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 general relief agency. Recipients of general relief shall also comply with the established work relief rules of the general relief agency. If a recipient of general relief refuses a bona fide offer of employment or training without good cause, or accepts a bona fide offer and subsequently performs inadequately through wilful neglect, or fails to comply with the work-seeking or work relief rules of the general relief agency, the general relief agency shall discontinue general relief payments to the recipient 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.

History: 1983 a. 27; 1985 a. 29 ss. 931, 3200 (23).

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 an individual without the presently available money, income, property or credit, or other means by which it can be presently obtained, excluding the exemptions set forth under s. 49.06, sufficient to provide the necessary commodities and services specified in sub. (5m).

(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.

(5m) "General 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 general relief furnished shall include necessities for which no other provision is made by law. The general relief furnished, whether by money or otherwise, shall be at such times and in such amounts, as will in the discretion of the general relief official or agency meet the needs of the recipient and protect the public.

(5r) "General relief agency" means a county department under s. 46.215, 46.22 or 46.23.

(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.

(8g) "Residence" means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(8r) "Voluntary" means according to a person's free choice, if competent, or by choice of a guardian if incompetent.

(9) "Work relief" means any moneys paid to dependent persons entitled to relief who have been required by any general relief agency 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); 1985 a. 29 ss. 932 to 935, 996, 997, 3200 (23); 1985 a. 176.

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.

49.015 General relief eligibility. (1) In this section, "close relative" means the person's parent, grandparent, brother, sister, spouse or child.

(2) No person is eligible for general relief under this chapter unless the person has resided in this state for at least 60 consecutive days before applying for general relief. This requirement does not apply if the person resides in this state and meets any of the following conditions:

(a) The person was born in this state.

(b) The person has, in the past, resided in this state for at least 365 consecutive days.

(c) The person came to this state to join a close relative who has resided in this state for at least 180 days before the arrival of the person.

(d) The person came to this state to accept a bona fide offer of employment and the person was eligible to accept the employment.

(e) The person came to this state for a lawful purpose without intent to seek benefits under this chapter.

(3) Prior to January 1, 1987, a county or municipality may waive the requirement under sub. (2) in a medical emergency or in case of unusual misfortune or hardship. Each waiver shall be reported to the department. The department may deny reimbursement under s. 49.035 and s. 49.04, 1983 stats., for any case in which a waiver is inappropriately granted.

(4) After December 31, 1986, a general relief agency may waive the requirement under sub. (2) in a medical emergency or in case of unusual misfortune or hardship. Each waiver shall be reported to the department. The department may deny reimbursement under s. 49.035 for any case in which a waiver is inappropriately granted.

History: 1985 a. 120.

49.02 General relief administration. (1) Before January 1, 1987, every municipality shall furnish general relief to all eligible dependent persons therein and shall establish or designate an official or agency to administer general relief. 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 general 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 general relief applicants and recipients.

(1m) After December 31, 1986, every county shall furnish general relief to all eligible dependent persons within the county and shall establish or designate a general relief agency to administer general relief. The general relief agency 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 general relief to be furnished. The general relief agency shall review the standards of need at least annually. The general relief agency may establish work-seeking rules for general relief applicants and recipients.

(2) Before January 1, 1987, every county may furnish general relief 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] a general relief agency to administer the same.

NOTE: Sub. (2) is shown in 1985 Wis. Act 29 containing, as clear copy, the phrase "designate a general relief agency". The 1983-84 Statutes show the phrase as "designate an official or agency". The revisor incorporated 1985 Wis. Act 29 into the statute data base by showning "an official or" in brackets with an explanatory note. 1985 Wis. Act 120 amended sub. (2), as affected by 1985 Wis. Act 29, and showed the brackets around "an official or".

(2m) After December 31, 1985, every county in which there is a city of 150,000 or more persons and every county in which there is a city whose population in 1980 is more than 22,500 and less than 23,000 shall furnish general relief to all eligible dependent persons within the county and shall establish or designate a general relief agency to administer general relief. The general relief agency 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 general relief to be furnished. The general relief agency shall review the standards of need at least annually. The general relief agency may establish work-seeking rules for general relief applicants and recipients.

(5) (a) Before January 1, 1987, 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 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.

(am) After December 31, 1986, except as otherwise provided in this section, a general relief agency shall be liable for emergency hospitalization and care if a physician hospitalizes on an emergency basis or renders care on that basis in the county in which the general relief agency is located 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 general relief agency.

(ar) Beginning January 1, 1987, if a county transfers an individual in need of emergency medical treatment or hospitalization under this subsection to another county in order that the individual may obtain emergency medical treatment or hospitalization, the county so transferring shall be liable for the costs of the emergency medical treatment or hospitalization provided in the county to which the individual was transferred.

(b) A 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 county is not liable for treatment or hospitalization provided under par. (a) before January 1, 1987, or under par. (am) after December 31, 1986, unless:

1. Before January 1, 1987, within 3 working days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider 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 or other health care provider is located and within 3 working days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider gives oral notice and mails written notice of the treatment or hospitalization to the relief administering agency or official of the municipality or county of the patient's residence, if different than the municipality or county in which the hospital or other health care provider is located. Each notice provided under this subdivision shall include the patient's name and residence 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;

1m. After December 31, 1986, within 3 working days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider has written notice of the treatment or hospitalization delivered to the general relief agency of the county in which the hospital or other health care provider is located. Each notice provided under this subdivision shall include the patient's name 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. Before January 1, 1987, within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider mails or delivers the form required under this subdivision to the general relief administering agency of the municipality or county in which the hospital or other health care provider is located. The hospital or other health care provider shall provide the information that it has obtained that is requested on a form developed and provided by the department. The hospital or other health care provider 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 or other health care provider 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 or other health care provider has a continuing obligation to seek and report information relevant to the patient's care and eligibility under this section to the general relief administering agency of the municipality or county in which the hospital or other health care provider is located;

2g. After December 31, 1986, within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider mails or delivers the form required under this subdivision to the general relief agency of the county in which the hospital or other health care provider is located. The hospital or other health care provider shall provide the information that it has obtained that is requested on a form developed and provided by the department. The hospital or other health care provider 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 or other health care provider assistance programs. For 20 days after the initial information is provided under this subdivision, the hospital or other health care provider has a continuing obligation to seek and report information relevant to the patient's care and eligibility under this section to the general relief agency of the county in which the hospital or other health care provider is located;

2m. Before January 1, 1987, within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider mails or delivers to the general relief administering agency or official of the municipality or county in which the hospital or other health care provider is located a form signed by the patient, if able, that authorizes the general relief administering agency or official of the municipality or county in which the hospital or other health care provider is located to verify any information submitted to that agency or official by the hospital or other health care provider;

2r. After December 31, 1986, within 10 days after the patient is initially provided emergency medical treatment or hospitalization an agent of the hospital or other health care provider mails or delivers to the general relief agency of the county in which the hospital or other health care provider is located a form signed by the patient, if able, that authorizes the general relief agency of the county in which the hospital or other health care provider is located to verify any information submitted to that agency by the hospital or other health care provider; and

3. If a county elects to require hospitals or other health care providers 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 or other health care provider obtains authorization for continued treatment or hospitalization of the patient from the county in which the hospital or other health care provider is located. If an agent of the hospital or other health care provider fails to obtain the authorization within the 72-hour period, either because he or she was unable to reach the county or because the county has failed to grant or deny the authorization within the 72-hour period, the hospital or other health care provider may continue to provide the treatment or hospitalization until the authorization is denied if an agent of the hospital or other health care provider makes daily good faith efforts to obtain authorization from the county for continued treatment or hospitalization of the patient. A county is liable for such continued treatment and hospitalization if all other requirements under this subsection are met.

(cm) Before January 1, 1987, each general relief administering agency or official of a municipality or a county that elects to require hospitals or other health care providers 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 general 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 general relief administering agency or official that develops a written procedure for responding to requests shall provide a copy to the department.

(cr) After December 31, 1986, each general relief agency of a county that elects to require hospitals or other health care providers 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 general relief agency. Each general relief agency shall inform the department as to whether it has developed a procedure for responding to requests or whether it has delegated the responsibility. Each general relief agency that develops a written procedure for responding to requests shall provide a copy to the department.

(e) A general relief agency may establish written standards to be used to determine what is reasonable care for the purposes of this section.

(6) Officials and agencies administering general relief shall assist eligible 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.

(6c) No individual who receives treatment or hospitalization under sub. (5) may be liable for the costs of the treatment or hospitalization otherwise reimbursable under this section if both of the following conditions exist:

(a) The individual is an eligible dependent person.

(b) The provider of the health care treatment or hospitalization fails to meet the requirements of sub. (5) (c) unless the provider's failure to meet those requirements results from an individual's wilful false representation.

(6g) No individual who receives treatment or hospitalization under sub. (5) may be liable for the difference between the costs of the treatment or hospitalization charged by the health care provider and the amount paid by the general relief agency.

(6n) Before January 1, 1987, except as provided in sub. (5), unless the county or municipality first gives prior authorization for medical treatment or hospitalization for an eligible dependent person or certifies a health care provider as required under s. 49.035 (6) (a), no county or municipality may be liable for medical treatment or hospitalization provided the eligible dependent person.

(6r) After December 31, 1986, except as provided in sub. (5), unless the general relief agency first gives prior authorization for medical treatment or hospitalization for an eligible dependent person or certifies a health care provider as required under s. 49.035 (6) (a), no county may be liable for medical treatment or hospitalization provided the eligible dependent person.

(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 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 which are not more restrictive than those set forth under s. 49.06. This limitation applies only to medical or dental care furnished as general relief on or after the date the county acts to limit its liability.

(10) A county shall 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 care for which a medical assistance rate exists. 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 county.

History: 1975 c. 184 s. 13; 1981 c. 20, 317; 1983 a. 27 ss. 1005 to 1011, 2202 (20); 1983 a. 205; 1985 a. 29 ss. 936g to 962m, 3200 (23); 1985 a. 120.

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.

49.032 General relief benefits. (1) (a) In 1986, a county or municipality administering general relief under s. 49.02 or s. 49.03, 1983 stats., shall determine need and make a benefit payment at least monthly. Benefit payments for an eligible

dependent person without other sources of income or resources, except as provided under s. 49.06 (1), shall be based on the following minimum monthly schedule: [See Figure 49.032 (1) (a) following]

Figure 49.032 (1) (a):

Case size	Benefit amount
1	$175
2	298
3	352
4	412
5	474

(b) For each general relief case in par. (a) whose size exceeds 5 persons, a county or municipality shall make an additional minimum monthly payment of $35 per person in excess of 5 in the case.

(c) After December 31, 1986, each general relief agency shall determine need and make a benefit payment at least monthly. Benefit payments for an eligible dependent person without other sources of income or resources, except as provided under s. 49.06 (1), shall be based on the following minimum monthly schedule: [See Figure 49.032 (1) (c) following]

Figure 49.032 (1) (c):

Case size	Benefit amount
1	$175
2	298
3	352
4	412
5	474

(d) For each general relief case in par. (c) whose size exceeds 5 persons, the general relief agency shall make an additional monthly payment of $35 per person in excess of 5 in the case.

(e) Depending on the type and amount of the eligible dependent person's income or resources, if any, or number of days or type of need during a month, the benefit payments under this section may be adjusted by an amount that reflects the eligible dependent person's reduced need.

(2) If a general relief agency calculates for an eligible dependent person who is in need of general relief a general relief benefit amount for shelter and utility needs separately from a general relief benefit amount for basic maintenance needs, including food and clothing, the general relief benefit amount for basic maintenance needs shall be not less than one-third of the total payment amount required under this section, except that sub. (1) (e) applies.

(4g) If in 1986 a county or municipality provides a monthly general relief benefit to an eligible dependent person which exceeds the monthly benefit amount required under sub. (1) (a), the department shall reimburse the county or municipality at the rate set forth under s. 49.035 (1) (b), from the appropriation under s. 20.435 (4) (eb), for the amount paid to the eligible dependent person.

(4r) After December 31, 1986, if a general relief agency provides a monthly general relief benefit to an eligible dependent person which exceeds the monthly benefit amount required under sub. (1) (c), the department shall reimburse the general relief agency at the rate set forth under s. 49.035 (1) (c), from the appropriation under s. 20.435 (4) (eb), for the amount paid to the eligible dependent person.

History: 1985 a. 29 ss. 966, 3200 (23); 1985 a. 120.

49.035 State aid for general relief. (1) From the appropriation under s. 20.435 (4) (eb) the department shall reimburse, except for medical costs:

(a) A county or municipality for up to 12.5% of the eligible costs paid by the county or municipality for general relief provided under s. 49.02 in 1985.

(b) A municipality for up to 12.5% of the eligible costs paid by the municipality and a county for up to 35% of the eligible costs paid by the county for general relief provided under s. 49.02 in 1986.

(c) A county for up to 40% of the eligible costs paid by the general relief agency for general relief provided under s. 49.02 after December 31, 1986.

(2) From the appropriation under s. 20.435 (4) (eb), the department shall reimburse, for general relief medical costs:

(a) A municipality for:

1. Up to 12.5% of eligible medical costs incurred by the municipality in 1985 or in 1986 on behalf of an individual client that are more than $500 but not more than $5,000 per claim period.

2. Up to 50% of eligible medical costs incurred by the municipality in 1985 on behalf of an individual client that exceed $5,000 per claim period.

3. Up to 30% of eligible medical costs incurred by the municipality in 1986 on behalf of an individual client that exceed $5,000 per claim period.

(b) A county for:

1. Up to 12.5% of eligible medical costs incurred by the county in 1985 on behalf of an individual client that are more than $500 but not more than $5,000 per claim period.

2. Up to 50% of eligible medical costs incurred by the county in 1985 on behalf of an individual client that exceed $5,000 per claim period.

3. Up to 30% of eligible medical costs incurred by the county in 1986 on behalf of an individual client that are not more than $10,000 per claim period.

4. Up to 60% of eligible medical costs incurred by the county in 1986 on behalf of an individual client that exceed $10,000 per claim period.

5. Up to 50% of eligible medical costs incurred by the county after December 31, 1986, on behalf of an individual client that are not more than $10,000 per claim period.

6. Up to 80% of eligible medical costs incurred by the county after December 31, 1986, on behalf of an individual client that exceed $10,000 per claim period.

(c) A county for up to 60% of the eligible medical costs incurred in 1986 for individual clients who are enrolled in a prepaid health care system with a uniform fee per person, if the following requirements are met:

1. The system is established through a process of competitive bidding that shall be among health care providers that are health maintenance organizations as defined under s. 609.01 (2).

2. The accepted bid or bids must meet acceptable standards, criteria for which shall be developed by the department.

3. The full range of medical or dental care furnished by the county as general relief, including emergency medical treatment and hospitalization, must be available for general relief clients under a contract between a county and a health maintenance organization for provision of general relief medical treatment and hospitalization.

(cm) After December 31, 1986, a county for up to 60% of the eligible medical costs for individual clients who are

enrolled in a prepaid health care system with a uniform fee per person, if the following requirements are met:

1. The system is established through a process of competitive bidding that shall be among health care providers that are health maintenance organizations as defined under s. 609.01 (2).

2. The accepted bid or bids must meet acceptable standards, criteria for which shall be developed by the department.

3. The full range of medical or dental care furnished by the general relief agency as general relief, including emergency medical treatment and hospitalization, must be available for general relief clients under a contract between a general relief agency and a health maintenance organization for provision of general relief medical treatment and hospitalization.

(4) Claims for reimbursement under subs. (1) and (2) shall be filed with the department by March 1 of the year immediately following the calendar 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 until January 1, 1987, to provide the department with case and fiscal information relating to general relief costs incurred before January 1, 1987.

(5m) The department shall establish a uniform reporting system for use by counties after December 31, 1986, to provide the department with case and fiscal information relating to general relief costs incurred after 1986.

(6) No county may receive reimbursement for any general relief expenditures unless the county does all of the following:

(a) Before January 1, 1987, requires prior authorization or health care provider certification for a specified period of time by the relief administering agency or official for all nonemergency medical care that is provided.

(am) After December 31, 1986, requires prior authorization or health care provider certification for a specified period of time by the general relief agency for all nonemergency medical care that is provided.

(b) Develops and files with the department on or before October 1 of each year a medical cost containment plan for the subsequent calendar year. The plan shall include provisions limiting the inappropriate use of emergency room care and controlling payments to providers and may include provisions on supplying case management services. The department shall approve or disapprove the plan within a reasonable period of time after the plan is timely filed.

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

(6m) Notwithstanding sub. (6), the department may deny any general relief reimbursement if the county fails to comply with the general relief requirements of this chapter.

(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; 1985 a. 29 ss. 967 to 974m, 3200 (23); 1985 a. 120.

49.037 Procedural rights. (1) An individual may apply for general relief and shall have the opportunity to do so. A general relief agency shall, in a prominent place in the general relief agency office, post notice of the right of any individual to apply.

(2) A general relief agency shall make available to an applicant for or recipient of general relief the following printed documents:

(a) A description of the general relief program which shall include at least the following information:

1. The kinds and levels of benefits available as general relief.

2. The application process, including time limitations.

3. The appeal rights for applicants and recipients and a description of the appeals process, including any time limitations.

(b) A statement of standards of general relief policies and procedures concerning all of the following:

1. Application for assistance.

2. Eligibility for benefits.

3. Amounts of assistance provided.

4. Actions of a recipient that will cause the termination, suspension or reduction of assistance.

(3) An application shall be in writing. A general relief agency shall make an application form available to an individual upon request. The general relief agency shall notify an applicant in writing of the disposition of the application within 15 working days after receipt of the application.

(4) The general relief agency shall inform each applicant for general relief of other public assistance programs administered by county, state or federal agencies, including temporary and interim assistance, low-income energy assistance authorized under 42 USC 8621 to 8629, aid to families with dependent children, emergency assistance for families with children, medical assistance, food stamps and supplemental security income and shall refer individuals to any local agency administering these programs. Application to or potential eligibility for aid under any of these programs, unemployment compensation or Hill-Burton benefits authorized under 45 USC 291c (e) may not constitute a basis for denial of eligibility for general relief. Any benefits expected by but not immediately available to a general relief applicant from any of these programs may not be considered presently available money, income, property or credit, or other means by which it can be presently obtained. Any benefit immediately available to a general relief applicant from any of these programs may not constitute the sole basis for denial of general relief if, despite the benefit, the applicant can be found an eligible dependent person under s. 49.032.

(5) Written notice required under sub. (3) to an individual whose application is denied in whole or in part shall contain the following:

(a) Specific reasons for the denial.

(b) A statement of the evidence and policy relied upon in making the denial determination.

(c) A statement of the procedure by which the applicant may petition the general relief agency under sub. (7) for a review of the denial determination.

(6) (a) Except as provided under par. (d), if the general relief agency terminates, suspends or reduces the general relief payment to a recipient in a continuing aid case, the determination to terminate, suspend or reduce is effective 10 working days after mailing or personal delivery of a written notice of the determination to the recipient affected by the action.

(b) Notwithstanding par. (a), if the recipient appeals the determination within 10 working days after the notice in par. (a) is mailed or personally delivered, the general relief agency shall continue the general relief payment to the recipient in the amount paid before the determination of termination, suspension or reduction until a hearing under sub. (7) is held and a decision under sub. (9) is issued.

(c) Written notice under par. (a) to a recipient in a continuing aid case shall contain the following:

1. A statement of the effective date of the determination.

2. Specific reasons for the determination.

3. A statement of the evidence and policy relied upon in making the determination.

4. A statement of the procedure by which the recipient may petition the general relief agency under sub. (7) for a review of the determination.

5. A statement of the recipient's right to continue to receive his or her general relief payment in the amount paid before the determination of termination, suspension or reduction, if the recipient appeals the determination within 10 working days after the general relief agency mailed or personally delivered the notice.

(d) For purposes of this subsection, a reduction of a recipient's general relief payment does not include a reduction made by a general relief agency of the amount of a recipient's general relief payment or voucher based on a reduction in a vendor's actual charge to a recipient.

(7) An individual whose application for general relief is not acted upon within the period required under sub. (3) or who is denied general relief in whole or in part, or whose general relief is terminated, suspended or reduced, may petition the general relief agency for a review of the action. The general relief agency shall provide a hearing petition form to an individual who requests a review. Upon receipt of the petition, the general relief agency shall hold a hearing at a date and place convenient to the petitioner. Unless the petitioner requests a deferral of the hearing, the general relief agency shall hold the hearing within 10 working days after receipt of the petition.

(8) At a hearing conducted under this section, the general relief agency shall:

(a) Permit the petitioner or his or her representative, at a reasonable time before the date of the hearing and during the hearing, to examine all documents or records to be used at the hearing.

(b) Permit the petitioner to present his or her case personally or with the aid of others, including legal counsel.

(c) Permit the petitioner or a representative to subpoena witnesses.

(d) Permit the petitioner or a representative to establish all facts and circumstances pertinent to his or her case.

(e) Permit the petitioner or a representative to question or refute any testimony or evidence, including permission to confront and cross-examine adverse witnesses.

(f) Furnish an impartial decision maker who may not communicate outside a hearing with either party concerning a hearing.

(g) Keep a record of the proceedings and make the record available to the petitioner upon appeal.

(9) The general relief agency shall issue its decision within 5 working days after the hearing under sub. (8). The hearing decision shall:

(a) Be based exclusively on evidence presented at the hearing, except that if an issue of creditability or veracity exists the decision may not be based on mere uncorroborated hearsay.

(b) Be issued and implemented within 5 working days after the date of the hearing.

(c) Inform the petitioner of the evidence and policies relied upon in reaching the decision and of the right to appeal to circuit court, including identification of the proper party to the appeal, the time limits and procedure for the appeal.

(10) Appeal of the decision under sub. (9) is to the circuit court. The review shall be conducted by the court without a jury and shall be confined to the record, except that in case of an alleged irregularity in procedure before the general relief agency, testimony on it may be taken in the court. If leave is granted to take this testimony, depositions and written interrogatories may be taken as set forth in ch. 804 before the date set for hearing if proper cause is shown for doing so.

(11) The provisions of s. 893.80 do not apply to claims arising as a result of a denial, suspension, reduction or termination of general relief.

History: 1983 a. 27; 1985 a. 29 ss. 975, 3200 (23); 1985 a. 120.

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 promulgate 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 under s. 46.215 or 46.22, as the administering agency.

(c) If an administering agency fails to administer this section according to the rules promulgated 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 under s. 46.215 or 46.22 as the administering agency.

(f) The department, after consulting with all elected tribal governing bodies in this state, shall promulgate 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; 1985 a. 176; 1985 a. 332 s. 251 (1).

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 under s. 46.215 or 46.22 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; 1985 a. 176.

49.05 Work relief. (1) In 1986, except as provided under s. 49.055 (2), a municipality or county required by law to administer general relief may require an individual entitled to general relief to labor on any work relief project authorized and sponsored by the municipality or county, at work which the individual is capable of performing. If a work relief project requires the employment of a skilled worker, and the number of workers so skilled listed on the general 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 a skilled worker who is not receiving general relief, and he or she shall be paid at the prevailing wage for such labor in the municipality or county.

(1g) After December 31, 1986, except as provided under s. 49.055 (2), a general relief agency may require an individual entitled to general relief to labor on any work relief project authorized and sponsored by the general relief agency, at work which the individual is capable of performing. If a work relief project requires the employment of a skilled worker, and the number of workers so skilled listed on the general relief rolls of the general relief agency sponsoring the project is not sufficient to meet the requirements of the project, the general relief agency may hire a skilled worker who is not receiving general relief, and he or she shall be paid at the prevailing wage for such labor in the city, village or town in which the work relief project is located.

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

(2) The basis of total payment, including any amount of the payment which constitutes state reimbursement under s. 49.035 (1), of an individual granted work relief shall be per hour of work relief performed by that individual, using as the hourly rate at least the federal minimum hourly wage prescribed by 29 USC 206 (a) (1).

(3) A work relief project may be authorized for the performance of any work not prohibited by law and an individual entitled to work relief may be assigned to work under the following conditions:

(a) By a county or municipality for a work relief project operated before January 1, 1987, by mutual agreement with the state, another county or another municipality, or with a school district, drainage district, utility district, metropolitan sewerage district or other governmental unit or with a nonprofit corporation, under which agreement:

1. The project may not be operated so as to supplant a regular employe of any governmental unit or nonprofit corporation.

2. The governmental unit or nonprofit corporation to which the labor of the individual is lent may provide for full or partial work relief reimbursement to the municipality or county lending the individual.

(b) After December 31, 1986, by a general relief agency for a work relief project operated by mutual agreement with the state, another general relief agency, or with a municipality, school district, drainage district, utility district, metropolitan sewerage district or other governmental unit or with a nonprofit corporation, under which agreement:

1. The project may not be operated so as to supplant a regular employe of any governmental unit or nonprofit corporation.

2. The governmental unit or nonprofit corporation to which the individual is lent may provide for full or partial work relief reimbursement to the general relief agency lending the individual.

(4) A county granting work relief shall be directly liable to an individual granted work relief for any benefits legally recoverable under the worker's compensation law of this state, but may contract with another governmental unit, for whose benefit the work relief project is primarily designed, to share the liability or wholly assume it, and that other governmental unit may make a contract sharing or totally assuming liability.

(5) A general relief agency may authorize the sale of a product made on any work relief project to a governmental unit or to a religious, charitable or educational institution.

(6) A general relief agency may operate a work relief project which will serve to rehabilitate a disabled individual so as to enable the individual to qualify for employment in public or private industry.

(7) The amount of payment computed under sub. (2) as applied to the amount of monthly general relief benefits paid to the dependent person under this section correspondingly reduces the amount of labor which may be required of the individual. No dependent person may be liable under s. 49.08 for the value of payment so computed.

(7m) From the appropriation under s. 20.435 (4) (eb), the department shall reimburse the county for the value of work relief payment provided under sub. (2) at the reimbursement levels under s. 49.035, less any reimbursement received by the county under sub. (3) (a) 2 or (b) 2, and, after January 1, 1986, for the educational payment under sub. (9) at the reimbursement levels under s. 49.035.

(8) Any individual assigned to or working on a work relief project shall comply with appropriate work relief rules established by the general relief agency. If an individual first fails to comply with appropriate work relief rules the general relief agency may discontinue or deny general relief benefits to the individual for a period not to exceed 30 days. If an individual fails to comply 2 or more times with appropriate work relief rules the general relief agency may discontinue or deny general relief benefits to the individual for a period not to exceed 60 days.

(9) A general relief agency may authorize a recipient of general relief to enroll in and attend any of the educational programs set forth under s. 49.055 (1) or any other program that in the judgment of the general relief agency can assist the recipient in achieving financial independence in lieu of the performance by that recipient of labor under a work relief project under this section. The abatement of the benefit payment of any person granted this authorization shall be per hour of in-class attendance, using the hourly rate set forth under sub. (2).

(10) The department shall promulgate rules to establish standards for determinations of benefit denial or discontinuance which exceed 30 days under sub. (8).

History: 1975 c. 147 s. 54; 1983 a. 27; 1985 a. 29 ss. 977 to 986m, 3200 (23).

49.053 General relief grant diversion. (1) In this section, "employer" means a governmental unit, an individual, a corporation, including a nonprofit corporation, a partnership or any other association.

(1m) A general relief agency may administer, by contract, a program of general relief grant diversion for general relief recipients. Under a grant diversion program, a general relief agency may use all or a part of the benefit payment provided under s. 49.02 to subsidize an employer at up to 50% of the wages he or she pays the recipient for a job performed by the recipient, for a period not to exceed 6 months, under a written contract between the general relief agency and an employer.

(2) The basis for cash wage payment to a general relief recipient performing work through a general relief grant diversion program shall be per hour of labor performed by the recipient, using as the hourly rate the higher of the following:

(a) The hourly wage rate paid other entry level employes of the employer who perform the same work.

(b) The federal minimum hourly wage prescribed by 29 USC 206 (a) (1).

(3) The amount of benefit payment provided under s. 49.02 for a general relief recipient that is used to subsidize the employer under this section correspondingly reduces the amount of labor which may be required of the individual at the rate which is the ratio between the amount used to subsidize the employer and the total wage paid. No dependent person may be liable under s. 49.08 for the value of payment so provided.

(4) From the appropriation under s. 20.435 (4) (eb), the department shall reimburse the county for the value of wage subsidization provided the employer of an individual under a general relief grant diversion program, at the reimbursement levels under s. 49.035.

(5) The contract under sub. (1) shall specify that the employer shall repay to the general relief agency the total amount of wage subsidization received if the employer fails to retain the general relief recipient in employment for 3 months following termination of wage subsidization, unless cause exists for the employer to dismiss the recipient.

(6) No contract between the general relief agency and an employer under sub. (1) may be in contravention of an applicable existing collective bargaining agreement entered into by the employer.

(7) A grant diversion program may not be operated so as to supplant a regular employe of an employer.

(8) A county operating a general relief grant diversion program shall be directly liable to an individual granted grant diversion for any benefits legally recoverable under the worker's compensation law of this state, unless the employer, by contract under sub. (1), agrees to share or totally assume this liability.

(9) A general relief agency that authorizes, operates or sponsors a grant diversion program shall establish written grant diversion rules.

(10) Any individual assigned to or working on a grant diversion project shall comply with appropriate grant diversion rules established under sub. (9). If an individual fails to comply with appropriate grant diversion rules the general relief agency may discontinue or deny general relief benefits

to the individual for a period not to exceed 30 days. If an individual fails to comply 2 or more times with appropriate grant diversion rules the general relief agency may discontinue or deny general relief benefits to the individual for a period not to exceed 60 days.

(11) A general relief agency may not base a denial of eligibility for a general relief recipient on the receipt by that recipient of income earned under this section.

(12) The department shall promulgate rules to establish standards for determinations of benefit denial or discontinuance which exceed 30 days under sub. (10).

History: 1985 a. 29 ss. 987, 3200 (23).

49.055 Approved educational program. (1) Eligibility for general relief under s. 49.02 shall not be affected for any otherwise eligible applicant for or recipient of general relief while the applicant or recipient is enrolled in and in good standing in any of the following:

(a) A public school, as described in s. 115.01 (1).

(b) A course of study meeting the approval of or standards established by the state superintendent of public instruction for a determination of high school graduation equivalency under s. 115.29 (4).

(c) A program established by a district board of vocational, technical and adult education under ch. 38, which provides instruction in English as a 2nd language or is a basic remedial education or literacy program.

(2) Eligibility for general relief under s. 49.05 (1), (1g) and (8) shall not be affected for any otherwise eligible applicant for or recipient of general relief while the applicant or recipient is enrolled in and in good standing in any program under sub. (1) if, solely by reason of the enrollment and good standing, the applicant or recipient is unable to meet requirements of grant diversion or work relief rules established by the general relief agency.

History: 1985 a. 29 ss. 988, 3200 (23).

49.06 Income and property exemptions; property assignment. (1) The following are not money, income, property or credit, or other means by which it can be presently obtained, for purposes of determining status as an eligible dependent person or the amount of general relief benefit due:

(a) A policy of insurance, the cash or loan value of which is not in excess of $300.

(b) After December 31, 1985, a vehicle, the equity value of which is $1,500 or less.

(c) Credit received under s. 71.09 (7).

(d) Low-income energy assistance benefits authorized under 42 USC 8621 to 8629.

(e) Food stamp benefits authorized under 7 USC 2011 to 2029.

(f) After December 31, 1985, expenses constituting up to 18% of gross earned income or $40 per month, whichever is lower, reasonably related to the performance of work, except work performed on a work relief project under s. 49.05.

(2) (a) No person may be denied general relief because the person possesses equity in the home in which he or she lives.

(b) Before January 1, 1987, no applicant for general relief may be required to assign the equity under par. (a) or insurance policy under sub. (1) (a) as a condition of receiving general relief. If a person is not in fact dependent, but by reason of a fallen market or economic or other conditions would be required to suffer a substantial loss if the person converted his or her limited real or personal holdings, the person may assign property to the municipality or county in order to become qualified to receive general relief. The municipality or county may sell, lease or transfer the property, defend and prosecute all actions concerning it, pay all just claims against it and do all other things necessary for the protection, preservation and management of the property.

(c) After December 31, 1986, no applicant for general relief may be required to assign the equity under par. (a) or insurance policy under sub. (1) (a) as a condition for receiving general relief. If a person is not in fact dependent, but by reason of a fallen market or economic or other conditions would be required to suffer a substantial loss if the person converted his or her limited real or personal holdings, the person may assign property to the county in order to become qualified to receive general relief. The county may sell, lease or transfer the property, defend and prosecute all actions concerning it, pay all just claims against it and do all other things necessary for the protection, preservation and management of the property.

History: 1985 a. 29, 120.

49.08 Recovery of general relief paid. If any person is the owner of property at the time of receiving general 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 general 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 general relief. Where the general 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 general 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; 1985 a. 29.

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.

49.12 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).

(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 general relief for purposes other than as directed by the general relief agency furnishing such general 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 general relief and 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; 1985 a. 29 ss. 1002 to 1004, 3200 (23).

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).

49.123 Loss of eligibility. A court may declare as ineligible for aid under s. 49.046 or general relief under this chapter any person who, with intent to secure that aid or general relief, whether for himself or herself or for some other person, is found under s. 49.12 (1) to have wilfully made any false representation concerning that aid or general relief as follows:

(1) If the value of the aid under s. 49.046 or general relief so secured exceeds $100 but does not exceed $500, the period of ineligibility is one month.

(2) If the value of the aid under s. 49.046 or general relief so secured exceeds $500 but does not exceed $2,500, the period of ineligibility is one month for each amount equaling $500 by which the value of the aid or general relief so secured exceeds $500.

History: 1985 a. 29.

49.125 Recovery of food stamps. The department, or a county or elected governing body of a federally recognized American Indian tribe or band acting on behalf of the department, may recover overpayments that arise from an overissuance of food coupons under the food stamp program administered under s. 46.215 (1) (k) or 46.22 (1) (b) 5. Recovery shall be made in accordance with 7 USC 2022.

History: 1985 a. 29, 176.

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 apply to the department for a certified copy of a birth certificate for the applicant if the applicant is required to provide a birth certificate or social security number as part of the application and for any person in the applicant's household who is required to provide a birth certificate or social security number. The department shall provide without charge any copy for which application is made under this subsection.

(3) Notwithstanding subs. (1) and (2), personal identification documentation requirements may be waived for 10 days for an applicant for general relief, if all of the following occur:

(a) An authorized staff member of a shelter facility for homeless individuals and families or of an agency that

provides or purchases that shelter prepares a sworn statement personally assuring the identity of the applicant.

(b) The applicant agrees to cooperate with the general relief agency by providing information necessary to obtain proper identification.

(4) Notwithstanding sub. (2), the general relief agency receiving an application under sub. (3) shall pay on behalf of any applicant under sub. (3) fees required for the applicant to obtain proper identification.

History: 1971 c. 334; 1979 c. 221; 1985 a. 29 ss. 1005m, 3200 (23); 1985 a. 315.

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 the 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 county of his or her residence.

(2) The actual cost for care and maintenance rendered a general relief recipient who has residence in another county shall be a proper general relief charge and a liability against the county of residence.

(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; 1985 a. 29.

49.16 County hospital; establishment. (1) Each county may establish a county hospital for the treatment of dependent persons, under s. 46.17, and other persons authorized under s. 46.21 (4m).

(2) In counties with a population of 500,000 or more, an institution established under sub. (1) shall be governed under s. 46.21, but in all other counties it shall be governed under 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; 1985 a. 176.

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 the 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 county of his or her residence.

(2) The actual cost for hospitalization and treatment rendered a general relief recipient who has residence in another county shall be a proper general relief charge and a liability against the county of residence.

(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.

History: 1985 a. 29.

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 incapacitated 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) Before January 1, 1987, except as provided in par. (d), any person who meets the standards for admission is eligible for admission. 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.

(cm) After December 31, 1986, except as provided in par. (d), any person who meets the standards for admission is eligible for admission.

(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 residence in another county shall notify the county of residence of the fact of such commitment or admission.

History: 1977 c. 449 ss. 130, 497; 1985 a. 29.

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, as determined from annual infirmary reports filed with the department under s. 46.18 (8), (9) and (10), by the county of residence.

(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.

(4) The records and accounts of each county infirmary may be audited by the department. 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 person cost of maintenance, care and treatment of patients.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1985 a. 29.

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.

(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.

NOTE: Under sub. (4), during the period 7-20-85 to 6-30-87, the reference to "s. 49.65 (6m) (a) 1" is changed to "s. 49.65 (6m) (ag)".

(6) The care, services and supplies provided under this section shall be a liability against the patient's county of residence.

History: 1971 c. 216; 1973 c. 90, 333; 1975 c. 413 s. 18; 1975 c. 430 s. 80; 1977 c. 418 s. 929 (55); 1985 a. 29.

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) ADJUSTMENTS TO STATE SUPPLEMENTAL PAYMENTS. (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) For the period from July 1, 1985, to March 31, 1987, the department shall increase the monthly state supplemental payments provided under this section by 2% to any person eligible under par. (a).

(c) For the period from April 1, 1987, to June 30, 1987, the department shall increase the monthly state supplemental payments provided under this section by one percent of the total amount of monthly state supplemental payments authorized under par. (b).

(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 county department under s. 46.215, 46.22, 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; 1985 a. 29, 120, 176.

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 reasonably 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, 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, in a group home licensed under s. 48.625 or in a child-caring institution licensed under s. 48.60, and has been placed in the foster home, group home or institution by a county department under s. 46.215, 46.22 or 46.23, by the department or by a federally recognized American Indian tribal governing body in this state under an agreement with a county department.

(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, except as provided in s. 49.46 (3) from October 1, 1986 to September 30, 1994. 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 department under s. 46.215 or 46.22 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 department under s. 46.215 or 46.22 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 department under s. 46.215 or 46.22 finds a person eligible for aid under this section, that county department 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 department 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 department under s. 46.215 or 46.22 15 to 30 days to process his or her application and, if not already a resident of the county, has notified the county department under s. 46.215 or 46.22 of his or her 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 under s. 46.215 or 46.22, 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. Except as specified in par. (br), 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, one home, as specified in par. (e), and, for each person, one burial plot and one burial agreement under s. 445.125 (1) (b) and (c) may not be included when determining the combined equity value of assets.

(br) Aid may be paid for up to 9 months to an otherwise eligible owner of real property other than that specified under par. (bm) and that real property may be excluded as an asset for up to 9 months if all of the following conditions are met:

1. The owner enters into a signed, written agreement with the county department under s. 46.215 or 46.22 that he or she shall make a good faith effort to sell the real property and repay the amount of aid granted during the asset exclusion period up to the amount of net proceeds of the sale of the real property.

2. The net proceeds of the sale of the real property plus the combined equity value of all other countable assets exceed $1,000 on the date of the agreement made under subd. 1.

(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 department under s. 46.215 or 46.22 on the grounds that a person is not fit and proper to have the care and custody of the child until the county department 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 department 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 proceedings have been commenced against the husband under s. 767.65; 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 department under s. 46.215 or 46.22 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. 46.215 (1) (o) or 46.22 (1) (b) 11. Any person who would otherwise be exempt from registering for a work program because the person is caring for a child whose age is more than 3 years but less than 6 years may be required to participate in a community work experience program if child day care licensed under s. 48.65 (1) is available for the child.

(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 185% 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 or public or private agency which 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, unless the department determines that the public or private agency no longer exists or has become unable to meet the alien's needs. The income and resources of the spouse of the executor, if the executor is an individual, 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 under s. 46.215 or 46.22 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 submits a signed and completed application for aid to the county department under s. 46.215 or 46.22, 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. Except as provided under sub. (5) (a) 1m, when any person applies for or receives aid under this section, any right of the parent or any dependent child to support or mainte-

nance 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. If the county department under s. 46.215 or 46.22 has been unsuccessful in finding a person other than the person charged with the care of the dependent child to receive the protective payment on behalf of the child, after performance of a reasonable effort to do so, the county department may make the payment on behalf of the child to the person charged with the care of the dependent child.

(k) The total income of the AFDC group, including any nonrecurring lump sum payment of earned or unearned income and any 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.

1m. The first $50 of any money received by the department in a month under an assignment to the state under sub. (4) (h) for a person applying for or receiving aid to families with dependent children that shall be paid to the family applying for or receiving aid.

2. The first $75 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 and an amount equal to one-third of the remaining earned income not disregarded, from the earned income of any person specified in subd. 2. These disregards do not apply to:

a. The earned income of a person who has received the disregards 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.

4m. After the person has received the benefit of the disregards under subd. 4 for 4 consecutive months, a disregard of $30 of earned income shall be available for 8 additional consecutive months. This disregard does not apply to:

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

b. 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 4m 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 commodities 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 director of the county department under s. 46.215, 46.22 or 46.23 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 department under s. 46.215, 46.22 or 46.23 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 department under s. 46.215, 46.22 or 46.23 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, 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 in a group home licensed under s. 48.625, 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 department under s. 46.215 or 46.22 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 department under s. 46.215, 46.22 or 46.23 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 department. 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, group 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 department under s. 46.215, 46.22 or 46.23 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 department.

(d) Aid may also be paid under this section to a foster home, to a group home licensed under s. 48.625 or to a child-caring 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, 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 or for placement of a child in a group home licensed under s. 48.625.

(11) (a) 1. a. Monthly payments made under s. 20.435 (4) (d) and (p) 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 September 1, 1985, to March 31, 1987. [See Figure 49.19 (11) (a) 1. a. following]

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

FAMILY SIZE	AREA I	AREA II
1	$ 308	$ 298
2	545	528
3	641	620
4	764	742
5	877	852
6	949	920
7	1,027	997
8	1,088	1,057
9	1,140	1,106
10	1,167	1,132

b. Payments made from April 1, 1987, to June 30, 1987, 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	$ 311	$ 301
2	550	533
3	647	626
4	772	749
5	886	861
6	958	929
7	1,037	1,007
8	1,099	1,068
9	1,151	1,117
10	1,179	1,143

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, natural disaster or energy emergency. Eligibility shall not exceed the limitations for federal participation defined by federal regulations, including 45 CFR 233.120. The aid

granted, except for cases of energy emergency, 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, 1985: $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. 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, 1986, the age-related rates shall be: $163 for children aged 4 and under; $224 for children aged 5 to 11; $274 for children aged 12 to 14 and $284 for children aged 15 to 17.

(13) When a county department under s. 46.215, 46.22 or 46.23 proposes to terminate, discontinue, suspend or reduce assistance to a recipient under this section such county department 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; 1985 a. 29, 120, 176, 281, 332.

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 promulgate 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.

(5) The state's share of amounts recovered under this section shall be credited to the appropriations under s. 20.435 (4) (L) and (Lm) in equal proportions until the appropriation under s. 20.435 (4) (Lm) is credited with an amount equal to the amounts in the schedule, after which all receipts shall be credited to the appropriation under s. 20.435 (4) (L).

History: 1977 c. 29; 1981 c. 93, 317; 1983 a. 27; 1985 a. 29; 1985 a. 332 s. 251 (1).

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).

49.197 Fraud investigation and reduction. (1) DEPARTMENT INVESTIGATION. From the appropriations under s. 20.435 (4) (L), (Lm), (n) and (nL), the department shall establish a program to investigate suspected fraudulent activity on the part of recipients of medical assistance under ss.

49.46 and 49.47, aid to families with dependent children under s. 49.19 and the food stamp program administered under s. 46.215 (1) (k) or 46.22 (1) (b) 5. The department's activities under this subsection may include, but are not limited to, comparisons of information provided to the department by an applicant and information provided by the applicant to other federal, state and local agencies, development of an advisory welfare investigation prosecution standard and administration of the welfare fraud investigation pilot project under sub. (2).

(2) WELFARE FRAUD INVESTIGATION PILOT PROJECT. (a) *Grants to county agencies.* From the appropriations under s. 20.435 (4) (Lm) and (nL), the department shall award grants to not more than 4 county departments under s. 46.215, 46.22 and 46.23 for the purpose of encouraging activities to detect fraud and reduce the error rate in benefits provided to recipients of medical assistance under ss. 49.46 and 49.47, aid to families with dependent children under s. 49.19 and the food stamp program administered under s. 46.215 (1) (k) or 46.22 (1) (b) 5. One grant shall be solely for the purpose of pursuing eligibility verification of applications for medical assistance, aid to families with dependent children and the food stamp program by ascertaining if applicants for these benefits are concurrently recipients in another state.

(b) *Grant award procedure.* The department of health and social services shall solicit from county departments under ss. 46.215, 46.22 and 46.23 innovative proposals designed to accomplish the purposes specified under par. (a), shall develop criteria for use in reviewing the proposals received and shall award grants on the basis of the criteria it establishes.

(c) *Pilot project report.* The department of health and social services shall report to the joint committee on finance by January 1, 1987, on the feasibility of implementing on a statewide basis a welfare fraud investigation program taking into consideration the results of the pilot project authorized under this subsection.

History: 1985 a. 29, 176.

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. (1) If any recipient of benefits under s. 49.046, 49.177 or 49.46, or under 42 USC 1381 to 1385 in effect on May 8, 1980, dies and the estate of the deceased recipient is insufficient to pay the funeral, burial and actual cemetery expenses of the deceased recipient, the county or applicable tribal governing body or organization responsible for burial of the recipient shall pay, to the person designated by the county department under s. 46.215, 46.22 or 46.23 or applicable tribal governing body or organization responsible for the burial of the recipient, the following:

(a) The full amount of actual cemetery expenses.

(b) Except as provided under sub. (2), the lesser of $618 in state fiscal year 1985-86 and $636 in each state fiscal year thereafter or the funeral and burial expenses not paid by the estate of the deceased and other persons.

(2) The state shall reimburse a county or applicable tribal governing body or organization for any amount paid under sub. (1) (a). The state shall reimburse a county or applicable tribal governing body or organization for the amount paid under sub. (1) (b) if the total amount of actual expenses paid for a deceased recipient under sub. (1) (b) does not exceed the amount specified in sub. (1) (b). If the total amount of actual expenses paid for a deceased recipient under sub. (1) (b) exceeds the amount specified in sub. (1) (b), the state may not reimburse a county or applicable tribal governing body or organization for such amount unless the department approves the reimbursement due to unusual circumstances.

History: 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 206; 1981 c. 20; 1985 a. 29, 176, 332.

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.

AFDC money did not lose exemption from garnishment when deposited in checking account. Northwest Eng. Credit Union v. Jahn, 120 W (2d) 185, 353 NW (2d) 67 (Ct. App. 1984).

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 1395ii, 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 under ss. 49.46 and 49.47 and rules and policies adopted by the department and may designate this function to the county department under s. 46.215 or 46.22;

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.

12r. Notify the medical examining board of any decertification or suspension of a person holding a license granted by the board if the grounds for the decertification or suspension include fraud or a quality of care issue.

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 county department under s. 51.42 a base level of medical assistance expenditures for inpatient hospital psychiatric care including alcohol or other drug abuse treatment services for persons age 22 to 64 and for medical day treatment and other mental health services, in order to determine liability under s. 49.46 (2) (e). 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. After taking into consideration the base level of each county department's allocation under 1985 Wisconsin Act 29, section 3023 (3) (n), payments to health maintenance organizations on behalf of medical assistance recipients and whether or not a county department participates in the pilot program under sub. (6), the department shall transfer funds from the appropriation under s. 20.435 (1) (b) to the appropriation under s. 20.435 (4) (b) and shall allocate to each county department from the appropriation under s. 20.435 (4) (b) the amount of its liability for the base level of expenditures each year, as established under s. 49.46 (2) (e). The county department may apply these funds against its liability for psychiatric, medical day treatment and mental health services authorized under s. 49.46 (2) (e). Funds applied by any county department against this liability shall be transferred or credited to the appropriation under s. 20.435 (1) (b). The county department may retain the funds it receives under this subdivision that it does not apply against its liability for psychiatric services, if it uses the funds to provide psychiatric inpatient care in a special or mental hospital for persons aged 22 to 64 or 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 department under s. 46.215 or 46.22 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 department under ss. 46.215 and 46.22 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.

(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 county departments under s. 46.23 or 51.42 that volunteer to participate in a pilot program beginning January 1, 1984, and continuing as long as federal waiver permits, concerning the provision of all mental health care by medical assistance. The number of county departments selected to participate shall be determined by the department considering cost-effective service provision and federal waiver limits. For each participating county department, 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 county depart-

ments. The department's method of determining each county department'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 county department under s. 46.23 or 51.42 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 county department. Each county department may apply the funds it receives under par. (a) against this liability. Funds applied by each county department against this liability shall be transferred or credited to the appropriation under s. 20.435 (1) (b). The county department may use the funds received that it does not apply against this liability for noninstitutional community programs. The county department may retain any amounts that remain unexpended or unencumbered at the end of a calendar year to provide noninstitutional community programs during the next calendar year.

(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.

(br) If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds under applicable federal acts or programs for the reduction of operation deficits under 1985 Wisconsin Act 29, section 3023 (12) (c), all of the following apply:

1. Notwithstanding s. 20.435 (4) (b), (cd), (de) or (eb), the department shall reduce allocations of funds to counties in the amount of the disallowance from the appropriations under s. 20.435 (4) (b), (cd), (de) or (eb) under the procedures specified under s. 16.544 to resolve the disallowance.

2. If a city or village owns and operates a facility that has received funds to reduce an operating deficit, the city or village shall reimburse the county in which the city or village is located in the amount of funds so received.

(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 or are exempt from the requirement of 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 reimbursement 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 regulations authorized under 42 USC 1396 to 1396p.

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 for persons eligible for medicare benefits under 42 USC 1395 to 1395xx. 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 1395xx, 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 s. HSS 132.13.

2. Reimbursement for personal or residential care is available for a person in a facility certified under 42 USC 1396 to 1396p 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.

NOTE: Sub. (6m) is shown as affected by 1985 Wis. Act 29, section 1027bg, eff. 7-1-87. Prior to that date, (6m), as affected by ss. 1027bm to 1028y and 3200 (23) of Act 29 and by ss. 119d to 119j of 1985 Act 120 reads:

"(6m) PAYMENT TO FACILITIES. (a) In this subsection:

1. 'Cost center' means a group of similar facility expenses.

2. 'Facility' means a nursing home as defined under s. 50.01 (3) or a community-based residential facility that is licensed under s. 50.03 and that is certified by the department as a provider of medical assistance.

3. 'Net property tax' means property tax from which the Wisconsin state property tax credit has been deducted.

(ag) Payment for care provided in a facility under this subsection made under s. 20.435 (1) (b), (o) or (p) shall, except as provided in pars. (bg), (bm) and (br), be determined according to a prospective payment system updated annually by the department and annually, beginning July 1, 1987, approved by the joint committee on finance. The payment system shall implement standards which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care in conformity with this section, with federal regulations authorized under 42 USC 1396a (13) (A), 1396a (30), 1396b (i) (3) and 1396L and with quality and safety standards established under subch. II of ch. 50 and ch. 150. In administering this payment system, the department shall allow costs it determines are necessary and proper for providing patient care. The payment system shall reflect all of the following:

1. A prudent buyer approach to payment for services, under which a reasonable price recognizing selected factors that influence costs is paid for service that is of acceptable quality.

2. Standards established by the department for costs of economically and efficiently operated facilities that shall be based upon allowable costs incurred by facilities in the state as available from information submitted under par. (c) 3 and compiled by the department.

3. For state fiscal year 1985-86, rates that shall be based by the department upon information from cost reports for the 1984 fiscal year of the facility.

4. For state fiscal year 1986-87, rates that may be based by the department upon information from cost reports for the 1985 fiscal year of the facility or upon information from cost reports, adjusted by a percentage rate for inflation determined by the department, for the 1984 fiscal year of the facility.

5. Consideration for special needs of facility residents.

6. Standards for capital payment that will be based upon replacement value of a facility as determined by a commercial estimator with which the department contracts, adjusted by a rate of return determined by the department.

7. Assurance of an acceptable quality of care for all medical assistance recipients provided nursing home care.

8. Calculation of total payments and supplementary payments to facilities that permits an increase in funds allocated under s. 20.435 (1) (b) and (o) for nursing home care provided medical assistance recipients over that paid for services provided in state fiscal year 1984-85 of no more than 3.5% during state fiscal year 1985-86 and an increase in those funds over that paid for services provided in state fiscal year 1985-86 of no more than 3.5% during state fiscal year 1986-87, excluding increases in total payments attributable to increases in recipient utilization of nursing home care.

(am) In determining payments for a facility under the payment system in par. (ag), the department shall consider all of the following cost centers:

1. Allowable direct care costs, including, if provided, any of the following:

a. Personal comfort supplies.

b. Medical supplies.

c. Transportation by common carrier or as provided by the facility to or from an office, clinic or other medical treatment center to receive medically necessary health treatment or care.

d. Services of facility medical personnel that are not separately billable under medical assistance requirements.

e. Nonbillable services of a registered nurse, licensed practical nurse, nursing assistant, ward clerk, activity person, recreation person, social worker, volunteer coordinator, teacher for residents aged 22 and older, vocational counselor for residents aged 22 and older, religious person, therapy aide, therapy assistant and counselor on resident living.

2. Allowable support service costs, including the following allowable facility expenses:

a. Dietary service for the provision of meals to facility residents.

b. Environmental service for the provision of maintenance, housekeeping, laundry and security service.

c. Administrative service for the provision of management or administration and general services of a facility.

3. Allowable fuel and utility costs, including the facility expenses that the department determines are allowable for the provision of:

a. Electrical service.

b. Water and sewer services.

c. Heat.

4. Net property tax or allowable municipal service costs incurred by the owner of the facility for the facility.

5. Capital payment necessary for the provision of service over time, including allowable facility expenses for suitable space, furnishings, property insurance and moveable equipment for patient care.

(ar) In determining payments for a facility under par. (ag), the department may establish minimum patient day occupancy standards for determining costs per patient day and shall apply the following methods to calculate amounts payable for the cost centers described under par. (am):

1. For direct care costs:

a. The department shall establish standards for payment of allowable direct care costs that are 110% of the median for direct care costs for facilities that do not primarily service the developmentally disabled and separate standards for payment of allowable direct care costs that are 110% of the median for direct care costs for facilities primarily serving the developmentally disabled. The standards shall be adjusted by the department for regional labor cost variations. The department may decrease the percentage established for the standards only if amounts available under par. (ag) (intro.) are insufficient to provide total payment under par. (am), less capital costs under subd. 5.

b. The department shall establish the direct care component of the facility rate for each facility by comparing actual allowable direct care cost information of that facility adjusted for inflation to the standards established under subd. 1. a.

c. If a facility has an approved program for provision of service to emotionally disturbed or mentally retarded residents, residents dependent upon ventilators, or residents requiring supplemental skilled care due to complex medical conditions, a supplement to the direct care component of the facility rate under subd. 1. b shall be made to that facility according to a method developed by the department.

d. Beginning July 1, 1986, the department shall include in direct care costs an amount reasonably related to cost for medical transportation under par. (am) 1. c.

2. For support service costs:

a. The department shall establish one or more standards for the payment of support service costs that are not less than the median of support service costs for a sample of all facilities within the state.

b. The department shall establish the support service component of the facility rate for each facility by comparing actual allowable support service cost informa-

tion of that facility, adjusted for inflation, to the applicable standard established under subd. 2. a.

c. Payment for administrative and general services shall not exceed a maximum cost amount as determined by the department.

d. The department may provide an efficiency incentive payment to a facility whose allowable support service costs are less than the standards set forth under subd. 2. a.

3. For fuel and utility costs:

a. The department shall establish standards, adjusted for heating degree day variations in the state, for payment of fuel and utility costs that are not less than the median of heating fuel and utility costs for a sample of all facilities within the state.

b. The department shall establish the fuel and utility component of the facility rate for each facility by comparing actual allowable fuel and utility cost information of that facility, adjusted for inflation, to the standard established under subd. 3. a.

c. The department may provide an efficiency incentive payment to a facility whose allowable fuel and heating costs are less than the standard set forth under subd. 3. a.

4. For net property taxes or municipal services, payment shall be made for those costs that range from the amount of the previous calendar year's tax or the amount of municipal service costs for a period specified by the department to a maximum limit as determined by the department.

5. Capital payment shall be based on a replacement value for a facility, as determined by a commercial estimator with which the department has contracted for service, and subject to limitations determined by the department, except that the department may not reduce final capital payment of a facility by more than $3.50 per patient day.

(av) 1. The department shall calculate a payment rate for a facility by applying the criteria set forth under pars. (ag) 1 to 5, 7 and 8, (am) 1 to 4 and (ar) 1 to 4 to costs requested for payment by the facility.

2. The department shall compile an average payment rate for each facility based on that facility's rates for cost centers described under par. (am) 1 to 4 that were in effect on June 30 of the previous year.

3. The department shall calculate the facility's projected cost per patient day, based on that facility's cost centers under par. (am) 1 to 4, adjusted for inflation, with administrative and general costs limited to a maximum as determined by the department.

4. If the average payment rate for a facility compiled under subd. 2 exceeds the figure calculated under subd. 3, the department shall calculate the facility's payment rate by performing all of the following:

a. Subtract the figure calculated under subd. 3 from the facility's average payment rate under subd. 2.

b. Multiply the figure resulting under subd. 4. a by up to 50%.

c. Add the figure resulting under subd. 4. b to the figure calculated under subd. 3.

5. If the facility's payment rate under subd. 1 is less than a 1.5% increase over its average payment rate for the previous year under subd. 2, if the figure calculated for the facility under subd. 3 exceeds the payment rate for the facility under subd. 1 and if subd. 4 does not apply, all of the following shall apply:

a. The department shall develop costs of a facility that reflect characteristics similar to the facility in question.

b. If the previous year's average payment rate under subd. 2 for the facility is less than the costs developed under subd. 5. a, the department may grant for the facility an increase of no more than 1.5% of the previous year's average payment rate under subd. 2 for the facility.

c. If the previous year's average payment rate under subd. 2 for the facility exceeds the costs developed under subd. 5. a, the facility's payment rate shall be the facility's previous year's average payment rate under subd. 2.

6. The total payment rate for a facility as calculated under subd. 1, 4 or 5. b or c shall be the sum of the rate so calculated, plus capital payment calculated under pars. (am) 5 and (ar) 5 and payment for ancillary services and materials under par. (b), and supplemental payments calculated under par. (ar) 1. c.

(b) The charges for ancillary materials and services that would be incurred by a prudent buyer may be included as an adjustment to the rate determined by par. (av) when so determined by the department. The department may not authorize any adjustments to the rate established under par. (av) to pay for a cost overrun that the department fails to approve under s. 150.11 (3). Ancillary materials and services for which payment may be made include, if provided, oxygen, medical transportation and laboratory and X-ray services. Payment for these services and materials shall not exceed medical assistance limitations for reimbursement of the services and materials. For services in a facility for which the department may make payment to a service provider other than a facility, the department may make payment to the facility but not in excess of the estimated amount of payment available if a separate service provider provided the service. The department may promulgate rules setting forth conditions of and limitations to this paragraph.

(bg) The department shall determine payment levels for the provision of skilled, intermediate, limited, personal or residential care or care for the mentally retarded in the state centers for the developmentally disabled separately from the payment principles, applicable costs and methods established under this subsection.

(bm) Except as provided in par. (bo), the department may establish payment methods for a facility for which any of the following apply:

1. The facility is newly constructed.

2. The total of licensed beds for the facility has significantly increased or decreased prior to calculation of its rate under the payment system.

3. The facility has undergone a change in certification or licensure level.

4. The facility has implemented or discontinued an approved program for provision of service to emotionally disturbed residents.

5. The facility has received approval or disapproval for provision of service to residents requiring supplemental skilled care due to complex medical conditions.

(bo) The department may establish payment methods for capital payment for a newly constructed facility that first provided services after June 30, 1984.

(bp) Notwithstanding pars. (ag) 3 and 4, (am) 5 and (ar) 5, the department may establish payment methods based on actual costs for capital payment for a facility that, after December 31, 1982, was constructed, was purchased or incurred annual remodeling costs of more than $600,000.

(br) If the federal department of health and human services disallows use of the allocation of matching federal medical assistance funds under applicable federal acts or programs for the reduction of operation deficits under 1985 Wisconsin Act 29, section 3023 (12) (c), all of the following apply:

1. Notwithstanding s. 20.435 (4) (b), (cd), (de) or (eb), the department shall reduce allocations of funds to counties in the amount of the disallowance from the appropriations under s. 20.435 (4) (b), (cd), (de) or (eb) under the procedures specified under s. 16.544 to resolve the disallowance.

2. If a city or village owns and operates a facility that has received funds to reduce an operating deficit, the city or village shall reimburse the county in which the city or village is located in the amount of funds so received.

(c) As a condition of payment under this section a facility shall:

1. Meet the staffing standard requirements for direct care costs including the supplement contained under par. (ar) 1. c, for which payment 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 or are exempt from the requirement of assessment under s. 46.27 (6) (a).

(d) The department shall:

2. Terminate payment to a facility for 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 facility 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 facility, 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 payment 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 facilities providing skilled, intermediate, limited, personal or residential care or providing care for the mentally retarded for modifications to any payment under this subsection. The department may, upon the presentation of facts, modify a payment 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 payment levels allowed under this subsection but may not exceed federal maximum reimbursement levels. The department shall develop specific criteria and standards for granting payment 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 regulations authorized under 42 USC 1396 to 1396p.

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.

(f) The department shall use the appeals mechanism established under par. (e) to review applications from and award grants to facilities meeting the requirements specified under 1985 Wisconsin Act 29, section 3023 (12) (b).

(g) Payment under this section to a facility may not include the cost of care reimbursable for persons eligible for medicare benefits under 42 USC 1395 to 1395xx. Medical assistance recipients are not liable for these costs. The department may require that a facility recover these costs from the appropriate agen-

cies. The department may, by rule, require medicare certification under 42 USC 1395 to 1395xx, 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 facility residents under this chapter be submitted or countersigned by the respective facility administrator. The department may specify those categories of services for which payment 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 payment 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 s. HSS 132.13.

2. Payment for personal or residential care is available for a person in a facility certified under 42 USC 1396 to 1396p 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, payment 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, limited service health organization, preferred provider plan 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, limited service health organization, preferred provider plan 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, limited service health organization, preferred provider plan 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 sub. (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 promulgate 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.

(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 under s. 46.215 or 46.22, 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 department under s. 46.215 or 46.22 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.

(20) EXEMPTION FROM CONTINUATION REQUIREMENTS. An insurer, as defined in s. 632.897 (1) (d), with which the department contracts under sub. (2) (b) 2 for the provision of health care to medical assistance recipients is exempt from the continuation of group coverage requirements of s. 632.897 with regard to those recipients, their spouses and dependents.

(21) TRANSFER OF BUSINESS, LIABILITY FOR REPAYMENTS. (a) If any provider liable for repayment of improper or erroneous payments or overpayments under this subchapter sells or otherwise transfers ownership of his or her business or all or substantially all of the assets of the business, the transferor and transferee are each liable for the repayment. Prior to final transfer, the transferee is responsible for contacting the department and ascertaining if the transferor is liable under this paragraph.

(b) If a transfer occurs and the applicable amount under par. (a) has not been repaid, the department may proceed against either the transferor or the transferee. Within 30 days after receiving notice from the department, the transferor or the transferee shall pay the amount in full. Upon failure to comply, the department may bring an action to compel payment. If a transferor fails to pay within 90 days after receiving notice from the department, the department may proceed under sub. (2) (a) 12.

(c) The department may enforce this subsection within 4 years following a transfer.

(d) This subsection supersedes any provision of chs. 180, 181 and 185.

(22) MEDICAL ASSISTANCE SERVICES PROVIDED BY HEALTH MAINTENANCE ORGANIZATIONS. If the department contracts with health maintenance organizations for the provision of medical assistance it shall give special consideration to health maintenance organizations that provide or that contract to provide comprehensive, specialized health care services to pregnant teenagers.

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; 1985 a. 29 ss. 1026m to 1031d, 3200 (23), (56), 3202 (27); 1985 a. 120, 176, 269; 1985 a. 332 ss. 91, 251 (5), 253; 1985 a. 340.

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.

(cg) Medical assistance shall be provided to a dependent child, a relative with whom the child is living or the spouse of the relative, if the spouse meets the requirements of s. 49.19 (1) (c) 2. a or b, for 4 calendar months after the month in which the child, relative or spouse is ineligible for aid to families with dependent children because of the collection or increased collection of maintenance or support, if the child, relative or spouse received aid to families with dependent children in 3 or more of the 6 months immediately preceding the month in which that ineligibility begins. Medical assistance eligibility under this paragraph applies only with respect to a child, relative or spouse who becomes ineligible for aid to families with dependent children after August 15, 1984, and before October 1, 1988.

(cm) Medical assistance shall be provided to a family for 9 consecutive calendar months following the month in which the family is ineligible for aid to families with dependent children solely because the family no longer receives the earned income disregards under s. 49.19 (5) (a) 4 and 4m due to the expiration after September 30, 1984, of the time limit during which the disregards are applied.

(cr) Medical assistance shall be provided for 9 consecutive calendar months to a family that ceased to receive aid to families with dependent children after September 30, 1981, and prior to October 1, 1984, solely because of the loss of the disregards for earned income under s. 49.19 (5) (a) 4, after receiving the disregards for 4 consecutive months, if the family:

1. Applies for the medical assistance no later than the last day of the 6th month commencing after the month in which the secretary of the federal department of health and human services promulgates final regulations under 42 USC 602 (a) (37).

2. Discloses in the application under subd. 1 any health insurance possessed by a member of the family.

3. Demonstrates that, but for the loss of the disregards for earned income under s. 49.19 (5) (a) 4, the family was continuously eligible for aid to families with dependent children from the date of that loss until the date of the application made under subd. 1.

(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 department under s. 46.215, 46.22 or 46.23 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, including psychiatric and alcohol or other drug abuse treatment services, subject to the limitations under par. (e).

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 under s. 46.215 or 46.22, 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, mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist, subject to the limitations under par. (e).

g. Nursing services.

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

i. Insulin, antacids and analgesics.

8. Home or community-based services, if provided under s. 46.27 (11), 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.

(e) 1. The department shall pay for inpatient psychiatric care for persons aged 22 to 64, including alcohol and other drug abuse services, under par. (a) 4. a and services under par. (b) 6. f only if the county department under s. 51.42 for the county in which the person resides authorizes payment, except that this provision does not apply if the county department under s. 51.42 in the county in which the person resides participates in the program under s. 49.45 (6) or if the recipient of the care or services is enrolled in a health maintenance organization under the department's authority under s. 49.45 (9). The county department under s. 51.42 and the county department under s. 46.215 or 46.22 for the county in which the patient resides shall develop a written agreement for programs for persons requiring these mental health services. The county department under s. 51.42 is liable for a portion of the customary charge or of the medical assistance rate for these services, whichever is less, as follows:

a. For inpatient psychiatric care, including alcohol and other drug abuse services, under par. (a) 4. a for recipients aged 22 to 64, the county department under s. 51.42 is liable for 20% of the charge or rate paid by the department.

b. For services under par. (b) 6. f, the county department under s. 51.42 is liable for 10% of the charge or rate.

2. Subdivision 1 does not apply unless a federal waiver has been issued that authorizes the department to restrict a person's free choice of provider.

(f) Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.

(3) CHILD SUPPORT SUPPLEMENT. In developing a plan under s. 46.257 (6), the department may determine that physical custody of a minor child pursuant to a court order, or to a stipulation approved by a court, under ch. 767 constitutes application for benefits under this section. This subsection applies from October 1, 1986 to September 30, 1994.

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; 1985 a. 29, 120, 176, 253.

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.

3g. Liquid assets for a single person limited to:

a. In 1985, $1,600.

b. In 1986, $1,700.

c. In 1987, $1,800.

d. In 1988, $1,900.

e. After December 31, 1988, $2,000.

3m. Liquid assets for a family of 2, limited to:

a. In 1985, $2,400.

b. In 1986, $2,550.

c. In 1987, $2,700.

d. In 1988, $2,850.

e. In 1989, $3,000.

3r. Liquid assets limited to $300 for each legal dependent in addition to a family of 2.

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 the following:

1. All beneficiaries, for those services enumerated under s. 49.46 (2) (a) and (b) 3 and 6. a to d, h and i.

2. All beneficiaries who reside in an intermediate care facility or a skilled nursing facility, for those services enumerated under s. 49.46 (2) (b) 1, 2, 4, 5 and 6. f and g.

(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.

(d) No payment under this subsection may include care for services rendered earlier than 3 months preceding the month of application.

(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; 1985 a. 29.

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

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

(c) Promulgate 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 in-center 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 post-operative 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; 1985 a. 332 s. 251 (1).

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) 6, 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. 49.90 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. 49.90 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); 1985 a. 29 s. 3202 (23), (46).

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 51 and 53 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.

(3m) PROHIBITED PROVIDER CHARGES. (a) No provider may knowingly impose upon a recipient charges in addition to payments received for services under ss. 49.45 to 49.47 or knowingly impose direct charges upon a recipient in lieu of obtaining payment under ss. 49.45 to 49.47 except under the following conditions:

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

2. 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 s. 49.45 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 s. 49.45.

3. Benefits or services for which recipient copayment, coinsurance or deductible is required under s. 49.45 (18), not to exceed maximum amounts allowable under 42 CFR 447.53 to 447.58.

(b) A person who violates this subsection may be fined not more than $25,000 or imprisoned not more than 5 years or both.

(4) PROHIBITED FACILITY CHARGES. (a) 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 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.

(b) A person who violates this subsection may be fined not more than $25,000 or imprisoned not more than 5 years or both.

(4m) PROHIBITED CONDUCT; FORFEITURES. (a) No person, in connection with medical assistance, may:

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

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

3. Knowingly conceal or fail to disclose any event of which the person has knowledge that affects his or her initial or continued right to a benefit or payment or affects the initial or continued right to a benefit or payment of any other person in

whose behalf he or she has applied for or is receiving a benefit or payment.

(b) A person who violates this subsection may be required to forfeit not less than $100 nor more than $15,000 for each statement, representation, concealment or failure.

(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; 1985 a. 29 s. 3202 (23); 1985 a. 269.

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. The department of justice or district attorney shall notify the medical examining board of any such prosecution of a person holding a license granted by the board.

History: 1977 c. 418; 1985 a. 340.

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 department under s. 46.215 or 46.22 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; 1985 a. 176.

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 (1) (d).

(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 departments under s. 46.215 or 46.22 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 promulgate rules to administer this program.

(b) The department shall pay the nonfederal share for such services enumerated in par. (a). The department shall, to the extent possible, use available in-kind services to provide the nonfederal share for the program under this subsection.

(c) The department shall reimburse under s. 49.52 (1) and (2) county departments under ss. 46.215 and 46.22 for payments advanced by the county departments to or in behalf of recipients of aid and potential aid recipients.

(d) In administering the program under this subsection, the department shall, directly or by contract, do all of the following:

1. Notify participants of available child care and transportation funding.

2. Inform individuals required to participate in the program of the sanctions for failure to register and participate.

3. Provide information concerning the program to non-English speaking participants in language which they can understand.

4. Give priority for receipt of services to individuals not engaged in another education or job training program.

(e) The department shall establish procedures to ensure that reimbursement of child care expenses of participants in the program under this subsection is made consistently within 2 weeks after a recipient submits a claim form.

(7c) EMPLOYMENT SEARCH PROGRAM. (a) The department shall administer an employment search program under 42 USC 602 (a) (19) for recipients of aid to families with dependent children. The department shall provide directly, or purchase through contracts, services including support services to assist individuals in obtaining regular, unsubsidized employment. Support services shall include child care and transportation costs reasonably incurred by program participants in order to meet the requirements of the program.

(b) The department shall pay the nonfederal share for services provided under par. (a).

(7g) GRANT DIVERSION PROJECT PROGRAM. (a) In conjunction with the program under sub. (7), the department may administer by contract, in up to 10 counties, projects of grant diversion for recipients of aid to families with dependent children under the federal work supplementation program authorized by 42 USC 614. Under a grant diversion project, the department may use all or a part of the grant of an individual receiving aid to families with dependent children provided under s. 49.19 to supplement wages for a job performed by that individual under a contract between the department or its designated representative and a governmental unit or another individual, a corporation, including a nonprofit corporation, a partnership or any other association.

(b) From the appropriations under s. 20.435 (4) (d) and (p), the department shall reimburse a governmental unit or individual, a corporation, including a nonprofit corporation, a partnership or any other association contracting with the department under par. (a) to supplement the wages for a job performed by an individual under par. (a).

(c) The basis for payment of an individual performing work of a project under this subsection shall be per hour of labor performed by the individual using as the hourly rate the higher of the following, except that, if the labor performed is for a municipality as defined under s. 66.293 (3) (b), the wage shall be at the rate set forth under s. 66.293:

1. The hourly wage paid entry level employes of the governmental unit or individual, corporation, including a nonprofit corporation, partnership or any other association who perform the same work.

2. The federal minimum hourly wage prescribed by 29 USC 206 (a) (1).

(ca) Payment under par. (c), after the earned income disregards under s. 49.19 (5) (a) 2 and 3 have been applied, shall additionally be subject, for 9 consecutive months, to an earned income disregard of $30 and a disregard equal to one-third of the remaining earned income.

(d) No contract between the department and a governmental unit or individual, a corporation, including a nonprofit corporation, a partnership or any other association under par. (a) may be in contravention of an existing collective bargaining agreement which is applicable entered into by the governmental unit or individual, corporation, including a nonprofit corporation, a partnership or any other association.

(e) Recipient participation in the grant diversion project shall be voluntary. The department shall promulgate rules establishing the criteria for recipient participation.

(f) As a part of the grant diversion project, the department may request a waiver from the secretary of the federal department of health and human services of application of the monthly employment time eligibility limitation set forth under 45 CFR 233.100 (a) (1) (i) for the aid to families with dependent children program. The department may request the waiver in order to conduct a study to determine the impact upon the employment and eligibility of certain AFDC recipients of the absence of requirements under 45 CFR 233.100 (a) (1) (i).

(g) The department shall pay the nonfederal share of the administrative costs of the program under this subsection.

(7j) WORK EXPERIENCE AND JOB TRAINING PILOT PROGRAM. (a) The department shall administer a work experience and job training pilot program in conjunction with the program under sub. (7) for recipients of aid to families with dependent children. The department shall ensure that the pilot program is coordinated with programs under the job training partnership act, 29 USC 1501 to 1781, and other job training programs. The department shall select 2 or more counties, from the counties in which the program under sub. (7) operates, to participate in the pilot program. The department shall promulgate rules for the administration of the pilot program. The department shall provide services under this subsection starting no later than January 1, 1987.

(am) Notwithstanding par. (a), if the pilot program under this subsection is implemented in more than 2 counties, the department shall select as the 3rd county to participate in the pilot program a rural county in which the program under sub. (7) does not operate on May 1, 1986.

(as) The department shall ensure that in one county participating in the pilot program under this subsection priority for participation in the pilot program is given to individuals who want to participate, whether they are required to participate or not. The department shall ensure that in the other county or counties participating in the pilot program priority for participation in the pilot program is given to individuals who are required to participate.

(b) The department may provide services for the pilot program under this subsection directly or by contract with a public or private agency. Notwithstanding s. 16.75 (6), any contract for the purchase of services for the pilot project shall be awarded by competitive bidding or by competitive sealed proposals.

(c) The pilot project established under this subsection shall include all of the following:

1. Enrollment, assessment and job search, including:
a. Registration and case review.
b. Remedial education.
c. Independent job search.
d. Group job search.
e. Employability assessment.
2. Subsidized employment, including:
a. On-the-job training.
b. Grant diversion under sub. (7g).
c. Work skills experience.
3. Job training, including:
a. Vocational skills training.
b. Private industry council job training programs under the job training partnership act, 29 USC 1501 to 1781.
c. Youth employment programs.
d. Other classroom programs.
4. Community work experience program as provided under par. (d).
5. Evaluation of the employment status of participants at 2 intervals following the start of employment, the first no sooner than 30 days and the 2nd no sooner than 6 months and no later than one year following the start of employment.

(cm) The department shall ensure that individuals who are required or who volunteer to participate in the pilot program

under this subsection are informed of the sanctions which may be imposed in connection with the pilot program.

(d) 1. A community work experience program under 42 USC 609 established as a part of the pilot program under this subsection shall be subject to this paragraph and the rules promulgated under par. (a), notwithstanding ss. 46.215 (1) (o), 46.22 (1) (b) 11 and 49.19 (4) (ds). Rules promulgated by the department under sub. (7m) apply to a community work experience program established as part of the pilot program to the extent that they do not conflict with this subsection.

2. A county participating in the work experience and job training pilot program under this subsection shall establish a community work experience program. The pilot county shall pay 10% of the federally allowable administrative costs of the community work experience program that are not reimbursed by the federal government and the department shall, from the appropriation under s. 20.435 (4) (df), reimburse the county for the remainder of the federally allowable administrative costs not reimbursed by the federal government.

3. In each county participating in the pilot program, the county executive or county administrator or, if the county has no county executive or county administrator, the chairperson of the county board shall appoint a council, to be known as the community work experience program council, to coordinate job placements at job sites for the program under this paragraph. The community work experience program council shall include the following members:

a. An elected county official.

b. A representative of the county department under s. 46.215, 46.22 or 46.23.

c. A representative of a local school district.

d. A representative of organized labor.

e. A recipient of aid to families with dependent children or a representative of a recipient advocacy group.

f. A representative of private business nominated by the area private industry council under the job training partnership act, 29 USC 1501 to 1781.

g. A representative of the office which administers the program under sub. (7) in the county.

4. A person shall participate in the community work experience program under this paragraph if the person has completed the rest of the work experience and job training pilot program and remains unemployed. No person may be required to work for more than 16 weeks or more than 32 hours per week in the community work experience program. Any person who would otherwise be exempt from registering for a work program because the person is caring for a child whose age is less than 6 years but who volunteers for the pilot program under this subsection shall be required to participate in a community work experience program if child day care licensed under s. 48.65 (1) or certified under s. 48.651 is available for the child.

5. A community work experience program may not be operated so as to supplant a regular employe of any governmental unit or to fill an established vacant governmental job.

6. A recipient of aid to families with dependent children who is caring for a child under the age of 3 and who is not required to participate in the pilot program established under this subsection but who volunteers to participate shall be informed of the provisions of subd. 4 and that the penalties under subd. 7 apply to a voluntary participant unless the participant has withdrawn from the community work experience program after giving 20 days' advance notice of his of her intent to withdraw.

7. Except as provided in subd. 6, if a participant in the community work experience program under this paragraph fails or refuses, without good cause, to participate in the program, sanctions shall apply as specified in 45 CFR 238.22.

8. Prior to imposing a sanction on a recipient of aid to families with dependent children for failure to participate in the community work experience program, the county must notify the recipient in writing of the reason for the proposed sanction. The notice must inform the recipient of the right to explain any disagreement with the decision informally by contacting the county department within 10 working days after the written notice. This right shall be in addition to the right to a formal review under 45 CFR 238.24.

(e) As part of the pilot program under this subsection, the department shall provide funds to pay child care costs of individuals who secure unsubsidized employment following participation in the pilot program and lose eligibility for aid to families with dependent children because of earned income. The funds shall be used to provide care for children for all or part of a day during which the individual works. The child care services must be provided by a child care provider as defined in s. 46.98 (1) (a). The department shall establish a formula for assistance under this paragraph based on ability to pay. The rates for child care services under this paragraph shall be determined as provided under s. 46.98 (4) (d).

(em) If child care funds provided in the pilot program under this subsection are insufficient to meet the needs of participants in the pilot program, a county may give priority for aid under s. 46.98 to participants in the pilot program, after meeting the needs of all parents eligible under s. 46.98 (4) (a) 4; however, a county may not reduce or terminate aid provided to any parent under s. 46.98 in order to provide aid to participants in the pilot program.

(f) The department shall request a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (c) to permit the department to provide medical assistance benefits in the circumstances under s. 49.46 (1) (cm) for 12 months, rather than 9 months, following the month in which the family is ineligible for aid to families with dependent children only to families in which one or more members secure employment following participation in the pilot program under this subsection. If a waiver is received, the department shall provide medical assistance benefits beginning January 1, 1987, or the date of the waiver, whichever is later, in the circumstances under s. 49.46 (1) (cm) for 12 months following the month in which the family is ineligible for aid to families with dependent children to families in which one or more members secure employment following participation in the pilot program under this subsection.

(g) The department shall submit a report evaluating the effectiveness of the pilot program established under this subsection and containing its findings and recommendations on which components of the pilot program under this subsection should be implemented statewide to the presiding officer of each house of the legislature by July 1, 1988.

(7m) COMMUNITY WORK EXPERIENCE PROGRAM. The department shall promulgate rules for the administration of community work experience programs that are administered by county departments under s. 46.215 (1) (o) or 46.22 (1) (b) 11.

(8) FAIR HEARING AND REVIEW. (a) Any person whose application for aid to families with dependent children is not acted upon by the county department under s. 46.215 or 46.22 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.

(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; 1985 a. 29, 176, 285; 1985 a. 332 ss. 251 (1), 253.

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.

49.52 Reimbursement to counties. (1) (a) Before January 1, 1987, the department shall reimburse each county from the appropriations under s. 20.435 (4) (b), (d), (o) and (p) for 100% of the cost of aid to families with dependent children granted under s. 49.19, for social services as approved by the department under ss. 46.215 (1), (2) (c) and (3) and 46.22 (1) (b) 8 and (e) 3, 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 s. 49.02 and s. 49.03, 1983 stats.

(ag) The department shall reimburse each county for reasonable costs of income maintenance administration within the limits of available federal funds and of the appropriations under ss. 20.435 (4) (de) and (nL) under a contract according to s. 46.032. The department shall determine reimbursement to counties for 1986 and the first 6 months of 1987 using the following method:

1. The state and federal income maintenance administration funds distributed to a county by contract under s. 46.032 for 1985 constitute the base allocation for that county.

2. a. For 1986, to the base allocation for each county under subd. 1 an amount is added or subtracted that is determined by computing 75% of the county's workload growth or decrease as a percentage of the projected statewide workload growth or decrease for 1986 as determined by the department, except that no county's allocation under this subdivision may be less than 95% of its base allocation under subd. 1.

b. For the first 6 months of 1987, to 50% of the base allocation under subd. 1 an amount is added or subtracted that is determined by computing 75% of the county's workload growth or decrease as a percentage of the projected statewide workload growth or decrease for the first 6 months of 1987 as determined by the department, except that no county's allocation may be less than 95% of 50% of its base allocation under subd. 1.

3. a. For 1986, an amount equal to 3% of the sum achieved by adding subds. 1 and 2. a is added to each county's allocation to provide for inflation.

b. For the first 6 months of 1987, an amount equal to 3% of the sum achieved by adding 50% of the total under subd. 1 and 100% of the total under subd. 2. b is added to each county's allocation to provide for inflation.

4. A county's percentage share of county funds matched to federal funds by all counties in 1984, constitutes the county's

percentage share appropriated under s. 20.435 (4) (de) in 1985-86 and is added to the county's allocation in 1986.

5. A county's percentage share of county funds matched to federal funds by all counties in 1984, constitutes the county's percentage share appropriated under s. 20.435 (4) (de) in 1986-87 and is added to the county's allocation for the first 6 months of 1987.

6. If funds received by a county under subd. 4 for expenditure in 1986 are not spent or encumbered on or before December 31, 1986, the department shall redistribute the amount not spent or encumbered in the following manner:

a. If a county received no federal funds matched to county funds in 1984 and has requested federal funds matched to county funds for 1986, to that county, up to the amount that would have been that county's percentage share of county funds matched to federal funds by all counties in 1984, had that county requested federal funds matched to county funds for 1984.

b. If funds remain following redistribution under subd. 6. a, to all counties that received federal funds matched to county funds in 1984, under the percentage share basis established under subd. 4, except that no funds shall be distributed to a county that failed to spend or encumber the funds on or before December 31, 1986.

7. If funds received by a county under subd. 5 for expenditure in 1987 are not spent or encumbered on or before December 31, 1987, the department shall redistribute the amount not spent or encumbered in the following manner:

a. If a county received no federal funds matched to county funds in 1984 and has requested federal funds matched to county funds for the first 6 months of 1987, to that county, up to the amount that would have been that county's percentage share of county funds matched to federal funds by all counties in 1984, had that county requested federal funds matched to county funds for 1984.

b. If funds remain following redistribution under subd. 7. a, to all counties that received federal funds matched to county funds in 1984, under the percentage share basis established under subd. 5, except that no funds shall be distributed to a county that failed to spend or encumber the funds on or before December 31, 1987.

(am) After December 31, 1986, the department shall reimburse each county from the appropriations under s. 20.435 (4) (b), (d), (o) and (p) for 100% of the cost of aid to families with dependent children granted under s. 49.19, for social services as approved by the department under ss. 46.215 (1), (2) (c) and (3) and 46.22 (1) (b) 8 and (e) 3, 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 s. 49.02.

(ar) The department shall develop funding incentives for counties to reduce rates of error. The department may use these incentives in formulating a method under par. (ag) to reimburse counties for reasonable costs of income maintenance administration for the 1987-89 biennium.

(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, including funding for foster care of a child receiving aid under s. 49.19, to county departments under ss. 46.215 and 46.22 or to county departments under s. 46.23 as provided under 1985 Wisconsin Act 29, section 3023 (3). County matching funds are required for the allocations under 1985 Wisconsin Act 29, section 3023 (3) (a), (bm), (e) to (h), (i) to (n) and (qr). 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. 51.423 (5). 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 under s. 46.215 or 46.22 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 contract under s. 46.031 (2g) 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 contract under s. 46.031 (2g) and approved.

(g) In addition to funds allocated under par. (d) to (f), each county department under ss. 46.215 and 46.22 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 under s. 51.423 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 each director of a county department under s. 46.215, 46.22 or 46.23 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; 1985 a. 29, 120, 176.

49.53 Limitation on giving information. (1) Before January 1, 1987, except as provided under sub. (2) or (3), no person may use or disclose information concerning applicants and recipients of general relief under s. 49.02 and s. 49.03, 1983 stats., 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.

(1m) After December 31, 1986, except as provided under sub. (2) or (3), no person may use or disclose information concerning applicants and recipients of general relief under s. 49.02, 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 department under s. 46.215 or 46.22 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).

(3) Each county department under s. 46.215 or 46.22 may release the current address of a recipient of aid under s. 49.19 to a law enforcement officer if the officer meets all of the following conditions:

(a) The officer provides, in writing, the name and social security number of the recipient.

(b) The officer satisfactorily demonstrates, in writing, all of the following:

1. That the recipient is a fugitive felon under 42 USC 602 (a) (9).

2. That the location or apprehension of the felon under subd. 1 is within the official duties of the officer.

3. That the officer is making the request in the proper exercise of his or her duties under subd. 2.

History: 1973 c. 147; 1975 c. 82; 1977 c. 261; 1981 c. 93; 1983 a. 27; 1985 a. 29, 176.

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 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 or the estate of a recipient or beneficiary against a 3rd party, including an insurer, is subrogated to the rights of the recipient, beneficiary or estate and may make a claim or maintain an action or intervene in a claim or action by the recipient, beneficiary or estate against the 3rd party.

(2) ASSIGNMENT OF ACTIONS. The department, county 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 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 or other party entitled to payment.

(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; 1985 a. 29 ss. 1051, 1052, 3200 (23).

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).

County recouped medical assistance payments from recipient of assistance who was minor. Perkins v. Utnehmer, 122 W (2d) 497, 361 NW (2d) 739 (Ct. App. 1984).

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 and is in need of general relief, public assistance or welfare aid, or who but for the ownership of such securities would qualify for general 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 general relief. Where the department accepts an assignment of such security as provided in this section it shall pay out as general relief an amount equal to the par value of the security assigned. The general 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 perform 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 general 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); 1985 a. 29, 120.

Note: Ch. 303, 1971 laws, provided for returning to its original owners Menominee Enterprises, Inc. bonds assigned to the state as a condition for receiving public assistance.

49.80 Low-income energy assistance. (1) DEFINITIONS. In this section:

(a) "County department" means a county department under s. 46.215 or 46.22.

(b) "Dwelling" means the residence of a low-income warm room program volunteer.

(c) "Household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(d) "Low-income warm room program materials" include a removable, insulated radiator blanket, a portable remote control thermostat and other cost-efficient materials or repairs necessary to achieve maximum heating efficiency in a dwelling.

(e) "Low-income warm room program volunteer" means a person who is eligible for assistance under 42 USC 8621 to 8629, whose dwelling, in comparison to the dwellings of other persons eligible for assistance under 42 USC 8621 to 8629, has a high ratio of space to occupant, and who volunteers to take the training under sub. (2) (b) and to cooperate with the department in the installation and operation of low-income warm room program materials in his or her dwelling.

(em) "Utility allowance" means the amount of utility costs paid by those individuals in subsidized housing who pay their

own utility bills, as averaged from total utility costs for the housing unit by the housing authority.

(f) "Weatherization" means an improvement of housing primarily designed to minimize the loss of an energy resource and includes the provision or installation of caulking, weather stripping or insulation.

(2) ADMINISTRATION. (a) The department shall administer low-income energy assistance as provided in this section to assist an eligible household to meet the costs of home energy with low-income home energy assistance benefits authorized under 42 USC 8621 to 8629.

(b) The department of health and social services shall administer a low-income warm room program to install low-income warm room program materials in the dwellings of low-income warm room program volunteers and to train the low-income warm room program volunteers and the members of each low-income warm room program volunteer's household in the operation of the low-income warm room program materials to achieve maximum health and heating efficiency.

(3) FUNDING. Subject to s. 16.54 (2), the department shall, within the limits of the availability of federal funds received under 42 USC 8621 to 8629:

(a) From the appropriation under s. 20.435 (4) (md), transfer or credit the following to the appropriation under s. 20.435 (4) (o) for social services under s. 49.52 (1) (d):

1. In federal fiscal year 1986, $1,200,000.

2. In federal fiscal year 1987, $1,200,000.

(b) By October 1 of every year from the appropriation under s. 20.435 (4) (md), determine under the revenue available the amounts payable under sub. (5) (b) and (c).

(c) From the appropriation under s. 20.435 (4) (mc), allocate the following for the department's expenses in administering the funds to provide low-income energy assistance:

1. In federal fiscal year 1986, $1,100,000

2. In federal fiscal year 1987, $1,100,000.

(d) From the appropriation under s. 20.435 (4) (md), allocate the following for the expenses of a county department in administering under sub. (4) the funds to provide low-income energy assistance:

1. In federal fiscal year 1986, $3,100,000.

2. In federal fiscal year 1987, $3,100,000.

(e) From the appropriation under s. 20.435 (4) (md):

1. Allocate the following under the priority of maintaining funding for the geographical areas on July 20, 1985, and, if funding is reduced, prorating contracted levels of payment, for contracting for the provision of weatherization to a household eligible under sub. (9):

a. In federal fiscal year 1986, 15% of the moneys received under 42 USC 8621 to 8629.

b. In federal fiscal year 1987, 15% of the moneys received under 42 USC 8621 to 8629.

1m. Allocate the following from the moneys reserved for the provision of weatherization under subd. 1, for administration of the low-income warm room program set forth under sub. (2) (b):

a. In federal fiscal year 1986, $10,000.

b. In federal fiscal year 1987, $10,000.

2. Allocate the following to a county department under s. 46.215 (1) (n) or 46.22 (1) (b) 10 for the payment of a household eligible for a benefit to meet weather-related or fuel supply shortage emergencies under sub. (8):

a. In federal fiscal year 1986, $2,400,000.

b. In federal fiscal year 1987, $2,400,000.

3. Allocate the following, except as provided under subds. 4 to 6, for the payment to a household eligible for low-income energy assistance under this section:

a. In federal fiscal year 1986, $52,100,000.

b. In federal fiscal year 1987, $52,100,000.

4. If federal funds received under 42 USC 8621 to 8629 and allocated under this subsection exceed $70,400,000 in federal fiscal year 1986 or exceed $70,400,000 in federal fiscal year 1987, and after allocation of this excess has been made as required under subd. 1, allocate the balance of moneys remaining, if any, in federal fiscal year 1986 or in federal fiscal year 1987 for the payment to a household eligible for low-income energy assistance under this section.

5. If federal funds received under 42 USC 8621 to 8629 total $66,880,000 or more but do not total $70,400,000 in federal fiscal year 1986 or in federal fiscal year 1987, allocate the moneys under subds. 1 to 3, except that the allocation under subd. 3 is the balance of moneys remaining after making the allocations in subds. 1 to 2.

6. If federal funds received under 42 USC 8621 to 8629 total less than $66,880,000 in federal fiscal year 1986 or in federal fiscal year 1987, the department shall submit a plan of expenditure under s. 16.54 (2) (b).

(4) APPLICATION PROCEDURE. (a) A household may apply after September 30 and before May 16 of any year for low-income energy assistance from the county department under s. 46.215 (1) (n) or 46.22 (1) (b) 10 and shall have the opportunity to do so on a form prescribed by the department for that purpose. The federal social security administration may provide to the department information constituting an application under this paragraph for those households eligible under sub. (5) (a).

(b) If by February 1 of any year the number of households applying under par. (a) substantially exceeds the number anticipated, the department may reduce the amounts of payments made under sub. (6) made after that date. The department may suspend the processing of additional applications received until the department adjusts benefit amounts payable.

(5) ELIGIBILITY. Subject to the requirements of subs. (4) (b) and (8), the following shall receive low-income energy assistance under this section:

(a) A household receiving a benefit under s. 49.177 or 42 USC 1381 to 1383c, unless eligibility of the household depends upon an individual of the household whose benefit under 42 USC 1381 to 1383c is reduced because:

1. The individual resides for an entire month in a hospital, extended care facility, nursing home or intermediate care facility which receives medical assistance benefits on behalf of the individual.

2. The individual or individual and eligible spouse live in another individual's household and receive support and maintenance in kind from the other individual.

3. The individual who is a child lives together with a parent or the spouse of a parent whose income and resources are deemed to be included with those of the child, regardless of whether the income and resources are available to the child.

(b) A household with income which is not more than 105% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2).

(c) A household with income which is more than 105% and not more than 150% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2).

(d) A household with income within the limits specified under par. (b) that resides in public housing in which a utility allowance is applied to determine the amount of rent that is subsidized or administered by a municipality or county or by the state or federal government.

(e) A household with income within the limits of par. (c) that resides in public housing in which a utility allowance is applied to determine the amount of rent that is subsidized or administered by a municipality or county or by the state or federal government.

(6) BENEFITS. Within the limits of federal funds allocated under sub. (3) and subject to the requirements of sub. (4) (b) and s. 16.54 (2) (b), the following benefits shall be paid under this section:

(a) To a household eligible under sub. (5) (a), a benefit amount equal to that set forth under par. (b) or (c), depending on household income, which shall be mailed to the household.

(b) To a household eligible under sub. (5) (b), a base benefit amount.

(c) To a household eligible under sub. (5) (c), a benefit amount which is 66 2/3% of the base benefit amount in par. (b).

(d) To a household eligible under sub. (5) (d) or (e), a benefit amount equal to that set forth under par. (b) or (c), depending on household income, less the amount of utility allowance that is applied to the income of the household to determine the amount of rent.

(7) INDIVIDUALS IN STATE PRISONS. No payment under sub. (6) may be made to a prisoner who is imprisoned in a state prison under s. 53.01 or to a person placed at the Ethan Allen school or the Lincoln Hills school.

(8) EMERGENCY PROGRAM. A household eligible for a benefit under sub. (5) may also be eligible for a benefit payment to meet weather-related or fuel supply shortage emergencies. A county department under s. 46.215 (1) (n) or 46.22 (1) (b) 10 shall define the circumstances constituting an emergency for which a payment may be made and shall establish the amount of payment to an eligible household or individual.

(9) WEATHERIZATION PROGRAM. A household may receive weatherization from an entity with which the department contracts for provision of weatherization if the income of the household is up to 125% of the income poverty guidelines for the nonfarm population of the United States as prescribed by the federal office of management and budget under 42 USC 9902 (2).

History: 1985 a. 29 ss. 1055g, 2488h to 2488n; 1985 a. 176, 332.

49.90 Liability of relatives; enforcement. (1) (a) 1. The parent and spouse of any dependent person who is unable to maintain himself or herself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no parent shall be required to support a child 18 years of age or older.

2. Except as provided under sub. (11), the parent of a dependent person under the age of 18 shall maintain a child of the dependent person so far as the parent is able and to the extent that the dependent person is unable to do so. This requirement does not supplant any requirement under subd. 1.

3. Subdivision 2 does not apply after December 31, 1989.

NOTE: Par. (a) is repealed and recreated by 1985 Act 56, eff. 1-1-90 to read: "(a) The parent and spouse of any dependent person who is unable to maintain himself or herself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no parent shall be required to support a child 18 years of age or older."

(b) For purposes of this section those persons receiving benefits under federal Title XVI or under s. 49.177 shall not be deemed dependent persons.

(c) Before January 1, 1990, for the purpose of determining the ability of a parent or spouse to maintain a dependent person or the ability of a parent to support the child of his or her dependent child under the age of 18, credit granted under s. 71.09 (7) shall not be considered.

(cm) After December 31, 1989, for the purpose of determining the ability of a parent or spouse to maintain a dependent person, credit granted under s. 71.09 (7) shall not be considered.

(1m) (a) 1. Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and ch. 48. Each parent of a dependent person under the age of 18 has an equal obligation to support the child of the dependent person as provided under sub. (1) (a) 2.

2. Subdivision 1 does not apply after December 31, 1989.

(b) 1. Each spouse has an equal obligation to support the other spouse as provided in this chapter. Each parent has an equal obligation to support his or her minor children as provided in this chapter and ch. 48.

2. Subdivision 1 applies after December 31, 1989.

(2) Upon failure of these relatives to provide maintenance the authorities or board shall submit to the district attorney a report of its findings. Upon receipt of the report the district attorney shall, within 60 days, apply to the circuit court for the county in which the dependent person resides for an order to compel such maintenance. Upon such an application the district attorney shall make a written report to the county department under s. 46.215 or 46.22, with a copy to the chairperson of the county board of supervisors in a county with a single-county department or the county boards of supervisors in counties with a multicounty department, and to the department of health and social services.

(3) At least 10 days prior to the hearing on said application notice thereof shall be served upon such relatives in the manner provided for the service of summons in courts of record.

(4) (a) 1. The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability (considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the husband or wife; then the father and the mother; and then the grandparents in the instances in which sub. (1) (a) 2 applies. The order shall specify a sum which will be sufficient for the support of the dependent person, to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person, but is able to contribute to the person's support, the court may direct 2 or more of the relatives to maintain the person and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person, but are able to contribute to the person's support, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and social services and distributed as required by state

and federal law. An order under this subdivision that relates to maintenance required under sub. (1) (a) 2 shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses, subject to the limitations under subs. (1) (a) 2 and (11) (a). Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

2. Subdivision 1 does not apply after December 31, 1989.

(b) 1. The circuit court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from these relatives, if they have sufficient ability (considering their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the husband or wife; then the father and the mother. The order shall specify a sum which will be sufficient for the support of the dependent person, to be paid weekly or monthly, during a period fixed by the order or until the further order of the court. If the court is satisfied that any such relative is unable wholly to maintain the dependent person, but is able to contribute to the person's support, the court may direct 2 or more of the relatives to maintain the person and prescribe the proportion each shall contribute. If the court is satisfied that these relatives are unable together wholly to maintain the dependent person, but are able to contribute to the person's support, the court shall direct a sum to be paid weekly or monthly by each relative in proportion to ability. Contributions directed by court order, if for less than full support, shall be paid to the department of health and social services and distributed as required by state and federal law. Upon application of any party affected by the order and upon like notice and procedure, the court may modify such an order. Obedience to such an order may be enforced by proceedings for contempt.

2. Subdivision 1 applies after December 31, 1989.

(5) Any party aggrieved by such order may appeal therefrom but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

(6) (a) 1. If any relative who has been ordered to maintain an institutionalized dependent person or an institutionalized child of a dependent person under 18 years of age neglects to do as ordered, the authorities in charge of the dependent or child or in charge of the institution may recover in an action on behalf of the general relief agency or institution for general relief or support accorded the dependent person or child against such relative the sum prescribed for each week the order was disobeyed up to the time of judgment, with costs.

2. Subdivision 1 does not apply after December 31, 1989.

(b) 1. If any relative who has been ordered to maintain an institutionalized dependent person neglects to do as ordered, the authorities in charge of the dependent or in charge of the institution may recover in an action on behalf of the general relief agency or institution for general relief or support accorded the dependent person against such relative the sum prescribed for each week the order was disobeyed up to the time of judgment, with costs.

2. Subdivision 1 applies after December 31, 1989.

(7) When the income of a responsible relative is such that he would be expected to make a contribution to the support of the recipient and such recipient lives in the relative's home and requires care, a reasonable amount may be deducted from the expected contribution in exchange for the care provided.

(9) In any action under this section the court may impose any sum ordered paid by a party as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment or order.

(10) If an action under this section relates to support of a child, to the extent appropriate the court shall determine support in the manner provided under s. 767.25.

NOTE: Sub. (10) is created eff. 7-1-87 by 1985 Wis. Act 29.

(11) (a) The parent of a dependent person who is under the age of 18 and is alleged to be the father of a child is responsible for maintenance of that child only if the paternity of the child has been determined to be that of the dependent person as provided in subch. VIII of ch. 48 or under ss. 767.45 to 767.60. Subject to the limitations under sub. (1) (a), if a parent of the dependent person is liable for the health care expenses of the dependent person's child under sub. (4) (a) 1, this liability extends to all expenses of the child's medical care and treatment, including those associated with the childbirth, regardless of whether they were incurred prior to the determination of paternity, except that the court may limit the liability of the dependent person's parent for the child's medical expenses if the expenses exceed 5% of the parent's federal adjusted gross income for the previous taxable year, if the parent files separately, or 5% of the sum of the parents' federal adjusted gross income for the previous taxable year, if the parents file jointly.

(b) Paragraph (a) does not apply after December 31, 1989.

History: 1973 c. 90 ss. 296e, 560 (2); 1973 c. 147, 336; Sup. Ct. Order, 67 W (2d) 773; 1975 c. 82, 199; 1977 c. 271, 449; 1979 c. 221, 352; 1981 c. 317; 1983 a. 186; 1985 a. 29 ss. 1055m, 1108 to 1114, 3200 (23); 1985 a. 56, 176, 311, 332.