tax levies, federal and state revenue sharing funds or private donations to the county that meet the requirements specified in s. 51.42 (8) (bd). Private donations may not exceed 25% of the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds allocated for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

(dc) The department shall prorate the amount allocated to any county department of public welfare or social services under par. (d) to reflect actual federal funds available.

(f) 1. If any state matching funds allocated under par. (d) to match county funds are not claimed, the funds shall be redistributed for the purposes the department designates.

2. The county allocation to match aid increases shall be included in the coordinated plan and budget and approved by January 1 of the year for which funds are allocated, in order to generate state aid matching funds. All funds allocated under par. (d) shall be included in the coordinated plan and budget and approved.

(g) In addition to funds allocated under par. (d) to (f), each county department of social services shall receive in its allocation funds appropriated by new legislation for new and expanded programs according to the purpose stated in such legislation.

(h) Funds allocated under par. (d) but not spent by the end of each calendar year may not be reallocated to other counties except to counties experiencing overall program deficits due to unanticipated high cost variable services, as defined by the department. Grant-in-aid funds allocated to counties but not claimed, due to the ratio requirement under par. (d), lapse in accordance with s. 20.435 (4) (b).

(i) Beginning January 1, 1980, the department shall reimburse counties for juvenile delinquency-related services as provided in s. 46.26 from the appropriation under s. 20.435 (4) (cd).

(2) (a) The county treasurer and county agency administrator of each county shall monthly certify under oath to the department in such manner as the department prescribes the claim of the county for state reimbursement under this section and if the department approves such claim it shall certify to the department of administration for reimbursement to the county for amounts due under this subsection and payment claimed to be made to the counties monthly. The department may make advance payments prior to the beginning of each month equal to one-twelfth of the contracted amount.

(b) To facilitate prompt reimbursement the certificate of the department may be based on the certified statements of the county officers

filed under par. (a). Funds recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By June 30 of each year the department shall report to the presiding officer of each house of the legislature on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

History: 1971 c. 125; 1971 c. 164 s. 92; 1971 c. 215; 1973 c. 90, 147, 333; 1975 c. 39, 82, 200; 1975 c. 224 s. 146; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1979 c. 34 ss. 840 to 842, 2102 (20) (a); 1979 c. 177; 1979 c. 221 ss. 392p to 399, 2202 (20); 1981 c. 20; 1981 c. 93 ss. 94 to 103m, 186; 1981 c. 314 s. 146; 1981 c. 331; 1983 a. 27 ss. 1082 to 1087, 2202 (20); 1983 a. 192.

49.53 Limitation on giving information. (1) Except as provided under sub. (2), no person may use or disclose information concerning applicants and recipients of general relief under ss. 49.02 and 49.03, aid to families with dependent children, social services, child and spousal support and establishment of paternity services under s. 46.25, or supplemental payments under s. 49.177, for any purpose not connected with the administration of the programs. Any person violating this subsection may be fined not less than $25 nor more than $500 or imprisoned in the county jail not less than 10 days nor more than one year or both.

(2) (a) Each county agency administering aid to families with dependent children and each official or agency administering general relief shall maintain a monthly report at its office showing the names and addresses of all persons receiving such aids together with the amount paid during the preceding month. Nothing in this paragraph shall be construed to authorize or require the disclosure in the report of any information (names, addresses, amounts of aid or otherwise) pertaining to adoptions, or aid furnished for the care of children in foster homes under s. 49.19 (10).

(b) Such report shall be open to public inspection at all times during regular office hours and may be destroyed after the next succeeding report becomes available. Any person except any public officer, seeking permission to inspect such book shall prove his identity and shall be required to sign a statement setting forth his address and his reasons for making such request and indicating that he understands the provisions of par. (c) with respect to the use of the information obtained. The use of a fictitious name is a violation of this section. Within 72 hours after any such record has been inspected, the agency shall mail to each person whose record was inspected a notification of that fact and the name and address of the person making such inspection. The agency shall keep a record of such requests.

(c) It is unlawful to use any information obtained through access to such report for political or commercial purposes. The violation of this provision is punishable upon conviction as provided in sub. (1).

History: 1973 c. 147; 1975 c. 82; 1977 c. 261; 1981 c. 93; 1983 a. 27.

This section does not deny access to records as to general relief granted. McCrossen v. Nekoosa-Edwards Paper Co. 59 W. (2d) 245, 208 NW. (2d) 148.

Sub. (1) did not preclude defendant in paternity case from inspecting record which may contain relevant evidence to impeach complainant. Procedure for disclosure adopted. State ex rel. Dombrowski v. Moser, 113 W. (2d) 296, 334 NW. (2d) 878 (1983).

Function of county agency in furnishing information to public regarding social security aid recipients is nondiscretionary and limited under 49.53 (2), Stats. 1969. County welfare boards are an integral part of county administration and entitled to full access to case records. Advisory committees are not. Access to information concerning individual social security aid recipients by county board of supervisors is limited by its limited role in administration of the aid programs. 59 Atty. Gen. 240.

Only amounts of monthly payments to AFDC recipients, together with their names and addresses, may be released to department of revenue by department of health and social services. AFDC recipients must be notified when such information is released. 69 Atty. Gen. 95.

49.54 Income determination. In determining the amount of aid to be granted a person applying for supplemental payments under s. 49.177, income shall be disregarded to the extent allowed by federal regulations.

History: 1971 c. 87; 1973 c. 147.

49.65 Third party liability. (1) SUBROGATION. The department, county, municipality or elected tribal governing body providing any public assistance under this chapter as a result of the occurrence of an injury, sickness or death which creates a claim or cause of action, whether in tort or contract, on the part of a public assistance recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient or the beneficiary and may make a claim or maintain an action or intervene in a claim or action by the recipient or the beneficiary against the 3rd party.

(2) ASSIGNMENT OF ACTIONS. The department, county, municipality or elected tribal governing body providing any public assistance authorized under this chapter, including medical assistance, as a result of the occurrence of injury, sickness or death which results in a possible recovery of indemnity from a 3rd party, including an insurer, may require an assignment from the applicant, recipient or beneficiary of such public assistance or legally appointed representative of the incompetent or deceased applicant, recipient or beneficiary giving it the right to make a claim against the 3rd party.

(3) CONTROL OF ACTION. The applicant or recipient or any party having a right under this section may make a claim against the 3rd party

or may commence an action and shall join the other party as provided under s. 803.03 (2). Each shall have an equal voice in the prosecution of such claim or action.

(4) RECOVERY; HOW COMPUTED. Reasonable costs of collection including attorney's fees shall be deducted first. The amount of assistance granted as a result of the occurrence of the injury, sickness or death shall be deducted next and the remainder shall be paid to the public assistance recipient.

(5) DEPARTMENT'S DUTIES AND POWERS. The department shall enforce its rights under this section and may contract for the recovery of any claim or right of indemnity arising under this section.

(6) PAYMENTS TO LOCAL UNITS OF GOVERNMENT. (a) Any county or elected tribal governing body that has made a recovery under this section shall receive an incentive payment from the sum recovered as provided under this subsection.

(b) The incentive payment shall be an amount equal to 15% of the amount recovered because of benefits paid under s. 49.46 or 49.47. The incentive payment shall be taken from the federal share of the sum recovered as provided under 42 CFR 433.153 and 433.154.

(c) The incentive payment shall be an amount equal to 10% of the amount recovered because of benefits paid under s. 49.046, 49.19, 49.20 or 49.30 or as state supplemental payments under s. 49.177. The incentive payment shall be taken from the state share of the sum recovered.

(d) Any county or elected tribal governing body that has made a recovery under this section for which it is eligible to receive an incentive payment under par. (b) or (c) shall report such recovery to the department within 30 days after the end of the month in which the recovery is made in a manner specified by the department.

(e) The amount of the recovery remaining after payments are made under pars. (b) and (c) shall be deposited in the state treasury and credited to the appropriation from which the assistance was originally paid.

(7) WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT'S RELEASE. (a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party's insurer from liability to the units of government specified in sub. (1). Any payment to a beneficiary or recipient of assistance under this chapter in consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance.

(b) Liability under par. (a) is to the extent of assistance payments under this chapter resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

(8) DEFINITION. In this section, "insurer" includes a sponsor, other than an insurer, that contracts to provide health care services to members of a group.

History: 1977 c. 29; 1979 c. 221; 1981 c. 20; 1983 a. 27, 465.

Counties were entitled to be reimbursed for medical assistance from insurance settlements obtained by accident victims, despite fact that neither victim had been fully compensated. Waukesha County v. Johnson, 107 W (2d) 155, 320 NW (2d) 1 (Ct. App. 1982).

Attorney's fees are not chargeable against public assistance recovered in an action under this section. 70 Atty. Gen. 61.

49.70 Menominee Enterprises, Inc., bonds, acquisition. (1) The department is authorized to exercise options to purchase securities assigned to the state of Wisconsin under s. 710.05, 1973 stats., at par value, or to accept an assignment of such securities, for the purpose of providing relief, public assistance or welfare aid under this section.

(2) The department shall exercise the options to purchase such securities or accept an assignment of such securities when it finds that the owner of the securities is a resident of this state as provided in s. 49.01 (3) and is in need of relief, public assistance or welfare aid, or who but for the ownership of such securities would qualify for relief, public assistance or other welfare aid. If the department exercises an option to purchase such security, the purchase price shall be paid out, at par value, as relief, as defined in s. 49.01 (8). Where the department accepts an assignment of such security as provided in this section it shall pay out as relief, as defined in s. 49.01 (8), an amount equal to the par value of the security assigned. The relief furnished, whether by money or otherwise, shall be at such times and in such amounts as will in the discretion of the department meet the needs of the recipient and protect the public. The department is authorized to exercise the options to purchase assigned to it in whole or in part, or to accept an assignment of such securities in whole or in part. The department is granted such authority as may be necessary and convenient to enable it to exercise the functions and per-

form the duties required of it by this section, including without limitation because of enumeration the authority to adopt and publish suitable rules governing eligibility and the furnishing and paying of relief under this section, the authority to enter into suitable agreements with the owner of the security or other appropriate persons for the purpose of carrying out this section, and the authority to sell or transfer the securities or defend and prosecute all actions concerning it and pay all just claims against it and do all other things necessary for the protection, preservation and management of the securities.

(3) If the relief, public assistance, or other welfare aid provided pursuant to this section is discontinued during the life of the person receiving such aid and the value of the securities transferred to the department exceed the total amount of assistance paid under this section, the excess of such property shall be returned to such person; and in the event of his death such excess shall be considered the property of such person for administration proceedings.

(4) The department may make loans to the owner of such securities for relief and welfare purposes which loans shall be secured by pledges of the securities to the state. The department may by rule establish the purposes for which loans may be made, permissible interest rates and fees, time and manner in which the loan is paid out, time and manner of repayment, general procedures to be followed in making loans, the action which shall be taken if a borrower defaults on a loan, maximum amount which may be loaned to any one borrower, and any other rules necessary to carry out the purposes of this section.

(5) Nothing in this section as created by chapter 2, laws of Special Session of 1963, is in derogation of other rights and remedies provided by law.

(6) On and after May 20, 1972, where the owner of such security is otherwise eligible for welfare assistance, such security shall be an exempt asset under the welfare law and shall not disqualify such person from receiving welfare assistance.

History: 1971 c. 302; 1975 c. 422 s. 163; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (19).

Note: Ch. 303, laws 1971, provided for returning to its original owners Menominee Enterprises, Inc. bonds assigned to the state as a condition for receiving public assistance.