

Scott Walker  
GovernorKitty Rhoades  
Secretary

**State of Wisconsin**  
Department of Health Services

DATE: May 19, 2015

TO: County Department of Community Program Directors  
County Departments of Developmental Disability Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors

FROM: Robert Halverson, Director   
Bureau of Fiscal Services

SUBJECT: Wis. Admin. Code ch. DHS 1 – Uniform Fee System

**The letter dated March 18, 2015, on this subject is obsolete and should be destroyed.**

The State of Wisconsin Department of Health Services (DHS) has recently become aware of several situations where some counties may be engaging in collection efforts to recover the cost of care and services from a liable party contrary to state law or administrative rule. The purpose of this memorandum is to clarify and improve general understanding of the Wisconsin Statutes and Administrative Codes related to collection activities for the cost of services covered under Wis. Admin. Code ch. DHS 1 – Uniform Fee System.

1. **ABILITY TO PAY DETERMINATION.** A client or liable/responsible party must have an established ability to pay before a County can bill or otherwise engage in collection activities in pursuit of payment. If a County determines that a liable/responsible party does not have the ability to pay the liability either through an evaluation of that party's full financial information, or, by using a shortcut method such as confirmation that the party is an SSI recipient, then a County, or its contracted entity, must cease seeking payment unless and until that party's financial circumstances change. Wis. Admin. Code § DHS 1.05(6)(a) and (b).
2. **INPATIENT CARE.** The cost of inpatient care is a liability subject to the ability to pay provisions of Wis. Admin. Code ch. DHS 1 (*see*, Wis. Stat. § 46.10(14)). Under all circumstances, the client or liable/responsible party must have an established ability to pay before a County can engage in collection activities. If a County determines that a liable/responsible party does not have the ability to pay the liability either through an evaluation of that party's full financial information, or, by using a shortcut method such as confirmation that the party is an SSI recipient, then the County, or its contracted entity, must cease seeking payment unless and until that party's financial circumstances change. Wis. Admin. Code § DHS 1.05(6)(a) and (b). While Wis. Admin. Code § DHS 1.02 (6)(a) applies to a liability for inpatient services, this provision is applicable only if the liable/responsible party first has an established ability to pay. In any event, the County is prohibited from pursuing payment from a liable/responsible party for the cost of inpatient care after it has

been determined that that liable/responsible party does not have the ability to pay that liability.

3. **NO ABILITY TO PAY – PERIODIC INQUIRY.** After a County determines that a party does not have an ability to pay, then the County has the authority to inquire on a periodic basis (e.g., annually) whether that party's financial circumstances have changed to the degree that the County may initiate or continue its collection activities. Wis. Stat. § 46.10(8)(c) and (10). Although it is at the County's discretion as to how it conducts its periodic reviews, all County collection activities, which includes all activities contracted out by the County, under Wis. Admin. Code ch. DHS 1 may be reviewed by DHS for compliance. Wis. Admin. Code § DHS 1.05(3).
4. **STATUTE OF LIMITATIONS.** Due to the statute of limitations (*see*, Wis. Stat. § 893.87), any such periodic inquiry is limited to 10 (ten) years from the liability determination date, unless that liability was converted to a judgment, in which case the statute of limitations is 20 years from the date of the judgment. *See*, Wis. Stat. § 893.40.
5. **WAIVER OF LIABILITY.** If a County determines that a liable/responsible party does not have the ability to pay, then—in its discretion—and after giving due regard to the specifics of the case, a County is authorized to compromise or waive that liability in whole or in part. Wis. Stat. § 46.10(8)(d). In any event, a County is prohibited from pursuing payment from a liable/responsible party after it has been determined that that party does not have the ability to pay the liability.
6. **MINIMUM PAYMENT.** Wis. Admin. Code § DHS 1.03(13) permits agencies to use minimum charges up to \$25 per month or 3% of family income if the liable/responsible party has an ability to pay. If the County determines that a responsible party does not have the ability to pay the liability either through an evaluation of that responsible party's full financial information, or, by using a shortcut method such as confirmation that the responsible party is an SSI recipient, then the County must cease seeking payment unless and until that responsible party's financial circumstances change. Wis. Admin. Code § DHS 1.05(6)(a) and (b).
7. **COLLECTION AGENCIES.** Wis. Admin. Code § DHS 1.05(5) and (13)(c)2. allows a County to refer accounts to an outside collection agency. All Counties must follow the **Guidelines for Using a Collection Agency under the Uniform Fee System.** These guidelines are available from the Department's Bureau of Fiscal Services.
8. **CONTRACTUAL ALLOWANCE.** If a client received care at a DHS Mental Health Institute and the cost of that care has been paid by Medicare, Tricare, or the Veterans Administration, the contractual allowance is the difference between what was billed and what the governmental third-party payer determined to be the allowable amount. DHS's agreement

with these payers is to accept the allowable amount (less coinsurance and deductibles) as payment in full. A County is not allowed to bill a liable/responsible party for this contractual allowance.

9. **DHS's ABILITY TO PAY DETERMINATIONS.** If DHS determines that a liable/responsible party does not have the ability to pay a liability either through an evaluation of that party's full financial information, or by using a shortcut method, then this decision is final. As a result, a County is not allowed to attempt to seek payment from the liable/responsible party.
  
10. **ACCOUNTS REFERRED TO THE COUNTY.** If a County is interested in taking over the collections from a specific party, then the County should contact DHS's Bureau of Fiscal Services. If the request is approved, then the County may begin assuming responsibility for collections efforts. This request-approval process occurs on a client by client basis at the request of the County.

## CONTACTS

If you have any additional questions, please contact the following:

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