

**1870 MEDICAL ASSISTANCE FRAUD: MAKING A FALSE STATEMENT
IN AN APPLICATION FOR A BENEFIT OR PAYMENT — §
946.91(2)(a)**

Statutory Definition of the Crime

Medical assistance fraud, as defined in § 946.91(2)(a) of the Wisconsin Statutes, is committed by a person who intentionally makes or causes to be made any false statement or representation of a material fact in any application for any medical assistance payment or benefit.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally made or caused to be made a (statement) (representation) of a material fact in an application for (payment) (a benefit) in connection with a medical assistance program.

The (statement) (representation) claimed to have been made is that: (specify the alleged statement or representation).

A material fact is one that affects eligibility for or the amount of a (payment) (benefit).²

"Medical assistance program" means a program providing services and items relating to health care to persons who apply for that assistance.³

2. The (statement) (representation) was false when made.
3. The defendant knew that the (statement) (representation) was false.⁴
4. The application for (payment) (benefit) was submitted.

The defendant does not have to receive the (payment) (benefit) sought. All that is required is that the application be submitted for payment.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1870 was originally published in 1992 and revised in 1993 and 2003. This revision was approved by the Committee in October 2014; it reflects the renumbering of § 49.795 as § 946.92.

The offense was formerly defined in § 49.49; that statute was renumbered § 946.91 by 2013 Wisconsin Act 226 [effective date: April 10, 2014]. The offense definition in § 946.91(2)(a) is the rough equivalent of the one provided in former § 49.49(a) ¶1.

1. This instruction is for violations of § 946.91(2)(a), which can be committed either by the person who provides services as part of the medical assistance program or by the person who receives the services. The provider of services may commit the offense by submitting a fraudulent "application for payment." The recipient may commit the offense by submitting fraudulent "application for benefits." The offense is a Class H felony with a maximum fine of \$25,000.

2. This definition of "material" is consistent with the discussion of the term in State v. Williams, 179 Wis.2d 80, 505 N.W.2d 468 (Ct. App. 1993):

If the false statements did not affect the amount of benefits or payments made, an issue of materiality is raised. If the statements had no legal effect, the court could determine as a matter of law that the false statements were not material. At the very least, the jury should be given the opportunity to determine whether the false statements were material based upon the evidence concerning the legal effect of the statements.

179 Wis.2d 80, 87-88.

3. The definition of "medical assistance program" was devised by the Committee. "Medical assistance" is defined in § 946.91(1)(b) as: "the program providing aid under subch. IV of Ch. 49, except ss. 49.468 and 49.471." The statutes referred to in the definition are extremely long and complex and do not lend themselves to convenient use as a definition of the term "medical assistance."

4. The recodification of former § 49.49 as § 946.91 substituted "intentionally" for "willfully," clarifying the mental element required. When used in the Criminal Code, "intentionally" requires that the actor have the purpose to cause the result specified and "have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" Section 939.23(3). As applied to this offense, that requires that the defendant knew the statement or representation in the application was false.