



State of Wisconsin
2017 - 2018 LEGISLATURE

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2017 SENATE BILL 174

April 13, 2017 - Introduced by Senators COWLES, KAPENGA, CRAIG, MARKLEIN and STROEBEL, cosponsored by Representatives JACQUE, KRUG, BRANDTJEN, R. BROOKS, DUCHOW, EDMING, GANNON, HORLACHER, KATZMA, KNODL, KREMER, MURPHY, PETERSEN, SKOWRONSKI, STEFFEN, THIESFELDT, TITTL and TUSLER. Referred to Committee on Public Benefits, Licensing and State-Federal Relations.

1 **AN ACT to amend** 20.435 (4) (bm), 20.435 (4) (L), 20.435 (4) (nn), 20.435 (4) (pa),
2 20.437 (2) (dz), 20.437 (2) (L) and 49.793 (2) (a); and **to create** 49.79 (11) and
3 49.846 of the statutes; **relating to:** incentive programs for counties and tribes
4 that identify fraudulent activity in certain public assistance programs,
5 removing inactive FoodShare accounts, expunging unused FoodShare benefits,
6 limiting the number of FoodShare replacement cards, requiring the exercise of
7 rule-making authority, and making appropriations.

Analysis by the Legislative Reference Bureau

Generally, this bill requires the creation of optional incentive programs for counties and tribes to receive reward payments for identifying fraudulent activity in certain public assistance programs; the removal and offline storage of benefits from certain inactive FoodShare accounts; and the expungement of FoodShare benefits that have been unused for over one year. The bill also requires the Department of Health Services to request a waiver to limit the number of replacement electronic benefit cards a FoodShare recipient may receive. FoodShare is also known as the food stamp program and the federal Supplemental Nutrition Assistance Program and provides benefits to eligible low-income households for the purchase of food. DHS administers FoodShare. The federal government pays the benefits for FoodShare while the state and federal governments share the cost of administration.

SENATE BILL 174***Incentive programs***

Under the bill, DHS is required to establish an optional incentive program, by rule, under which a county with a population of less than 750,000 or tribe receives a reward payment if an employee or officer of the county or tribe identifies fraudulent activity in Medical Assistance or FoodShare. Under the bill, the amount of the reward payment under the program is 20 percent of the amount that DHS determines will be saved in the program over a 12-month period as the result of eliminating the identified fraudulent activity. Under the bill, the Department of Children and Families is required to establish a similar incentive program, by rule, that applies to fraudulent activity in Wisconsin Works that is identified by an employee or officer of a county or tribe.

Under current law, a county or tribe may retain a portion of incorrect overpayments in public assistance programs administered by DHS, including Medical Assistance and FoodShare, that are recovered as the result of the efforts of an employee or officer of the county or tribe. Currently, DHS establishes by rule the portion of FoodShare overpayment recoveries that a county or tribe may retain. Under the bill, a county or tribe may retain the full amount of FoodShare overpayment recoveries that the state is permitted to retain under federal law. The bill also provides that, if a county or tribe receives a reward payment under the optional incentive program, the county or tribe may not retain overpayments that are recovered as the result of the identified fraudulent activity. Current law also allows a county or tribe to retain a portion of incorrect overpayments that are recovered in the Wisconsin Works program as the result of the efforts of an employee or officer of the county or tribe. Under current law, Milwaukee County may not retain a portion of incorrect payments that are recovered as a result of the efforts of an employee or officer of the county.

FoodShare changes

The bill requires DHS to remove and store offline all FoodShare benefits posted to a recipient's benefit account if the account has not been accessed in six months or longer. The benefits must be made available again to the recipient if the recipient requests them or reapplies for FoodShare benefits, whichever is appropriate under the circumstances. DHS must attempt to notify the recipient before removing the benefits and must describe how the benefits may be returned to the account. The bill also directs DHS to expunge any FoodShare benefits that have not been used after one year, regardless of whether the benefits are being stored offline from an inactive account or are posted to active accounts.

The bill directs DHS to request a waiver from the U.S. Department of Agriculture, no later than six months after the bill goes into effect, to allow DHS to limit the number of replacement cards that it must issue in a 12-month period to a FoodShare recipient who reports that his or her electronic benefit card has been lost, stolen, damaged, or destroyed to four replacement cards in a 12-month period. If the USDA does not disapprove the waiver, DHS may limit, to the number authorized under the waiver, the number of replacement cards that it issues to a FoodShare recipient in a 12-month period. Under federal regulations, there is no limit on the number of replacement cards that must be issued to a household for cards that are

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reported lost, stolen, or damaged. However, under the federal regulations, a state may opt to require a household member to contact the state agency to provide an explanation if the number of replacement cards requested reaches a threshold that is determined to be excessive. The threshold for an excessive number of replacement cards may not be less than four within a 12-month period. The household must be given notice that it has reached the threshold and that it must contact the state agency. If a household member does not contact the state agency, no replacement card is issued and the case is referred for investigation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (4) (bm) of the statutes is amended to read:
2 20.435 (4) (bm) *Medical Assistance, food stamps, and Badger Care*
3 *administration; contract costs, insurer reports, and resource centers.* Biennially, the
4 amounts in the schedule to provide a portion of the state share of administrative
5 contract costs for the Medical Assistance program under subch. IV of ch. 49 and the
6 Badger Care health care program under s. 49.665 and to provide the state share of
7 administrative costs for the food stamp program under s. 49.79, other than payments
8 under s. 49.78 (8), for reward payments under s. 49.846 (2), to develop and implement
9 a registry of recipient immunizations, to reimburse 3rd parties for their costs under
10 s. 49.475, for costs associated with outreach activities, for state administration of
11 state supplemental grants to supplemental security income recipients under s.
12 49.77, to administer the pharmacy benefits purchasing pool under s. 146.45, and for
13 services of resource centers under s. 46.283. No state positions may be funded in the
14 department of health services from this appropriation, except positions for the
15 performance of duties under a contract in effect before January 1, 1987, related to
16 the administration of the Medical Assistance program between the subunit of the
17 department primarily responsible for administering the Medical Assistance

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1 program and another subunit of the department. Total administrative funding
2 authorized for the program under s. 49.665 may not exceed 10% of the amounts
3 budgeted under pars. (p) and (x).

4 **SECTION 2.** 20.435 (4) (L) of the statutes is amended to read:

5 20.435 (4) (L) *Fraud and error reduction.* All moneys received as the state's
6 share of the recovery of overpayments and incorrect payments under ss. 49.497 (1)
7 and (1m), 49.793 (2) (a), and 49.847, all moneys received from counties and tribal
8 governing bodies as a result of any error reduction activities under ss. 49.197 and
9 49.845, and all moneys credited to this appropriation account under ss. 49.497 (2) (b),
10 49.793 (2) (b), and 49.847 (3) (b), for any contracts under s. 49.197 (5), for any
11 activities to reduce error and fraud under s. 49.845, to pay federal sanctions under
12 the food stamp program, for reward payments under 49.846 (2), and for food stamp
13 reinvestment activities under reinvestment agreements with the federal
14 department of agriculture that are designed to improve the food stamp program.

15 **SECTION 3.** 20.435 (4) (nn) of the statutes is amended to read:

16 20.435 (4) (nn) *Federal aid; income maintenance.* All moneys received from the
17 federal government for the costs of contracting for the administration of the Medical
18 Assistance program under subch. IV of ch. 49 and the Badger Care health care
19 program under s. 49.665 and the food stamp program, other than moneys received
20 under par. (pa), for costs to administer income maintenance programs, as defined in
21 s. 49.78 (1) (b), and for reward payments under 49.846 (2).

22 **SECTION 4.** 20.435 (4) (pa) of the statutes is amended to read:

23 20.435 (4) (pa) *Federal aid; Medical Assistance and food stamp contracts*
24 *administration.* All federal moneys received for the federal share of the cost of
25 contracting for payment and services administration and reporting, other than

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1 moneys received under par. (nn), to reimburse 3rd parties for their costs under s.
2 49.475, for administrative contract costs for the food stamp program under s. 49.79,
3 for reward payments under s. 49.846 (2), and for services of resource centers under
4 s. 46.283.

5 **SECTION 5.** 20.437 (2) (dz) of the statutes is amended to read:

6 20.437 (2) (dz) *Temporary Assistance for Needy Families programs;*
7 *maintenance of effort.* The amounts in the schedule for administration and benefit
8 payments under Wisconsin Works under ss. 49.141 to 49.161, the learnfare program
9 under s. 49.26, and the work experience program for noncustodial parents under s.
10 49.36; for payments to local governments, organizations, tribal governing bodies,
11 and Wisconsin Works agencies; for kinship care and long-term kinship care
12 assistance as specified under s. 49.175 (1) (s); for aid payments and local
13 administration with respect to any services or program specified under s. 49.175 (1);
14 for reward payments under s. 49.846 (3); and for emergency assistance for families
15 with needy children under s. 49.138. Payments may be made from this appropriation
16 account for any contracts under s. 49.845 (4) and for any fraud investigation and
17 error reduction activities under s. 49.197 (1m). Moneys appropriated under this
18 paragraph may be used to match federal funds received under par. (md).
19 Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the department may transfer funds
20 between fiscal years under this paragraph. Notwithstanding ss. 20.001 (3) and
21 20.002 (1), the department of health services shall credit to this appropriation
22 account funds for the purposes of this appropriation that the department transfers
23 from the appropriation account under s. 20.435 (5) (bc). All funds allocated by the
24 department but not encumbered by December 31 of each year lapse to the general

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1 fund on the next January 1 unless transferred to the next calendar year by the joint
2 committee on finance.

3 **SECTION 6.** 20.437 (2) (L) of the statutes is amended to read:

4 20.437 (2) (L) *Public assistance overpayment recovery, fraud investigation, and*
5 *error reduction.* All moneys received as the state's share of the recovery of
6 overpayments and incorrect payments under s. 49.191 (3) (c), 1997 stats., and s.
7 49.195, 1997 stats., for any contracts under s. 49.845 (4), for any activities under s.
8 49.197 (1m) to investigate fraud relating to the Aid to Families with Dependent
9 Children program and the Wisconsin Works program, for any activities under s.
10 49.197 (3) to reduce payment errors in the Wisconsin Works program, for reward
11 payments under s. 49.846 (3), and for costs associated with collection of public
12 assistance overpayments.

13 **SECTION 7.** 49.79 (11) of the statutes is created to read:

14 49.79 (11) TREATMENT OF INACTIVE ACCOUNTS; EXPUNGEMENT OF UNUSED BENEFITS.
15 (a) If, for a period of 6 months or longer, an individual or household that is receiving
16 benefits under this section through an electronic benefit transfer system uses no
17 benefits that have been posted to the individual's or household's benefit account, the
18 department shall remove all benefits from the account electronically and store them
19 offline. The benefits being stored offline shall be made available to the individual or
20 household again within 48 hours after a request by the individual or a member of the
21 household to restore the benefits or upon reapplication by the individual or
22 household for benefits under this section, whichever is applicable. The department
23 shall attempt to notify the individual or household before benefits are removed from
24 the account under this paragraph and shall describe the steps that the individual or
25 household must take to get the benefits returned to the account.

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1 (b) The department shall expunge any benefits that have not been used after
2 a period of one year, regardless of whether either of the following applies:

3 1. The benefits have been removed from an inactive benefit account under par.
4 (a) and are being stored offline.

5 2. The benefits are still posted to an active account.

6 **SECTION 8.** 49.793 (2) (a) of the statutes is amended to read:

7 49.793 (2) (a) Except as provided in par. (b), a county, multicounty consortium,
8 as defined in s. 49.78 (1) (br), or governing body of a federally recognized American
9 Indian tribe may retain ~~a portion of the full~~ amount of an overpayment the state is
10 authorized to retain under 7 USC 2025 that is recovered under sub. (1) due to the
11 efforts of an employee or officer of the county, multicounty consortium, or tribe. ~~The~~
12 ~~department shall promulgate a rule establishing the portion of the amount of the~~
13 ~~overpayment that the county, multicounty consortium, or governing body may~~
14 ~~retain.~~ This paragraph does not apply to recovery of an overpayment that was made
15 as a result of state, county, multicounty consortium, or tribal governing body error.

16 **SECTION 9.** 49.846 of the statutes is created to read:

17 **49.846 Optional incentive program for counties and tribes that**
18 **identify fraud in certain public assistance programs. (1) DEFINITIONS.** In this
19 section:

20 (a) "County or tribe" means a county having a population of less than 750,000
21 or a federally recognized American Indian tribe or band in this state.

22 (b) "Food stamp program" has the meaning given in s. 49.79 (1) (c).

23 (c) "Medical Assistance program" means the program under subch. IV.

24 (d) "Wisconsin Works" has the meaning given in s. 49.141 (1) (p).

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1 **(2)** DEPARTMENT OF HEALTH SERVICES; PUBLIC ASSISTANCE PROGRAMS. (a) *Medical*
2 *Assistance program.* The department of health services shall establish an optional
3 incentive program, by rule, under which the department will provide a reward
4 payment to a county or tribe if an employee or officer of the county or tribe identifies
5 fraudulent activity in the Medical Assistance program. The department of health
6 services may make reward payments under the optional incentive program from the
7 appropriations under s. 20.435 (4) (bm), (L), (nn), and (pa). The department of health
8 services shall establish the optional incentive program to include all of the following:

9 1. That a county or tribe shall choose to receive a reward payment in the
10 amount determined under subd. 2. or to retain funds under s. 49.49 (5) or 49.497 (2)
11 (a).

12 2. That the amount of a reward payment to a county or tribe under the program
13 is equal to 20 percent of the amount that the department determines will be saved
14 in the Medical Assistance program as the result of eliminating the identified
15 fraudulent activity during the 12-month period after the fraudulent activity is
16 eliminated. Notwithstanding ss. 49.49 (5) and 49.497 (2) (a), a county or tribe that
17 receives a reward payment under this subdivision may not retain any funds that are
18 incorrectly paid as the result of the identified fraudulent activity and recovered due
19 to the efforts of an employee or officer of the county or tribe.

20 (b) *Food stamp program.* The department of health services shall establish an
21 optional incentive program, by rule, under which the department will provide a
22 reward payment to a county or tribe if an employee or officer of the county or tribe
23 identifies fraudulent activity in the food stamp program. The department of health
24 services may make reward payments under the optional incentive program from the

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1 appropriations under s. 20.435 (4) (bm), (L), (nn), and (pa). The department shall
2 establish the optional incentive program to include all of the following:

3 1. That a county or tribe shall choose to receive a reward payment in the
4 amount determined under subd. 2. or to retain funds under s. 49.793 (2) (a).

5 2. That the amount of a reward payment to a county or tribe under the program
6 is equal to 20 percent of the amount that the department determines will be saved
7 in the food stamp program as the result of eliminating the identified fraudulent
8 activity during the 12-month period after the fraudulent activity is eliminated.
9 Notwithstanding s. 49.793 (2) (a), a county or tribe that receives a reward payment
10 under this subdivision may not retain any funds that are incorrectly paid as the
11 result of the identified fraudulent activity and recovered due to the efforts of an
12 employee or officer of the county or tribe.

13 **(3) WISCONSIN WORKS.** The department of children and families shall establish
14 an optional incentive program, by rule, under which the department will provide a
15 reward payment to a county or tribe if an employee or officer of the county or tribe
16 identifies fraudulent activity in Wisconsin Works. The department of children and
17 families may make reward payments under the optional incentive program from the
18 appropriation under s. 20.437 (2) (dz), (L), and (mc). The department of children and
19 families shall establish the optional incentive program to include all of the following:

20 (a) That a county or tribe shall choose to receive a reward payment in the
21 amount determined under par. (b), to receive a reward under the incentive program
22 under s. 49.197 (2), or to retain funds under s. 49.195 (4).

23 (b) That the amount of a reward payment to a county or tribe under the program
24 is equal to 20 percent of the amount that the department determines will be saved
25 in Wisconsin Works as the result of eliminating the identified fraudulent activity

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1 during the 12-month period after the fraudulent activity is eliminated.
2 Notwithstanding ss. 49.195 (4) and 49.197 (2), a county or tribe that receives a
3 reward payment under this paragraph may not retain any funds that are incorrectly
4 paid as the result of the identified fraudulent activity and recovered due to the efforts
5 of an employee or officer of the county or tribe and may not receive a reward payment
6 under s. 49.197 (2).

7 (4) USE OF REWARD PAYMENT. A county or tribe may use a reward payment
8 received under this section for any purpose.

9 (5) WAIVERS. (a) If the department of health services determines that it needs
10 a waiver to allow reward payments under sub. (2) (a) to qualify as administrative
11 costs for the Medical Assistance program or to allow a county and tribe to use any
12 federal funds received under sub. (2) (a) for any purpose, the department shall
13 request the waiver from the federal department of health and human services. If the
14 federal department of health and human services disapproves the waiver request
15 made under this paragraph, the department of health services may not implement
16 the incentive program under sub. (2) (a).

17 (b) If the department of health services determines that it needs a waiver to
18 allow reward payments under sub. (2) (b) to qualify as administrative costs involved
19 in the operation of the food stamp program or to allow a county and tribe to use any
20 federal funds received under sub. (2) (b) for any purpose, the department shall
21 request the waiver from the U.S. department of agriculture. If the U.S. department
22 of agriculture disapproves the waiver request made under this paragraph, the
23 department of health services may not implement the incentive program under sub.
24 (2) (b).

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1 (c) If the department of children and families determines that it needs a waiver
2 to allow reward payments under sub. (3) to qualify as state expenditures for purposes
3 of determining whether the state is maintaining a certain level of historic support
4 under the temporary assistance for needy families program under 42 USC 601 to 619
5 or to allow a county and tribe to use any federal funds received under sub. (3) for any
6 purpose, the department shall request the waiver from the federal department of
7 health and human services. If the federal department of health and human services
8 disapproves the waiver request made under this paragraph, the department of
9 children and families may not implement the incentive program under sub. (3).

SECTION 10. Nonstatutory provisions.

11 (1) WAIVER TO LIMIT NUMBER OF FOODSHARE REPLACEMENT CARDS.

12 (a) In this subsection:

13 1. "Department" means the department of health services.

14 2. "FoodShare recipient" means an individual or household that is receiving
15 benefits under the federal food stamp program, as defined in section 49.79 (1) (c) of
16 the statutes.

17 (b) No later than 6 months after the effective date of this paragraph, the
18 department shall request a waiver from the U.S. department of agriculture to allow
19 the department to limit the number of replacement benefit cards that it must issue
20 in a 12-month period to a FoodShare recipient who reports that his or her electronic
21 benefit card has been lost, stolen, damaged, or destroyed to 4 replacement cards. If
22 the U.S. department of agriculture does not disapprove the waiver request, the
23 department may limit the number of replacement benefit cards that it issues in a

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1 12-month period to a FoodShare recipient to the number that is authorized under
2 the waiver.

3 (END)