



2015 ASSEMBLY BILL 535

November 24, 2015 – Introduced by Representatives JACQUE, BRANDTJEN, R. BROOKS, GANNON, GENRICH, HORLACHER, KREMER, KRUG, T. LARSON, PETERSEN, SKOWRONSKI and TITTL, cosponsored by Senators COWLES, GUDEX, HANSEN, LASEE and STROEBEL. Referred to Committee on Public Benefit Reform.

1 **AN ACT to amend** 20.435 (4) (b), 20.435 (4) (b), 20.435 (4) (bm), 20.435 (4) (L),
2 20.435 (4) (nn), 20.435 (4) (pa), 49.49 (5), 49.497 (2) (a), 49.793 (2) (a) and 49.847
3 (3) (a); and **to create** 49.844 of the statutes; **relating to:** an optional incentive
4 program for counties and tribes that identify fraudulent activity in certain
5 public assistance programs, granting rule-making authority, and making
6 appropriations.

Analysis by the Legislative Reference Bureau

This bill establishes an optional program that provides incentives in the form of reward payments to counties and tribes for identifying fraud in certain public assistance programs.

Under current law, a county or an elected governing body of a federally recognized American Indian tribe or band (tribe) may retain a portion of incorrect overpayments in public assistance programs administered by the Department of Health Services (DHS), including Medical Assistance (MA) and the supplemental nutrition assistance program (known as FoodShare in Wisconsin), that are recovered as the result of the efforts of an employee or officer of the county or tribe.

Under one provision in current law, a tribe or county other than Milwaukee County may retain the portion of a recovered amount that is specified by rule by DHS. This provision applies to any public assistance program administered by DHS. Under another provision that applies only to MA, a county or tribe may retain 15

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percent of recovered MA funds that were incorrectly provided as a result of fraudulent activity by a recipient or provider. Under another provision that applies only to MA, a tribe or county other than Milwaukee County may retain 15 percent of recovered MA funds that were incorrectly provided as a result of misstatements or omissions of fact or failures to provide information by an applicant or recipient or another person providing information on behalf of an applicant or recipient. Under a provision that applies only to FoodShare, DHS establishes by rule the portion of overpayment recoveries that a tribe or a county other than Milwaukee County may retain. In this latter provision, the bill changes the amount of a FoodShare overpayment recovery that a county or tribe may retain to the full amount of the overpayment recovery that the state is permitted to retain under federal law.

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, which excludes Milwaukee County, or a tribe receives a reward payment if an employee or officer of the county or tribe identifies suspected fraudulent activity in MA or FoodShare and the county or tribe determines the fraudulent activity occurred, establishes a claim for any overpaid benefits related to the fraudulent activity, and, if directed by DHS, criminally prosecutes the fraudulent activity. 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. The bill also provides that, if a county or tribe chooses to receive a reward payment under the optional incentive program, the county or tribe may not also retain 15 percent or any other portion of recovered MA or FoodShare overpayments that were made as a result of the identified fraudulent activity. The bill does not, however, affect a county or tribe's eligibility to retain a recovered overpayment that was made as the result of a recipient's nonfraudulent error.

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) (b) of the statutes, as affected by 2015 Wisconsin Act 55,
2 section 676, is amended to read:

3 20.435 (4) (b) *Medical Assistance program; benefits and reward payments for*
4 *identifying fraud.* Biennially, the amounts in the schedule to provide a portion of the
5 state share of Medical Assistance program benefits administered under subch. IV of
6 ch. 49, for a portion of the Badger Care health care program under s. 49.665, to

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1 provide a portion of the Medical Assistance program benefits administered under
2 subch. IV of ch. 49 that are not also provided under par. (o), to fund the pilot project
3 under s. 46.27 (9) and (10), to provide a portion of the facility payments under 1999
4 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource centers
5 under s. 46.283, for services under the family care benefit under s. 46.284 (5), for
6 assisting victims of diseases, as provided in ss. 49.68, 49.683, and 49.685, for
7 distributing grants under s. 146.64, for reward payments under s. 49.844 (2), and for
8 reduction of any operating deficits as specified in 2005 Wisconsin Act 15, section 3.
9 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
10 account to the appropriation account under sub. (5) (kc) funds in the amount of and
11 for the purposes specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002
12 (1), the department may credit or deposit into this appropriation account and may
13 transfer between fiscal years funds that it transfers from the appropriation account
14 under sub. (5) (kc) for the purposes specified in s. 46.485 (3r). Notwithstanding s.
15 20.002 (1), the department may transfer from this appropriation account to the
16 appropriation account under par. (bd) funds in the amount and for the purposes
17 specified in s. 49.45 (6v).

18 **SECTION 2.** 20.435 (4) (b) of the statutes, as affected by 2015 Wisconsin Act 55,
19 section 677, is amended to read:

20 20.435 (4) (b) *Medical Assistance program; benefits and reward payments for*
21 *identifying fraud*. Biennially, the amounts in the schedule to provide a portion of the
22 state share of Medical Assistance program benefits administered under subch. IV of
23 ch. 49, for a portion of the Badger Care health care program under s. 49.665, to
24 provide a portion of the Medical Assistance program benefits administered under
25 subch. IV of ch. 49 that are not also provided under par. (o), to fund the pilot project

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1 under s. 46.27 (9) and (10), to provide a portion of the facility payments under 1999
2 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource centers
3 under s. 46.283, for services under the family care benefit under s. 46.284 (5), for
4 assisting victims of diseases, as provided in ss. 49.68, 49.683, and 49.685, for
5 distributing grants under s. 146.64, for reward payments under s. 49.844 (2), and for
6 reduction of any operating deficits as specified in 2005 Wisconsin Act 15, section 3.
7 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
8 account to the appropriation account under sub. (5) (kc) funds in the amount of and
9 for the purposes specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002
10 (1), the department may credit or deposit into this appropriation account and may
11 transfer between fiscal years funds that it transfers from the appropriation account
12 under sub. (5) (kc) for the purposes specified in s. 46.485 (3r).

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

14 20.435 (4) (bm) *Medical Assistance, food stamps, and Badger Care*
15 *administration; contract costs, insurer reports, and resource centers.* Biennially, the
16 amounts in the schedule to provide a portion of the state share of administrative
17 contract costs for the Medical Assistance program under subch. IV of ch. 49 and the
18 Badger Care health care program under s. 49.665 and to provide the state share of
19 administrative costs for the food stamp program under s. 49.79, other than payments
20 under s. 49.78 (8), for reward payments under s. 49.844 (2) and (3), to develop and
21 implement a registry of recipient immunizations, to reimburse 3rd parties for their
22 costs under s. 49.475, for costs associated with outreach activities, for state
23 administration of state supplemental grants to supplemental security income
24 recipients under s. 49.77, and for services of resource centers under s. 46.283. No
25 state positions may be funded in the department of health services from this

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1 appropriation, except positions for the performance of duties under a contract in
2 effect before January 1, 1987, related to the administration of the Medical Assistance
3 program between the subunit of the department primarily responsible for
4 administering the Medical Assistance program and another subunit of the
5 department. Total administrative funding authorized for the program under s.
6 49.665 may not exceed 10% of the amounts budgeted under pars. (p) and (x).

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

8 20.435 (4) (L) *Fraud and error reduction.* All moneys received as the state's
9 share of the recovery of overpayments and incorrect payments under ss. 49.497 (1)
10 and (1m), 49.793 (2) (a), and 49.847, all moneys received from counties and tribal
11 governing bodies as a result of any error reduction activities under ss. 49.197 and
12 49.845, and all moneys credited to this appropriation account under ss. 49.497 (2) (b),
13 49.793 (2) (b), and 49.847 (3) (b), for any contracts under s. 49.197 (5), for any
14 activities to reduce error and fraud under s. 49.845, to pay federal sanctions under
15 the food stamp program, for reward payments under s. 49.844 (2) and (3), and for food
16 stamp reinvestment activities under reinvestment agreements with the federal
17 department of agriculture that are designed to improve the food stamp program.

18 **SECTION 5.** 20.435 (4) (nn) of the statutes is amended to read:

19 20.435 (4) (nn) *Federal aid; income maintenance.* All moneys received from the
20 federal government for the costs of contracting for the administration of the Medical
21 Assistance program under subch. IV of ch. 49 and the Badger Care health care
22 program under s. 49.665 and the food stamp program, other than moneys received
23 under par. (pa), for costs to administer income maintenance programs, as defined in
24 s. 49.78 (1) (b), and for reward payments under s. 49.844 (2) and (3).

25 **SECTION 6.** 20.435 (4) (pa) of the statutes is amended to read:

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1 20.435 (4) (pa) *Federal aid; Medical Assistance and food stamp contracts*
2 *administration.* All federal moneys received for the federal share of the cost of
3 contracting for payment and services administration and reporting, other than
4 moneys received under pars. (nn) and (np), to reimburse 3rd parties for their costs
5 under s. 49.475, for administrative contract costs for the food stamp program under
6 s. 49.79, for reward payments under s. 49.844 (2) and (3), and for services of resource
7 centers under s. 46.283.

8 **SECTION 7.** 49.49 (5) of the statutes is amended to read:

9 49.49 (5) COUNTY COLLECTION. Any Except as provided in s. 49.844 (2) (b) and
10 (c), any county may retain 15 percent of state Medical Assistance funds that are
11 recovered due to the efforts of a county employee or officer or, if the county initiates
12 action by the department of justice, due to the efforts of the department of justice
13 under s. 49.846. This subsection applies only to recovery of medical assistance that
14 was provided as a result of fraudulent activity by a recipient or by a provider.

15 **SECTION 8.** 49.497 (2) (a) of the statutes is amended to read:

16 49.497 (2) (a) Except as provided in par. (b) and s. 49.844 (2) (b) and (c), a county
17 or governing body of a federally recognized American Indian tribe may retain 15%
18 of benefits provided under this subchapter or s. 49.665 that are recovered under this
19 section due to the efforts of an employee or officer of the county or tribe.

20 **SECTION 9.** 49.793 (2) (a) of the statutes is amended to read:

21 49.793 (2) (a) Except as provided in par. (b) and s. 49.844 (3) (b) and (c), a county,
22 multicounty consortium, as defined in s. 49.78 (1) (br), or governing body of a
23 federally recognized American Indian tribe may retain ~~a portion of the full~~ amount
24 of an overpayment the state is authorized to retain under 7 USC 2025 that is
25 recovered under sub. (1) due to the efforts of an employee or officer of the county,

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1 multicounty consortium, or tribe. ~~The department shall promulgate a rule~~
2 ~~establishing the portion of the amount of the overpayment that the county,~~
3 ~~multicounty consortium, or governing body may retain.~~ This paragraph does not
4 apply to recovery of an overpayment that was made as a result of state, county,
5 multicounty consortium, or tribal governing body error.

6 **SECTION 10.** 49.844 of the statutes is created to read:

7 **49.844 Optional incentive program for counties and tribes that**
8 **identify fraud in certain public assistance programs. (1) DEFINITIONS.** In this
9 section:

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

12 (b) "Department" means the department of health services.

13 (c) "Food stamp program" means the federal food stamp program under 7 USC
14 2011 to 2036a.

15 (d) "Medical Assistance program" means the program under subch. IV.

16 **(2) MEDICAL ASSISTANCE PROGRAM.** (a) The department shall establish by rule
17 an optional incentive program under which the department will provide a reward
18 payment to a county or tribe if an employee or officer of the county or tribe identifies
19 suspected fraudulent activity in the Medical Assistance program and the county or
20 tribe does all of the following:

21 1. Investigates the identified suspected fraudulent activity and determines
22 that fraud occurred.

23 2. Establishes a claim for any overpaid benefits resulting from the identified
24 fraudulent activity.

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1 3. Pursues criminal prosecution for the identified fraudulent activity if directed
2 to do so by the department.

3 (b) The department shall establish the optional incentive program to include
4 all of the following:

5 1. That, for identifying fraudulent activity, a county or tribe shall choose to
6 receive a reward payment under this subsection in the amount determined under
7 subd. 2. or, alternatively, to retain funds under s. 49.49 (5), 49.497 (2) (a), or 49.847
8 (3) (a).

9 2. That the amount of a reward payment to a county or tribe under the program
10 established under this subsection is equal to 20 percent of the amount that the
11 department determines will be saved in the Medical Assistance program, during the
12 12-month period after the fraudulent activity is eliminated, as a result of
13 eliminating the identified fraudulent activity.

14 (c) 1. A county or tribe that chooses to receive a reward payment under this
15 subsection may not retain any funds that were incorrectly paid as a result of the
16 identified fraudulent activity and that are recovered due to the efforts of an employee
17 or officer of the county or tribe.

18 2. Nothing in subd. 1. or par. (b) prohibits a county or tribe from retaining
19 recovered funds under s. 49.497 (2) (a) or 49.847 (3) (a) that were incorrectly paid as
20 the result of a recipient's error rather than fraud.

21 (d) The department may make reward payments under the optional incentive
22 program established under this subsection from the appropriations under s. 20.435
23 (4) (b), (bm), (L), (nn), and (pa).

24 **(3) FOOD STAMP PROGRAM.** (a) The department shall establish by rule an
25 optional incentive program under which the department will provide a reward

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1 payment to a county or tribe if an employee or officer of the county or tribe identifies
2 suspected fraudulent activity in the food stamp program and the county or tribe does
3 all of the following:

4 1. Investigates the identified suspected fraudulent activity and determines
5 that fraud occurred.

6 2. Establishes a claim for any overpaid benefits resulting from the identified
7 fraudulent activity.

8 3. Pursues criminal prosecution for the identified fraudulent activity if directed
9 to do so by the department.

10 (b) The department shall establish the optional incentive program to include
11 all of the following:

12 1. That, for identifying fraudulent activity, a county or tribe shall choose to
13 receive a reward payment under this subsection in the amount determined under
14 subd. 2. or, alternatively, to retain funds under s. 49.793 (2) (a) or 49.847 (3) (a).

15 2. That the amount of a reward payment to a county or tribe under the program
16 established under this subsection is equal to 20 percent of the amount that the
17 department determines will be saved in the food stamp program, during the
18 12-month period after the fraudulent activity is eliminated, as a result of
19 eliminating the identified fraudulent activity.

20 (c) 1. A county or tribe that chooses to receive a reward payment under this
21 subsection may not retain any funds that were incorrectly paid as a result of the
22 identified fraudulent activity and that are recovered due to the efforts of an employee
23 or officer of the county or tribe.

