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Legislative Fiscal Bureau
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June 1, 1999 Joint Committee on Finance Paper #1095

TANF

Residency Requirement Under the Wisconsin Works Program (DWD -- Economic Support and Child Care)

CURRENT LAW

Under the 1996 federal welfare reform legislation that created the temporary assistance to needy families (TANF) program, states must submit plans to the federal government describing how the state's TANF program will be implemented. Among other items, the state plan must set forth objective criteria for the determination of eligibility for assistance. The state plan also must indicate whether the state intends to treat families moving into the state differently than other families and, if so, how it intends to treat such families. Federal law also specifies that states may apply program rules and benefit levels of the state from which a family moved if the family has lived in the new state of residence for fewer than 12 months.

Under state law, in order to be eligible for a subsidized employment position (trial job, community service job or transitional placement) or job access loan under the Wisconsin Works (W-2) program, an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance. Unless the individual is a migrant worker, the individual also must have demonstrated an intent to continue to reside in Wisconsin.

GOVERNOR

No provision.

DISCUSSION POINTS

1. On May 17, 1999, the Supreme Court of the United States in *Saenz v. Roe* ruled that California's two-tier system of benefits provided under its TANF program violated the Fourteenth

Amendment to the U.S. Constitution. Generally, under California's law, individuals who resided in California for fewer than 12 months were eligible for benefits not to exceed a maximum benefit payment equal to the amount that would have been received by the family from the state of prior residence, or California's benefit amount, whichever was lower.

2. The Supreme Court based its decision that California's law is unconstitutional on the premise that the law violates a citizen's right to travel from one state to another. In particular, the Court noted, the law violated the right of travelers who elect to become permanent residents to be treated like other citizens of the state, and to enjoy the same privileges and immunities enjoyed by other residents. In addition, the Court held that the Fourteenth Amendment "expressly equates citizenship with residence and does not tolerate a hierarchy of subclasses of similarly situated citizens based on the location of their prior residences."

3. Furthermore, the Court concluded that California's claim that the two-tier benefit system was designed to save public funds was not sufficient to justify the discriminatory manner in which the state sought to save money. The Court also concluded that Congress did not have the authority to permit states to violate the Fourteenth Amendment. Accordingly, the provisions of the 1996 federal welfare reform legislation that authorize states to enact two-tier benefit systems violate Constitutional provisions.

4. As noted, current state law in Wisconsin provides that an individual is eligible for a W-2 employment position and job access loan only if the individual has resided in the state for at least 60 consecutive days prior to applying for an employment position or job access loan. Unless the person is a migrant worker, he or she also must demonstrate an intent to continue to reside in the state.

5. The Supreme Court decision in the California case did not specifically address such a residency requirement. The Legislative Council has provided this office with an initial review of the *Saenz* case and its applicability to Wisconsin's residency requirement, which is attached to this paper. According to the Legislative Council, the law at issue in the *Saenz* case is different from Wisconsin's law in at least three ways. First, the California law treated new residents differently for 12 months, while the Wisconsin law is limited to 60 days. Second, the California law created numerous sub-classes of individuals who received various benefit levels depending upon their prior state of residence. Wisconsin's law creates two distinct groups: individuals who have resided more than 60 days in the state, and those who have resided fewer than 60 days. Finally, the California law provided lower benefits to new residents, while Wisconsin's law denies eligibility for a W-2 employment position or job access loan.

6. However, despite these differences, according the Legislative Council, it appears that the rationale used by the Court in its decision in the *Saenz* case is broad enough to apply to the Wisconsin statute. Wisconsin's law creates a degree of citizenship based on length of residence which the Court held is prohibited by the Fourteenth Amendment. Accordingly, if challenged in a court of law, it is probable that a court would find that the law discriminates against newly arrived residents in violation of the Fourteenth Amendment to the U.S. Constitution and would require the

state to show that the statute furthers a compelling governmental interest. In the California case, the Court ruled that saving public funds, discouraging interstate travel, or recognizing that newly arrived residents have different tax contributions are not sufficient justifications.

7. In order to make state law consistent with the *Saenz* decision, the Committee could eliminate the W-2 residency requirement.

8. Another option would be to specify that a person must be a resident of the state in order to be eligible for a W-2 subsidized employment position or job access loan, without specifying the length of time that a person must have been in the state. The Supreme Court ruling in the *Saenz* case addressed the issue of a state treating certain residents in a different manner than other residents, as opposed to the treatment of non-residents in comparison with residents. Wisconsin's 60-day residency requirement would likely be found unconstitutional because it treats certain residents (those who have been in the state for less than 60 days) differently than other residents (those who have lived in the state for more than 60 days). Under this alternative, the state would make a distinction between individuals who intend to remain in the state, and those who do not have such an intention. Residence is currently defined in the public assistance statutes as "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." Under this definition, if it is specified that a person must be a resident of the state for eligibility purposes, the person would have to demonstrate that he or she intended to continue to reside in the state, as could be evidenced by various documents or other indicators. Under the current W-2 manual, the W-2 agency is required to use the best information available in determining residency, including bills sent to the person's address and statements from landlords.

9. It is unclear if these alternatives would have a significant fiscal effect. Currently, approximately 500 to 600 persons apply for the W-2 program in a month. However, no data is available that would indicate how many are determined ineligible for the program due to the residency requirement. Furthermore, even if additional persons apply or are found eligible for the program, a subsidized benefit may or may not be provided to them. Therefore, if the Department determines that elimination of the 60-day residency requirement has a significant fiscal impact, it could request additional funding under s. 13.10. However, the Department would have to monitor the elimination of this provision and demonstrate that subsidized employment benefits are being provided to persons who would otherwise have been ineligible for the program had the 60-day residency not been eliminated.

10. An additional consideration is whether penalties would be imposed on the state if a court found that the current residency requirement is unconstitutional. The state's potential liability would depend upon the type of lawsuit that is filed. A person bringing action could seek a prohibition on enforcement of the Wisconsin law, and could possibly seek retroactive benefits. Also, it is possible that if the state continues to enforce a law that is unconstitutional, the state exposes itself to liability under federal civil rights laws.

11. It should also be noted that Wisconsin conducted a pilot program from July, 1994, to

September, 1997, that established a two-tier benefit system in Kenosha, Milwaukee, Racine and Rock Counties. The project included persons found eligible for the former aid to families with dependent children (AFDC) program who had not previously resided in Wisconsin for at least six months and either: (a) applied for benefits within 90 days after moving to Wisconsin; or (b) applied for benefits more than 90 days but less than 180 days after moving to Wisconsin and were unable to demonstrate to the county agency's satisfaction that they were employed for at least 13 weeks after moving to the state. A person who met these criteria received an AFDC grant for the first six months of residency that was calculated on the basis of the benefits the family would have received in the state in which the family most recently resided. The grant could have been higher or lower than the amount provided under Wisconsin law, depending on the benefit level in the other state.

12. The Supreme Court did not address the issue of retroactive benefit payments under the *Saenz* case. The Court simply required California to prohibit the implementation of the two-tier benefit system. In addition, Wisconsin's two-tier system differed from the California law in that it allowed for higher benefits for new arrivals, depending upon the benefit level in the family's prior state of residence. Because of these factors, it is unclear if the state would be liable for retroactive benefit payments if a lawsuit was brought against the state under the former two-tier system. Any estimate of whether damages would be sought, and the amount of any damages, would be speculative.

ALTERNATIVES

1. Modify the bill to eliminate the eligibility requirement that specifies that an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance and (unless the individual is a migrant worker) demonstrated an intent to continue to reside in Wisconsin. Under this alternative, if the Department determines through monitoring of the program and with specific data that elimination of this provision has a significant fiscal impact, it could request additional funding under s. 13.10.

2. Modify the bill to eliminate the current 60-day residency requirement, and instead specify that, in order to be eligible for a W-2 subsidized employment position or job access loan, an individual must be a resident of Wisconsin. Under this option, if the Department determines through monitoring of the program and with specific data that elimination of this provision has a significant fiscal impact, it could request additional funding under s. 13.10.

3. Maintain current law.

Prepared by: Joanne T. Simpson

CORRESPONDENCE/MEMORANDUM

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DATE: May 24, 1999

TO: JOANNE SIMPSON, FISCAL ANALYST, LEGISLATIVE FISCAL BUREAU

FROM: Robert J. Conlin, Senior Staff Attorney

SUBJECT: Effect of Recent U.S. Supreme Court Case on W-2 Residency Requirement

You requested a memorandum discussing the effect of a recent U.S. Supreme Court case on Wisconsin's 60-day residency requirement for eligibility for Wisconsin Works (W-2) employment positions. This memorandum describes that case, describes Wisconsin's 60-day residency requirement and provides an analysis of the possible effects of that case on Wisconsin's residency requirement.

1. Saenz v. Roe

On May 17, 1999, the U.S. Supreme Court, in *Saenz v. Roe*, __ U.S. __, 1999 U.S. LEXIS 3174 (1999), concluded that California's "two-tier" welfare benefits system violated the U.S. Constitution's Fourteenth Amendment and held that Congress could not authorize states to violate the Fourteenth Amendment. The issue before the Supreme Court was whether California's welfare law, which provided different benefit levels based on the recipient's length of residence in the state, was unconstitutional. Generally, under California's welfare law, individuals who resided in California for fewer than 12 months were eligible for welfare benefits equal to the lesser of: (a) California's benefits; or (b) the benefits they would have been eligible for in their prior state of residence.

The Court began its analysis by noting that the case involved a citizen's right to travel from one state to another [*Saenz v. Roe*, __ U.S. __, 1999 LEXIS at 16.]. The Court explained that the constitutional right to travel has at least three components:

> It protects the right of the citizen of one state to enter and to leave another state, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state. [*Saenz* at 19.]

The Court concluded that it was the third element, the right of travelers who elect to become permanent residents to be treated like other citizens of that state, that was implicated by California's two-tier welfare scheme. The Court characterized that right as the "right of the

newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same state." [*Id.* at 23.] The Court stated that this aspect of the right to travel is protected not only by the new arrival's status as a state citizen, but also by his or her status as a citizen of the United States under the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment provides in relevant part:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall bridge the privileges or immunities of citizens of the United States; . . . .

Because the third element of the right to travel is protected by the Fourteenth Amendment, the Court concluded that any infringement of the right is subject to the highest level of scrutiny: strict scrutiny. [*Id.* at 25-26]. Generally, when the Court applies strict scrutiny to a law, in order to be constitutionally valid, the law must further a compelling governmental interest and be narrowly tailored to achieve that interest. The Court found that California's law could not survive this level of scrutiny. The Court analyzed four principal lines of argument in striking down the law.

First, the Court held that California's two-tier welfare benefits scheme could not pass constitutional muster based on the argument that it affected a person's right to travel "only incidentally." The Court stated that because the right to travel embraces the citizen's right to be treated equally in his or her new state of residence, the discriminatory classification is itself a penalty. The "incidental" effect was irrelevant to the Court's inquiry. [*Id.* at 27]

Second, the Court concluded that the state's desire to save public funds by imposing the two-tier scheme was not sufficient to justify the discriminatory manner in which the state sought to save money. [*Id.* at 30.] The Court noted that the Fourteenth Amendment equates citizenship with residence and that the "clause does not provide for, and does not allow for, degrees of citizenship based on length of residence." [*Id.*, internal citations omitted.]

Third, the Court rejected any notion that a state could base its discriminatory actions on a policy that sought to distinguish between residents based on their tax contributions. It quoted a previous Supreme Court decision holding that to allow a state to discriminate between residents based on their length of residence to account for the difference in their relative tax contributions would:

> . . . logically permit the state to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the state to apportion all benefits and services according to the past tax contributions of its citizens. [*Id.* at 31, internal citations omitted.]

Finally, the Court concluded that Congress did not have the authority to permit states to violate the Fourteenth Amendment. [*Id.* at 32.] Accordingly, those provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which authorize

states to enact two-tier welfare benefit schemes like California's did not save the California law from its constitutional deficiencies.

Accordingly, the Court concluded that the justifications put forth by California for its two-tier welfare scheme were not sufficient to justify discriminating between state residents.

2. Wisconsin Law

Section 49.145 (2) (d), Stats., provides that an individual is eligible for a W-2 employment position only if the individual meets, among other things, the following requirement:

> The individual has resided in this state for at least 60 consecutive days prior to applying under s. 49.141 (3) and, unless the person is a migrant worker, has demonstrated an intent to continue to reside in this state.

Thus, in Wisconsin, in order to be eligible for a W-2 employment position, an individual must have resided in this state for at least 60 consecutive days prior to applying and, unless the person is a migrant worker, demonstrate an intent to continue to reside in the state.

3. Analysis

It should be noted that the Court in *Saenz* did not specifically address a residency requirement like Wisconsin's 60-day residency requirement. The law at issue in the *Saenz* case was different on its face from the Wisconsin statute cited above in at least three ways. First, the California law treated new residents differently for 12 months. Wisconsin treats new residents differently for only 60 days. Second, the California law, in essence, created numerous subclasses of individuals who were treated differently because new residents' benefits were tied to the benefits those individuals received in other states. Wisconsin's law creates two classes: individuals who have resided in the state for more than 60 days and those that have resided in Wisconsin for fewer than 60 days. Finally, the California scheme involved the provision of lower benefits to new residents. Wisconsin's law denies eligibility for an employment position benefit. However, given the breadth of the constitutional principles at issue in *Saenz*, and the Court's treatment of them, it appears that the dissimilarities between Wisconsin's residency requirement and the two-tier benefit law in California may not make a difference if Wisconsin's law were to be challenged.

It should also be emphasized that the decision in *Saenz* involved a law that made distinctions between ***residents***. It did not address laws that make distinctions between residents and nonresidents.

With respect to residents of Wisconsin, Wisconsin's law makes a distinction between persons who have resided in the state for less than 60 days and persons who have resided in the state for more than 60 days. Applying the rationale of the *Saenz* decision, a compelling case can be made that the same "travel rights" that were implicated in *Saenz* are implicated by the Wisconsin residency requirement, i.e., a new arrival who has taken up residence in the state faces discrimination based on his or her status as a new arrival. As the Court noted in *Saenz*,

"Since the right to travel embraces the citizen's right to be treated equally in her new state of residence, the discriminatory classification is itself a penalty." [*Saenz* at 30.] As applied to a person who has resided in Wisconsin for less than 60 days, the Wisconsin statute creates a degree of citizenship based on length of residence which, according to *Saenz*, is prohibited by the Fourteenth Amendment.

The distinction between the California law and the Wisconsin law may become relevant in at least two possible ways in a constitutional challenge to Wisconsin's law. First, it might be argued that Wisconsin's requirement that a person reside in this state for 60 days and show an intent to continue to reside in this state is nothing more than a test of residency. In other words, a person, under this rationale, is not considered a resident until he or she has been in this state for 60 days and shows a continued intent to reside here. Thus, the argument could be made that Wisconsin's law does not create classifications of residents and, therefore, the rationale of *Saenz* does not apply. However, this argument is weakened by at least two elements of Wisconsin's law.

First, the statute which contains the 60-day requirement provides that a person is not eligible until he or she "has resided" in the state for at least 60 days. This language seems to recognize that the person is a resident. Second, s. 49.001 (6), Stats., which provides definitions applicable to public assistance programs, including the W-2 program, defines "residence" to mean 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." Since the residency requirement in s. 49.145 (2) (d), Stats., does not provide that the definition of "residence" in s. 49.001 (6) is inapplicable to it, it appears reasonable to conclude that the 60-day requirement does not define residency, but rather sets a limit on the length of residency required to qualify for W-2 employment position benefits.

The second argument that could be made that *Saenz* does not apply to Wisconsin' 60-day requirement is that the Wisconsin 60-day requirement does not penalize an individual's right to travel. This was the position taken by the Wisconsin Supreme Court in *Jones v. Milwaukee County*, 168 Wis. 2d 892, 485 N.W.2d 21 (1992). In that case, the Wisconsin Supreme Court concluded that a provision in Wisconsin's former general relief program that required a person to be a resident for 60 days to qualify for benefits did not operate to penalize an individual's right to travel. The court noted that while previous U.S. Supreme Court cases had found a one-year residency requirement unconstitutional, a 60-day waiting period was so "substantially less onerous . . . that it does not operate to penalize an individual's right to travel." [*Jones v. Milwaukee County*, 168 Wis. 2d at 485 N.W.2d at 26.]

The U.S. Supreme Court in *Saenz*, however, appears to have substantially weakened such reasoning when it concluded that the right to travel includes the right of persons who elect to become residents of a new state to be treated like other residents of that state. The Court said that because the case involved discrimination against citizens who have completed their interstate travel, the incidental effect on their right to travel was not an issue. Instead, the Court concluded that the discriminatory classification was itself a penalty. [*Saenz* at 27.] Thus, a strong case can be made that the length of time involved in creating classifications between residents does not matter in determining the constitutionality of a residency requirement under the rationale of *Saenz*.

Ultimately, if a court were to find that the Wisconsin residency requirement discriminates against new residents, the state would need to show a compelling governmental interest to justify the discrimination and that the method of achieving that interest is narrowly tailored to meet that end. Based on *Saenz,* it is clear that protection of the public fisc, the discouragement of interstate travel, or the recognition of the differing tax contributions of those involved are not sufficient justifications to save a statute which violates the Fourteenth Amendment. Thus, the burden would be on the state to show some compelling governmental interest to justify the 60-day residency requirement.

4. Conclusion

Although on its face, Wisconsin's 60-day residency requirement differs from the California law at issue in *Saenz,* it appears that the holding in *Saenz* is broad enough to apply to the Wisconsin statute so as to make those distinctions inconsequential as applied to residents of Wisconsin. Accordingly, if a resident who has resided in the state less than 60 days were to challenge the constitutionality of the state's 60-day residency requirement, it is probable that a court, applying the rationale of *Saenz,* would find that the provision discriminates against newly arrived residents in violation of the Fourteenth Amendment to the U.S. Constitution and, consequently, would require the state to show that the statute furthers a compelling governmental interest in order to pass constitutional muster. If the state were unable to make the requisite showing, the law would be invalidated.

If you have any additional questions on this matter, please feel free to contact me at the Legislative Council Staff offices.

RJC:wu:tlu;wu

Base Agency: DHFS—Children and Family Services—Kinship Care Benefits

Recommendations:

Paper No. 1096 Alternatives A, B(3) and (4), C(2) and D(1)

Comments: The governor has proposed a number of changes relating to kinship care. Part A is a modification and is fine. Part B relates to whether the payments should continue as an entitlement and whether waiting lists should be established. LFB argues against waiting lists in point 17. Part C deals whether eligibility should be financially-based. This would require a great deal of work for DHFS that they probably aren't prepared to deal with at this time. Best to leave it alone for now. Part D deals with foster kinship care. See point 29 for arguments.

Prepared by: Julie

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June 1, 1999 Joint Committee on Finance Paper #1096

TANF

Kinship Care Benefits (DHFS -- Children and Family Services)

[LFB 1999-01 Budget Summary: Page 313, #5 and Page 691, #22]

CURRENT LAW

Kinship Care. The Department of Health and Family Services (DHFS) reimburses counties (other than Milwaukee County) for kinship care payments counties make to eligible relatives. In Milwaukee County, DHFS makes these payments directly to eligible relatives. Kinship care relatives who provide care and maintenance for a child may receive a kinship care payment of $215 per month if:

- The county or DHFS determines that there is a need for the child to be placed with the kinship care relative and that the placement with the relative is in the best interests of the child;

- The county or DHFS determines that the child meets one or more of the criteria for children in need of protection or services or juveniles in need of protection or services, or that the child would be at risk of meeting one or more of these criteria;

- The county or DHFS conducts a background investigation of the kinship care relative, any employe and prospective employe of the kinship care relative who has or would have regular contact with the child for whom kinship care payments would be made and any other adult resident in the kinship care relative's home to determine if the kinship care relative, employe, prospective employe or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child;

- The kinship care relative cooperates with the county or DHFS in the application process, including applying for other forms of assistance for which the kinship care relative may be eligible; and

- The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income (SSI) benefits.

At least every twelve months, the county or DHFS reviews the case of a relative receiving kinship care to determine if the conditions under which the case was initially determined eligible still exist. If those conditions no longer exist, the county or DHFS discontinues making the kinship care payments.

In 1998-99, DHFS is budgeted $22,740,600 ($188,800 GPR and $22,551,800 PR) to fund kinship care payments. This funding includes a supplement of approximately $1.9 million approved by the Joint Committee on Finance in September, 1998, under s. 16.515 of the statutes. Kinship care benefits are primarily funded with federal temporary assistance to needy families (TANF) block grant funds transferred from DWD. As of December, 1998, kinship care payments were made on behalf of approximately 8,000 children statewide.

Kinship Foster Care. In 1998-99, DHFS is budgeted $1,586,000 GPR and $2,200,000 FED to allocate to counties for foster care payments and assessments for foster parents who provide care to a related child and to foster parents who provide care to teenage parents. This funding is budgeted as a separate allocation referred to as kinship foster care. Funding for foster care payments and assessments made for other individuals is provided to counties through community aids.

GOVERNOR

Kinship Care. Provide $3,950,700 (-$188,800 GPR and $4,139,500 PR) in 1999-00 and $4,182,900 (-$188,800 GPR and $4,371,700 PR) in 2000-01 to reflect a reestimate of the cost to provide kinship care benefit payments. The bill would provide a total of $24,791,900 PR in 1999-00 and $25,024,100 PR in 2000-01 to support kinship care benefits.

Specify that, despite meeting the eligibility criteria for kinship care or long-term kinship care, a kinship care relative providing care and maintenance for a child would not be entitled to receive either kinship care payments or long-term kinship care payments. Specify that a county department of human services or social services *may* make kinship care or long-term kinship-care payments to an eligible relative, rather than require DHFS or a county department to provide kinship care or long-term kinship care payments to an eligible relative, as provided under current law.

Kinship Foster Care. The bill maintains base funding for kinship foster care payments and assessments.

DISCUSSION POINTS

1. Kinship care was created under provisions of 1995 Wisconsin Act 289, which

created the Wisconsin Works program to replace the former aid to families with dependent children (AFDC) program. Under AFDC, non-legally responsible relatives who provided care for children were eligible for an AFDC payment based on the income of the child.

2. Kinship care is different from AFDC payments to non-legally responsible relatives in at least two ways. First, there is no financial eligibility requirement for kinship care, other than prohibiting payment on behalf of children who receive SSI payments. Second, the relative and the child placed in the relative's home must meet certain nonfinancial criteria, as described above, in order to be eligible for a kinship care payment. Under AFDC, there were no eligibility requirements other than the financial criteria and the requirement that the child actually reside in the relative's home.

3. It is currently estimated that the costs for kinship care payments in the 1999-01 biennium will total $22,465,400 PR in 1999-00 and $24,521,700 PR in 2000-01. This estimate is based on an assumed average caseload of approximately 8,700 in 1999-00 and approximately 9,500 in 2000-01. This estimate represents an increase to base funding of $1,624,200 in 1999-00 and $3,680,500 in 2000-01, but a reduction from the amounts provided in the bill of $2,326,500 in 1999-00 and $502,400 in 2000-01. This estimate does not include any changes in base funding provided for kinship care assessments or for kinship foster care. Since kinship care benefits would be funded entirely with TANF funds, the bill should be modified to delete references to GPR appropriations for kinship care benefits.

Entitlement and the Use of Waiting Lists

4. The bill would specify that kinship care relatives are not entitled to kinship care payments and that DHFS and counties *may* make kinship care payments to kinship care relatives, rather than requiring them to do so. The administration indicates that this provision is intended to clarify that kinship care is not an entitlement and that they did not intend for kinship care to replace the entitlement available under AFDC.

5. Under the bill, funding for kinship care payments would be limited to the amounts appropriated by the Legislature. This would be consistent with a variety of human service programs, such as the community options program (COP) and the family support programs, for which counties maintain waiting lists if program demand exceeds available funding. While the statutes do not specify that recipients of services under these programs are not entitled to receive services, the effect is the same.

6. Kinship care placements with a relative could prevent the need for more costly placements, such as foster care or other out-of-home care setting. Other human service programs are not funded as entitlements and waiting lists for some of these programs can be lengthy. Programs such as COP, the family support program and the Alzheimer's family and caregiver support program are not entitlements, yet providing services to individuals under these programs would allow the client to remain in his or her home or community-based setting, rather than a nursing home or other high-cost placement.

7. For these same reasons, the Legislature may want to ensure that relatives eligible for kinship care receive a kinship care payment, since providing the kinship care payment could prevent a more costly placement in out-of-home care under either the child welfare system or juvenile justice system. Preventing placement in the child welfare or juvenile justice system benefits the state and the county, as well the child.

8. Further, since relatives placed on waiting lists have been determined eligible for kinship care, the county or DHFS have already determined that it would be in the best interests of that child to be in the relative's home and that the child is at-risk of being in need of protection or services. Such a determination provides an argument for ensuring that the child remains in the relative's home. However, since there is no legal obligation for the relative to provide care and maintenance for that child (unless a court order places the child in the relative's home), if the relative is placed on a waiting list, it is not clear what would happen to the child. The relative could refuse to provide care and maintenance to the child, requiring the child to return home or go elsewhere. Alternatively, the relative could provide care and maintenance for the child without the kinship care payment, which may be a considerable financial burden for the relative.

9. In practice, kinship care has not been administered as an entitlement program and therefore, it could be said that the Governor's recommendations are intended to conform the statutes to current practice. DHFS and counties have placed cases that have been determined eligible for kinship care on waiting lists until funding became available. In September, 1998, the Committee approved the transfer of approximately $1.9 million in federal TANF funds from DWD to DHFS to address waiting lists in a number of counties and tribes and to provide funding for payments being made with county tax levy or tribal revenue.

10. In determining whether the use of waiting lists is acceptable under the kinship care program, the Committee could consider what effect the Governor's recommendations would have on the ability to supplement kinship care allocations in the future if waiting lists developed.

In September, 1998, under s. 16.515 of the statutes, the Committee approved an increase of approximately $1.9 million in 1998-99 in DHFS PR (TANF) expenditure authority in order to eliminate waiting lists for the kinship care program. Under s. 16.515, with the approval of the Committee, the DOA Secretary may supplement any sum certain PR appropriation which is determined insufficient because of unforeseen emergencies or insufficient to accomplish the purpose for which made, if it is found that an emergency exists. If the statutes specify that kinship care is not an entitlement, as recommended by the Governor, or that waiting lists are allowable, it would be more difficult to argue that development of kinship care waiting lists constitutes an emergency and grounds for supplementation under s. 16.515.

11. The issue of whether current statutes create an entitlement for kinship care remains the subject of debate and is currently being challenged in circuit court in Milwaukee County. Current statutes specify that DHFS and counties "shall make payments in the amount of $215 per month to a kinship care relative who is providing care and maintenance for a child [s. 48.57 (3m) (am)]..." if the relative and child meet the kinship care eligibility requirements. Therefore, current

statutes could be interpreted as providing an entitlement for a kinship care relative. This interpretation however, would be contrary to current practice.

12. An alternative interpretation of current statutes, which has been adopted in current practice, would argue that counties' and DHFS' liability for kinship care payments is limited to the amounts appropriated by the Legislature. This argument is based on the same paragraph of the statutes that requires DHFS to make payments to eligible relatives [s. 48.57 (3m)(am)], which refers to the appropriation from which DHFS funds kinship care payments in Milwaukee County and reimburses counties for kinship care payments. Since this appropriation is not a sum sufficient appropriation, DHFS, the administration and others have argued that kinship care is not an entitlement and therefore, DHFS and the counties are free to establish waiting lists if appropriated funding is not sufficient to address demand.

13. Under proposed administrative rules submitted to the Legislative Rules Clearinghouse on April 9, 1999, DHFS would specify that an agency may place an approved applicant for kinship care on a waiting list if the agency has expended its kinship care benefit allocation. However, a Legislative Council staff review of the proposed rule questioned the statutory authority for DHFS to propose a rule that would authorize waiting lists. Specifically, the Legislative Council staff review states "the statutes are ambiguous as to whether kinship care or long-term kinship care are entitlement programs and waiting lists are not allowed or whether they are not entitlements and waiting lists are allowed. The issue of whether a county department must make a payment when the state appropriation to reimburse counties has been depleted has not been resolved."

14. The basis for the Legislative Council staff statement regarding authority to establish waiting lists is based on the Finance Committee's action to maintain current law when this issue was discussed during the Committee's 1997-99 biennial budget deliberations. At that time, the Committee considered the issue that the kinship care statutes were ambiguous regarding the issue of entitlement. Two separate alternatives were discussed , one which would have clarified that kinship care was an entitlement, the other would have clarified that kinship care was not an entitlement. Neither alternative was adopted.

15. Without clarification by the Legislature as to whether kinship care creates an entitlement or not, it is expected that DHFS and counties would continue to operate kinship care as though relatives are not entitled to a kinship care payment and continue to use waiting lists when demand exceeds available funding. However, without such clarification, it is expected that the status of kinship care would remain ambiguous and continue to be subject to court challenges.

16. Even if the Committee supports the intent of the Governor's recommendations to clarify that kinship care is not an entitlement, the Committee could modify the Governor's recommendations for the following reasons:

- The Governor's language does not specifically address the issue of waiting lists. Instead, it specifies that a kinship care relative is not entitled to a kinship care payment. The

Governor's recommendations are based on the assumption that if the statutes specify that kinship care is not an entitlement, then waiting lists are authorized. However, under other human services programs, which are clearly not entitlement programs and waiting lists are authorized, such as COP and the family support program, the statutes specify that counties' liability to provide services under those programs is limited the amount of funding available for those programs. To be consistent with other human service programs that are not entitlements, a similar provision could be adopted for kinship care which would limit DHFS' and counties' liability for kinship care payments to the appropriation amounts, rather than addressing the issue of entitlement specifically.

- The Governor's language would specify that counties' and DHFS' authority to make kinship care payments would be permissive. The Governor's language states that a county department and in Milwaukee County, DHFS *may* make payments in the amount of $215 per month to a kinship care relative who is providing care and maintenance for a child if the kinship care eligibility requirements are met. Therefore, a county or DHFS could opt not to provide kinship care payments at all, regardless of whether funding is available. While it is unlikely that many counties or DHFS would refuse to administer kinship care, the opportunity to refuse to administer kinship care would exist under the language in the bill.

17. If the Committee wants to ensure that kinship care payments are provided to eligible kinship care relatives, the Committee could delete the references in current law to the sum certain appropriation in order to eliminate the argument that DHFS' and counties' liability for kinship care payments are limited to the amounts appropriated by the Legislature. The practical effect of such a change would require that if demand for kinship care exceeds the amounts appropriated by the Legislature, the county would be required to fund any additional need unless the Legislature approves additional funding to address waiting lists in those counties. Since DHFS is responsible for making kinship care payments in Milwaukee County, if that additional need developed in Milwaukee County, DHFS would be required to seek additional expenditure authority from the Legislature. Similarly, DHFS medical assistance is an entitlement under provisions of federal law, but is budgeted in a sum certain appropriation. If projected expenditures for medical assistance exceed available funding, DHFS must seek additional funding from the Legislature.

If the Committee chooses to support an alternative which would clarify that kinship care is an entitlement, the Committee may want to consider implementing financial eligibility criteria for kinship care, as discussed below.

18. Alternatively, if the Legislature supports the Governor's recommendations or similar provisions, but wants to minimize the use of waiting lists when demand exceeds funding, the Committee could establish a reserve of funding available to supplement a DHFS or county kinship care allocation when DHFS' or a county's expenditures for kinship care exceed the amounts allocated. This reserve could be established by providing $500,000 PR (TANF) in 1999-00. Since the funding would be provided in an annual appropriation, the Committee could specify that DHFS could carry any unused amounts of the reserve into 2000-01 to address waiting lists in that fiscal year.

Eligibility Criteria

19. In December, 1998, the Legislative Audit Bureau released a report on the kinship care program. In that report, the Audit Bureau suggested that the Legislature review the financial and nonfinancial eligibility criteria for kinship care. Specifically, the report identified inconsistent practices among counties in assessing whether a relative was eligible for kinship care on the nonfinancial eligibility criteria in cases where the kinship care placement has been informally arranged by the family. The report indicates that "neither statutes, administrative rules, nor written program guidance developed by the Department provide much guidance to local agencies regarding the circumstances under which a child may be considered at risk of needing protection or services."

20. The Legislature is expected to have the opportunity to review the nonfinancial eligibility criteria in response to rules promulgated by DHFS and currently in the administrative rules process. These proposed rules, as required under provisions of 1997 Wisconsin Act 237, address assessment criteria for determining eligibility for kinship care payments.

21. The Audit Bureau report identifies instances of counties exceeding statutory authority regarding the financial eligibility criteria and recommends that DHFS instruct counties not to implement any financial eligibility criteria other than that established in statute. DHFS has complied with the recommendation. However, the report suggests that the Legislature may want to "consider refinement of the provision in the kinship care statutes relating to the income of the children and caretaker relatives." Concern has been raised, in particular, about the lack of financial eligibility criteria for the relatives.

22. The Audit Bureau report notes that it would be possible to limit the availability of kinship care payments to only those relatives with low or moderate incomes. "Doing so would provide public funds to only those families for whom the costs of caring for a relative's child would be prohibitive or burdensome. The adverse effect of such regulations on more affluent families might not be significant...".

23. The Committee could require that kinship care relatives have incomes at or below a percentage of the federal poverty level (FPL). The Committee could specify that the income determination would be based on the relative's family including the relative child. The following table identifies certain percentages of the FPL the Committee could consider and what that would translate to in terms of 1999 annual income for a family of four.

Percentage of The FPL	Annual Income
200%	$33,400
250	41,750
300	50,100
350	58,450
400	66,800

24. If the Committee chooses to impose financial eligibility criteria for kinship care, it is likely that there would be a decrease kinship care payments. However, since no data is available that indicates the income level of relatives who currently receive kinship care, it is not possible to project the effect of establishing income limits on kinship care payments. If the Committee chooses this alternative, the effective date of the provision should be delayed until January, 2000, in order to allow DHFS and counties to develop alternative procedures to implement the change. Further, the change should specify that the new financial eligibility criteria would first apply to relatives currently receiving kinship care at their first twelve-month review following the effective date of the provision.

25. Establishing financial eligibility criteria for relatives receiving kinship care could impose a significant administrative burden on DHFS and counties assessing families for kinship care eligibility. Currently, counties are not required to document the relative's financial resources. Further, such a change in the kinship care eligibility criteria would require programming changes to the client assistance for reemployment and economic support (CARES) system, the state's system for determining financial eligibility for a variety of human service programs including W-2, food stamps and medical assistance.

26. In his response to the 1998 Audit Report, DHFS Secretary Leean indicated that implementing financial eligibility for kinship care would be contrary to the intent of the program. "This is a child-only grant which can assist families to resolve problems internally, thus assuring safety for a child and reducing the need for further intervention by the legal and child protective services system..."

27. The Audit Bureau report states, "it could be argued that those who care for children for whom a court has ordered out-of-home placement deserve some payment regardless of their financial need, in recognition that the service they are providing eliminates the need for even larger payments to licensed foster homes. Moreover, relatives who are caring for children whose out-of-home placement has not yet been court-ordered may be eliminating the need for both the legal proceedings to obtain a court order and foster care placements." If the Committee supports this view and Secretary Leean's view as reflected in his response to the Audit Bureau report, it could take no action to impose financial eligibility criteria.

28. Alternatively, if the Committee wants to ensure that kinship care is an entitlement as discussed above, the Committee could provide an entitlement only to relatives that meet certain financial eligibility criteria. In adopting such an alternative, the Committee could provide counties and DHFS the option to provide kinship care payments to individuals above the financial eligibility criteria.

Kinship Foster Care

29. The kinship foster care allocation was created in order to address concerns that, in converting cases from the AFDC program to kinship care, counties would provide kinship care payments to relatives that could be licensed foster parents in order to avoid having to pay foster care

payments from their community aids allocations. The intent in creating the separate allocation was to remove any incentive to do so.

However, with the conversion from AFDC to kinship care complete as of January, 1998, this separate allocation is no longer necessary. The separate allocation creates a greater administrative burden to keep track of the additional allocation, at the state and local level. Therefore, the Committee could delete funding and appropriation language related to kinship foster care and instead budget these funds directly in community aids in order to eliminate the administrative burden of tracking the allocation separately at the state and local level.

ALTERNATIVES TO BASE

A. Modification - Kinship Care Benefits Funding Level

Modify base funding for kinship care benefits by $1,624,200 (-$188,800 GPR and $1,813,000 PR) in 1999-00 and $3,680,500 (-$188,800 GPR and $3,869,300 PR) in 2000-01 to reflect current estimates of kinship care payments made by DHFS and the counties. Further, delete references to GPR appropriations for kinship care benefits to reflect that no GPR funds would be budgeted for kinship care benefits.

Modification	GPR	PR	TOTAL
1999-01 FUNDING (Change to Base)	- $377,600	$5,682,300	$5,304,700
[Change to Bill	*$0*	*- $2,828,900*	*- $2,828,900]*

B. Entitlement and the Use of Waiting Lists

1. Specify that, despite meeting the eligibility criteria for kinship care or long-term kinship care, a kinship care relative providing care and maintenance for a child would not be entitled to receive either kinship care payments or long-term kinship care payments. Specify that a county department of human services or social services *may* make kinship care or long-term kinship-care payments to an eligible relative, as recommended by the Governor.

2. Specify that DHFS' responsibility relating to kinship care funding is limited to the funds appropriated for this purpose.

3. Delete references to the current appropriations to clarify that DHFS and counties responsibility for kinship care payments is not limited to the amounts appropriated by the Legislature.

4. Provide $500,000 PR in 1999-00 for a supplemental kinship care fund budgeted in DHFS and a corresponding increase in TANF funds budgeted in DWD and specify that DHFS could only make expenditures from this fund to supplement a county's kinship care allocation or the DHFS allocation for kinship care payments in Milwaukee County in order to prevent the need to

place eligible kinship care relatives on a waiting list if payments for kinship care exceed the amount allocated. Further, specify that DHFS could carry any unused funding from this provision to 2000-01.

Alternative B4	FED	PR	TOTAL
1999-01 FUNDING (Change to Base)	$500,000	$500,000	$1,000,000
[Change to Bill	*$500,000*	*$500,000*	*$1,000,000]*

C. Financial Eligibility Criteria

1. Specify that, effective January 1, 2000, kinship care relatives with incomes at or below one of the following percentages of the federal poverty level would be eligible for kinship care. Specify that the kinship care relative's income would be based on the family size including the kinship care child. Further, specify that this provision would first apply to current kinship care recipients at their first twelve-month eligibility review following the effective date of the provision.

   a. 200%
   b. 250
   c. 300
   d. 350
   e. 400

2. Take no action.

D. Foster Kinship Care

1. Delete $1,586,000 GPR and $2,200,000 FED from base funding for kinship foster care and instead budget these funds in community aids and delete appropriation language regarding kinship foster care to reflect that counties would make payments to foster parents related to the children in their care or providing care to teenage parents from community aids rather than a separate kinship foster care allocation.

Prepared by: Rachel Carabell

Base Agency: DHFS—Children and Family Services—Kinship Care Administration

Recommendations:

Paper No. 1097 Alternatives A(2) and B(1)

Comments: This proposal gives DHFS a little extra money and a position to deal with hearings and appeals costs associated with kinship care appeals. Sounds reasonable.

Prepared by: Julie

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June 1, 1999 | Joint Committee on Finance | Paper #1097

TANF

Kinship Care Administration (DHFS -- Children and Family Services)

[LFB 1999-01 Budget Summary: Page #313, #5, Page 691, #22]

CURRENT LAW

The Department of Health and Family Services (DHFS) reimburses counties (other than Milwaukee County) for kinship care payments counties make to eligible relatives. In Milwaukee County, DHFS makes these payments directly to eligible relatives.

Any kinship care applicant whose application is not acted on promptly or whose application is denied on the grounds that the eligibility criteria are not met (other than eligibility criteria regarding criminal background information), or a kinship care recipient whose kinship care payment is discontinued on one of these grounds, may petition DHFS for a review of that action or failure to act. The Department of Administration's (DOA) Division of Hearings and Appeals presides over all appeals of kinship care applications and continuations.

GOVERNOR

Provide $60,000 PR annually in DHFS and corresponding increase in federal temporary assistance to needy families (TANF) block grant funds budgeted in the Department of Workforce Development to reflect the annual costs incurred by DHFS as a result of kinship care appeals heard by the Division of Hearings and Appeals.

DISCUSSION POINTS

Hearings and Appeals

1. 1997 Wisconsin Act 27 (the 1997-99 biennial budget act) established the right of kinship care applicants and recipients to appeal lack of action on a kinship care application or denial

of kinship care benefits, but provided no funding to support DHFS costs for the administrative hearings held on those appeals.

2. In calendar year 1998, the Division of Hearings and Appeals received 91 kinship care appeals and charged DHFS $33,600 to support its costs for these cases. Based on calendar year 1998 actual charges, the Committee could provide $33,600 annually, rather than $60,000, as recommended by the Governor.

3. However, if the Committee modifies provisions relating to the program eligibility, the number of appeals may increase over the 1998 level. Therefore, the Committee may want to approve the Governor's recommendation to provide $60,000 annually to support DOA's charges.

DHFS Oversight

4. A December, 1998, Legislative Audit Bureau report on kinship care suggests that DHFS oversight of the program has been minimal and identifies several concerns regarding the Department's administration of the program. Specifically, the report indicates that, while agencies began opening kinship care cases in April, 1997, DHFS has not yet adequately identified the management information required for kinship care and did not collect or compile any statewide information on program caseload or waiting lists until September, 1998. The report indicates that DHFS first provided written instruction to local agencies with regard to reporting management information in May, 1998.

5. In response to the Audit Bureau report, DHFS Secretary Leean indicated that the level of oversight required for kinship care as suggested by the Audit Bureau is inconsistent with the initial intent of the program. Secretary Leean's letter indicates however, that DHFS is committed to providing the state-level direction and monitoring that is necessary and consistent with the program's design.

6. Currently, approximately 20% of one individual's staff time in the Division of Children and Family Services is spent providing state-level direction and oversight of the kinship care program. Since kinship care is a $20 million annual program administered in all counties, the Committee could consider increasing state oversight of the program to address the concerns raised in the Audit Bureau report.

7. If the Committee supports additional DHFS oversight of the kinship care program, it could authorize 1.0 PR position, beginning in 1999-00, and provide $40,700 PR in 1999-00 and $54,300 PR in 2000-01 to fund the position. This position could provide program oversight and monitoring, technical assistance to counties in administering kinship care, serve as the liaison to the Department of Workforce Development and the Bureau of Milwaukee Child Welfare (which administers kinship care in Milwaukee County) and develop and procedures related to kinship care.

8. Alternatively, if the Committee determines that the current level of oversight for the program is sufficient, it could provide no additional staff for oversight activities. This would be consistent with the DHFS 1999-01 biennial budget submission and the Governor's

recommendations.

ALTERNATIVES TO BASE

A. Hearings and Appeals Costs

1. Adopt the Governor's recommendation to provide $60,000 PR annually in DHFS and a corresponding amount in federal TANF budgeted in DWD to fund costs charged to DHFS by the DOA Division of Hearings and Appeals for administrative hearings on kinship care cases.

Alternative A1	FED	PR	TOTAL
1999-01 FUNDING (Change to Base)	$120,000	$120,000	$240,000
[Change to Bill	*$0*	*$0*	*$0]*

2. Provide $33,600 PR annually in DHFS and a corresponding amount in federal TANF budgeted in DWD to fund costs charged to DHFS by the DOA Division of Hearings and Appeals for administrative hearings on kinship care cases.

Alternative A2	FED	PR	TOTAL
1999-01 FUNDING (Change to Base)	$67,200	$67,200	$134,400
[Change to Bill	*- $52,800*	*- $52,800*	*- $105,600]*

3. Maintain current law.

Alternative A3	FED	PR	TOTAL
1999-01 FUNDING (Change to Base)	$0	$0	$0
[Change to Bill	*- $120,000*	*- $120,000*	*- $240,000]*

B. DHFS Staff

1. Provide $40,700 PR in 1999-00 and $54,300 PR in 2000-01 and corresponding increase in federal TANF budgeted in DWD and authorize 1.0 PR position, beginning October, 1999, to increase program oversight of the kinship care program.

Alternative B1	FED	PR	TOTAL
1999-01 FUNDING (Change to Base)	$95,000	$95,000	$190,000
[Change to Bill	*$95,000*	*$95,000*	*$190,000]*
2000-01 POSITIONS (Change to Base)	0.00	1.00	1.00
[Change to Bill	*0.00*	*1.00*	*1.00]*

2. Maintain current law.

Prepared by: Rachel Carabell

Gov Agency: DHFS—Children and Family Services—Kinship Care Benefits

Recommendations:

Paper No. 1098 Alternative 2

Comments: This would increase the caretaker supplement benefit from $150 to $250 for the first child in the home. See points 5 and 6 for supportive arguments.

Prepared by: Julie

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June 1, 1999 | Joint Committee on Finance | Paper #1098

TANF

SSI -- Caretaker Supplement Benefit Level (DHFS -- Supportive Living)

[LFB 1999-01 Budget Summary: Page 324, #1, Page 691, #23]

CURRENT LAW

The Department of Health and Family Services is required to make monthly payments of $100 per dependent child to custodial parents if all of the following apply:

- The custodial parent is a recipient of federal or state supplemental security income (SSI) payments;

- If the dependent child has two custodial parents, each custodial parent receives federal or state SSI payments;

- The custodial parent assigns any right of support for the dependent child to the state;

- The dependent child meets the eligibility criteria under the former aid to families with dependent children criteria (AFDC) program;

- The dependent child does not receive federal SSI payments;

- The custodial parent is ineligible for the Wisconsin Works (W-2) program solely because he or she receives federal or state SSI payments or is receiving benefits under W-2 pending an application for federal SSI benefits.

The SSI caretaker supplement was initially established under provisions of 1997 Wisconsin Act 27 (the 1997-99 biennial budget act). Act 27 established the benefit at $77 per month per dependent child beginning January, 1998. 1997 Wisconsin Act 237 (the 1997-99

annual adjustment act) increased the benefit to $100 per month per dependent child effective July, 1998.

The supplement is funded with federal temporary assistance to needy families (TANF) block grant funds transferred from the Department of Workforce Development and GPR funds budgeted in the DHFS appropriation for state supplemental SSI benefits. The amount of TANF funds reflects the difference between the cost to fully fund the caretaker supplement and the amount of GPR available from the SSI benefits appropriation. The total amount of GPR funds budgeted for SSI benefits is an amount sufficient to meet the state's SSI maintenance-of-effort requirement under federal law. The supplement was established to replace benefits for which these children were previously eligible under the AFDC program.

GOVERNOR

Provide $4,400,100 PR in 1999-00 and $6,597,000 PR in 2000-01 from TANF funds transferred from DWD to increase the monthly payment amount for the SSI caretaker supplement from $100 to $150 per child, effective October 1, 1999, or on the day after publication of the bill, whichever is later. Of these amounts, $2,100 in 1999-00 would be provided for administrative costs related to the increase in the supplement amount.

The amount of GPR budgeted for the caretaker supplement in the bill ($8,956,800 GPR in 1999-00 and $10,311,700 GPR in 2000-01) reflects the difference between the total amount budgeted for SSI benefits ($128,281,600 GPR annually) and the amounts projected for non-caretaker supplement SSI benefits ($119,324,800 GPR in 1999-00 and $117,969,900 GPR in 2000-01).

DISCUSSION POINTS

1. Since the SSI caretaker supplement was established in 1997 Act 27, there has been a considerable amount of discussion regarding the appropriate benefit level for the supplement. Because this benefit was created as a replacement to AFDC benefits, many have argued that the supplement should have been established at the same level for these families, since these families are not eligible to participate in the W-2 program.

2. The benefit level available to AFDC beneficiaries, including the dependent children of SSI recipients, was based on the number of children in the home. The following identifies the maximum AFDC benefit a family could have received for their dependent children if the parents had been SSI recipients

Number of Children	Maximum AFDC Payment
1	$249
2	440
3	517
4	617
5	709

3. The Committee has twice considered establishing the supplement at the previous AFDC level, during the 1997-99 biennial budget deliberations and again during deliberations on the 1997-99 annual adjustment bill. In both of the cases, the Committee did not adopt alternatives to establish the benefit at the previous AFDC level. Instead, the Committee adopted the Governor's recommendations to establish the benefit at $77 per month during the biennial budget deliberations and to increase the supplement to $100 per month during the annual adjustment bill deliberations.

4. The Governor's budget recommendation to increase the monthly supplement from $100 to $150 per child indicates that the administration recognizes that $100 per child may not be sufficient to support SSI caretakers' costs of caring for their dependent children. However, the Committee may want to consider whether the Governor's recommended benefit level is sufficient or another level is more appropriate.

5. During testimony on the bill, many organizations representing families with disabled caretakers urged the Committee to increase the supplement to provide $250 per month for the first child in the family and $150 per month for every other child in the family. As a result, each family would receive an additional $100 per month above the amounts they would receive under the bill. The Senate Committee on Aging and Human Services recommended that the bill be modified to reflect this proposal.

6. It is estimated that the cost to increase the benefit to $250 for the first child would total $4,559,200 PR in 1999-00 and $6,838,800 PR in 2000-01, in addition to the funding increase in the bill. DHFS indicates that it would incur one-time administrative costs of $10,900 to establish a benefit level for one child in the home that differs from the benefit level for other children in the home.

7. Alternatively, since the Legislature adopted the benefit level of $100 per month as an appropriate benefit level for the caretaker supplement during deliberations on the 1997-99 annual adjustment bill, the Committee could choose to delete the Governor's recommendations and maintain the benefit at $100 per month per dependent child.

8. The Committee could also consider alternative benefit levels. For example, the Committee could increase the benefit level to $175 per child, $200 per child, or a level consistent with the current kinship care benefit level ($215 per child). The following table identifies the

amounts a family would receive under current law, the Governor's recommendations and alternative funding levels, based on the number of dependent children in the home.

Number of Children	Current Law	Governor's Recommendations	$175 per Month	$200 per Month	$215 per Month
1	$100	$150	$175	$200	$215
2	200	300	350	400	430
3	300	450	525	600	645
4	400	600	700	800	860
5	500	750	875	1000	1075

9. The bill would increase the caretaker supplement benefit beginning October 1, 1999, or on the day after publication of the bill, whichever is later. However, the amount of funding provided in the bill to support the benefit increase reflects a November 1, 1999, effective date for the increase. The administration indicates that the bill should be modified to reflect a November 1, 1999, effective date to reflect the Governor's intent.

ALTERNATIVES

1. Approve the Governor's recommendation to increase the caretaker supplement benefit to $150 per month per dependent child, but specify that the effective date of the increase would be November 1, 1999, or the day after publication of the bill, whichever is later.

2. Modify the Governor's recommendations to provide $4,559,200 PR in 1999-00 and $6,838,800 PR in 2000-01 and specify that the payment for the first child in the home would be $250, rather than $150. Provide an additional $10,900 PR in 1999-00 to reflect one-time costs to implement the change in the benefit level. Provide a corresponding increase in federal TANF funds budgeted in DWD. Specify that the effective date of the modification would be November 1, 1999, or the day after publication of the bill, whichever is later.

Alternative 2	FED	PR	TOTAL
1999-01 FUNDING (Change to Bill)	$11,408,900	$11,408,900	$22,817,800

3. Modify the Governor's recommendations to instead establish the caretaker supplement at one of the following levels:

	Monthly Payment	Change to Bill 1999-00	2000-01	Total
a.	175	$2,199,000	$3,298,500	$5,497,500
b.	200	4,398,000	6,597,000	10,995,000
c.	215	5,717,400	8,576,100	14,293,500

Increase FED funding in DWD by corresponding amounts.

4. Maintain current law.

Alternative 4	FED	PR	TOTAL
1999-01 FUNDING (Change to Bill)	- $10,997,100	- $10,997,100	- $21,994,200

Prepared by: Rachel Carabell

Gov Agency: DWD—Economic Support and Child Care—Payment Procedures, Job Access Loans and the Emergency Assistance Program

Recommendations:

Paper No. 1099 Alternatives 3 and 5

Comments: Alternative 3 approves the governor's recommendation with a modification to help assist participants who are waiting for a first time benefit check and experiencing a hardship. (See point 13 for support.) Alt. 5 expands the emergency assistance program. This would help families who are in danger of becoming homeless.

Prepared by: Julie

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June 1, 1999 Joint Committee on Finance Paper #1099

TANF

Payment Procedures, Job Access Loans and the Emergency Assistance Program (DWD -- Economic Support and Child Care)

[LFB 1999-01 Budget Summary: Page 691, #24]

CURRENT LAW

Payment Procedures: Current law contains no provisions regarding the procedures related to the payment of grants for participation in W-2 employment positions.

Job Access Loans: Under current law, an individual who meets the eligibility requirements for participation in a W-2 subsidized employment position may also be eligible for a job access loan if the individual: (a) needs the loan to address an immediate and discrete financial crisis that is not the result of the individual's failure to accept a bona fide offer of employment or the individual's termination of a job without good cause; (b) needs the loan to obtain or continue employment, including a loan that is needed to repair a vehicle that is needed to obtain or continue employment; (c) is not in default with respect to the repayment of any previous job access loan or repayment of any grant or wage overpayments; and (d) is not a migrant worker.

In general, individuals who are under the age of 18 are not eligible for W-2 employment positions or job access loans. However, if the person will be 18 within two months of the date of application, the person may be eligible for a loan if the individual is in kinship care, a foster home, a group home, or an adult-supervised independent living arrangement approved by the W-2 agency. In addition, the individual must have graduated from high school or met the standards for the granting of a declaration of equivalency of high school graduation.

The Emergency Assistance Program: Under current law, the Department is required to implement a program of emergency assistance to needy persons in cases of fire, flood, natural

disaster, homelessness or energy crisis. "Needy person" is to be defined by DWD by rule. The draft proposed rule specifies that needy persons consist of a group whose members: (a) are residents of Wisconsin or migrant workers; (b) are U.S. citizens or qualifying aliens; (c) consist of a minor child living with a qualified caretaker relative; and (d) are in need of assistance to avoid destitution of the child or to provide a living arrangement for the child in a home that did not result from the child or a qualified caretaker relative refusing without good cause to accept employment or training for employment. The total financial need of an emergency assistance group is the extent to which unpaid expenses and the amounts needed to address the emergency exceed the group's income and assets, as determined by the W-2 agency.

The Department also is required to establish the maximum amount of aid to be granted, which does not have to be established by rule. Emergency assistance provided to needy persons in cases of fire, flood, natural disaster or energy crisis may only be provided once in a 12-month period. Emergency assistance provided in cases of homelessness may be used only to obtain a permanent living accommodation and may only be provided once in a 36-month period, except in cases of domestic abuse, emergency assistance may be provided once every 12 months.

A family is considered to be homeless if: (a) the family must leave its current housing because it is uninhabitable as determined by a local building inspector, a local health department or another appropriate local authority; (b) the family has a current residence that is a shelter designed for temporary accommodation such as a motel, hotel, shelter facility or transitional shelter facility; (c) a member of the family was a victim of domestic abuse; (d) the family is without a fixed, regular and adequate nighttime residence; or (e) the family is living in a place that is not designed for, or ordinarily used as, a regular sleeping accommodation.

Funding for emergency assistance totals $3,300,000 per year ($1,659,700 GPR and $1,640,300 FED).

GOVERNOR

Reduce funding by $1,736,600 ($416,800 GPR and $1,319,800 PR) annually for job access loans to reflect a revised estimate of the costs of providing the loans based on actual usage during the first year of the W-2 program. The program revenue represents estimated cash repayments by recipients of job access loans. Under this provision, $450,000 GPR and $150,000 PR from estimated cash repayments would be provided for job access loans annually.

Continue to provide $3,300,000 annually for emergency assistance.

DISCUSSION POINTS

W-2 Payment Procedures

1. The original W-2 legislation did not establish procedures related to the payment of

grants for participants in W-2 employment positions, nor did it require DWD to establish procedures by rule.

2. According to the W-2 policy manual produced by DWD, the W-2 participation period is from the 16th day of one month to the 15th day of the next month. The W-2 payment is provided for completed participation on the first day of the month after the participation period ends. Therefore, depending on when the participant first applies for the W-2 program, a participant might not receive a full benefit payment until 10 weeks later.

3. Although the participant will receive partial payments between the time of application and the first full benefit check, caseworkers and some legislators have expressed concern that families already in a crisis situation may not be able to meet monthly obligations, such as making a rental payment, even though the individual is in compliance with all requirements of the W-2 program.

4. It could be argued that the payment procedures established by DWD most replicate unsubsidized work experiences and are consistent with the Department's philosophy regarding the W-2 program. When the participant moves from the W-2 program to an unsubsidized job, the W-2 payment will be available to cover the needs of the participant until the individual's first paycheck is received. However, the payment procedure may cause short-term hardships for families initially entering the program.

Job Access Loans

5. As described earlier, the bill provides $600,000 annually ($450,000 GPR and $150,000 PR) for job access loans. In a letter dated April 15, 1999, from the Secretary of the Department of Administration to the Co-chairs of the Joint Committee on Finance, the administration indicates that funding for job access loans should be increased by $416,800 annually to account for recent increases in the use of job access loans. Based on the number and amount of job access loans provided over the last four months, the administration's estimates appear reasonable. If this option is approved, $416,800 GPR would be transferred from the Department's appropriation for W-2 administration and benefits [20.445 (3)(dz)] to the Department's appropriation for job access loans [20.445 (3)(e)]. As a result, expenditures of federal TANF funding would be increased by that amount.

6. Job access loans are short-term loans designed to meet expenses related to obtaining or maintaining employment, and to prevent a discrete financial crisis from becoming a long-term problem that makes a person dependent upon a W-2 employment position. There is no entitlement to a job access loan. Job access loans are intended to help participants through short-term financial problems by modeling working conditions outside of the W-2 program.

7. Under rules promulgated by DWD, W-2 agencies are required to issue job access loans to eligible individuals. The minimum loan amount available is $25, and the maximum an individual may receive is $1,600. The average of all amounts loaned in any 12-month period by a

W-2 agency may not exceed $800. Emergency payments may be made within 24 to 96 hours of the approval of the job access loan.

8. The W-2 agency must determine a minimum monthly payment amount for each loan, and an individual receiving a loan must submit to the agency a repayment plan for the loan which includes the maximum cash repayment amount and the shortest repayment period that the W-2 agency determines is feasible. At least 25% of the loan amount must be repaid in cash. The remaining 75% may be repaid in cash or through a combination of cash and volunteer in-kind community work approved by the W-2 agency. The volunteer activity is valued at the higher of the state or federal minimum wage rate. If a recipient's repayment plan includes volunteer work, the recipient must find the volunteer opportunity, obtain prior authorization from the W-2 agency and arrange and pay for any needed child care. The participant must repay a job access loan within 12-months, which may be extended to 24 months with the approval of the W-2 agency.

9. According to data provided by the Department through October, 1998, a total of 902 job access loans had been issued statewide. The average loan amount was approximately $650. Of the 902 loans, 70 had been paid back in full and 832 remained outstanding with an average balance due of $528. More recent information provided in April, 1999, indicates that 1,209 job access loans are currently open, with an average loan amount of $500. Of those, 202 had been repaid in the amount of $24,300.

10. The Department was not able to provide information regarding the number of borrowers that have been on time with payments or the number of loans that are being repaid in part with community service. However, according to the Economic Support Collections Unit, there is $747,000 in outstanding overpayments or delinquent payments under the job access loan program.

11. Several caseworkers in W-2 agencies statewide have indicated that it does a disservice to provide a client with a job access loan when it is likely that the individual will have difficulties repaying the loan. It can also be argued that most families left on the W-2 caseload are hard-to-serve cases with many barriers to employment. These families could have a difficult time paying back any kind of loan, even with in-kind service which requires extra effort that many W-2 participants might not be able to comply with.

12. The agencies indicated that no other source of funding was available in the last contracts that could be used to assist clients with short-term discrete financial problems. However, in the request for proposals for the next contracts, the Department has included a provision that would allow a W-2 agency to establish a voluntary program to provide assistance to participants who have been placed in a W-2 transitional placement, community service job, trial job or custodial parent of an infant placement, are waiting for their first benefit checks and are experiencing extreme hardship.

13. To provide even greater flexibility to the W-2 agency, the Committee could modify the job access loan program to allow W-2 agencies to use job access loan funds to provide either a loan or a one-time emergency payment to assist participants who are waiting for their first full

benefit check and are experiencing hardship, such as an inability to pay rent. W-2 agencies could also utilize this flexibility to provide assistance to any individual who is need of a one time payment or any assistance needed for employment related expenses (such as a car repair), but would likely be unable to repay a loan. This provision would allow W-2 agencies to determine when a loan would be provided, and when to provide a grant that would not have to be repaid. Because the administration is estimating that only $150,000 annually would be paid back under the job access loan program, it is not anticipated that this provision would have a significant fiscal impact in terms of a reduced amount of repayments.

Emergency Assistance

14. As an added alternative, the Committee could consider modifying the emergency assistance program. The Department currently contracts with W-2 agencies to administer the emergency assistance program, except in Milwaukee County where the Department contracts with the county, which subcontracts with the Red Cross.

15. Currently, emergency assistance is only available after a family becomes homeless. Given the concerns expressed about the potential inability of W-2 participants to pay rent, the emergency assistance program could be modified to specify that families may receive an emergency assistance payment if the family is in danger of losing their home or current place of residence. This could be evidenced by a notice terminating tenancy or a notice of impending foreclosure.

16. The maximum benefit amount under the emergency assistance program is $150 per eligible family member which is determined by DWD. As noted, the emergency assistance program is currently funded at $3.3 million annually. Approximately $1.6 million of this amount is provided for families that become homeless, and the remaining $1.7 is provided for low-income heating and energy assistance. It is unknown how many families would become eligible for emergency assistance under an expansion of the program.

17. Based on the costs of providing emergency assistance for families that become homeless, the Committee could increase funding for the emergency assistance program by half that amount, or $800,000 annually. Because these would be federal TANF funds, if not spent, they would be carried forward to the next biennium. If additional funding was required, the Department could use its current flexibility to transfer between allocations; or it could submit a request to the Joint Committee on Finance under s. 13.10.

ALTERNATIVES

1. Approve the Governor's recommendation to reduce funding by $1,736,600 ($416,800 GPR and $1,319,800 PR) annually for job access loans. The program revenue represents estimated cash repayments by recipients of job access loans. Under this provision, $450,000 GPR and $150,000 PR from estimated cash repayments would be provided for job access loans annually.

2. Modify the bill by increasing funding for job access loans by $416,800 FED annually. The federal funds represent the incremental change in expenditures that would be funded from federal TANF dollars. Under this provision, $866,800 GPR and $150,000 PR annually would be provided for job access loans.

Alternative 2	FED
1999-01 FUNDING (Change to Bill)	$833,600

3. Modify the Governor's recommendation by specifying that W-2 agencies would be authorized to provide job access loans to participants, or to provide individuals with a one-time only payment that would help the individual meet discrete financial needs. If the agency provided a one-time payment, the payment would not be treated as a loan. The W-2 agency would determine when to provide a loan and when to provide a one-time payment that would not have to be paid back. The agency could use funding under its W-2 contract or funding provided to them for the job access loan program for these payments.

4. Modify the Governor's proposal by specifying that a person could be eligible for emergency assistance if the person is in danger of becoming homeless, as evidenced by a notice of impending foreclosure action or a notice terminating tenancy.

5. Modify the Governor's proposal by increasing funding for the emergency assistance program by $800,000 annually, and modify the emergency assistance program to specify that a person could be eligible for emergency assistance if the person is in danger of becoming homeless, as evidenced by a notice of impending foreclosure action or a notice terminating tenancy.

Alternative 5	FED
1999-01 FUNDING (Change to Bill)	$1,600,000

Prepared by: Joanne T. Simpson

Gov Agency: DWD—Economic Support and Child Care—Children First Program

Recommendations:

Paper No. 1100 Alternative 2

Comments: This approves the governors recommendation with a re-estimate. See point 3. All other options are also okay except Alt. 6.

Prepared by: Julie

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June 1, 1999 | Joint Committee on Finance | Paper #1100

TANF

Children First Program (DWD -- Economic Support and Child Care)

[LFB 1999-01 Budget Summary: Page 693, #28]

CURRENT LAW

In any action to establish or modify a child support order, state law permits courts to order either or both parents to seek employment or participate in an employment or training program as a means of increasing financial support for the child. Any noncustodial parent ordered by a court to register for work experience or job training must participate if services are available and if the parent: (a) is able to work full time; (b) is working less than 32 hours per week; and (c) has income less than 40 times the federal minimum hourly wage. Noncustodial parents who work an average of 32 hours or more per week are not required to participate.

The state employment and work experience program for noncustodial parents who fail to pay child support due to unemployment or underemployment is referred to as "Children First". A noncustodial parent may not be required to participate in a Children First program for more than 32 hours per week (including time spent participating in another work or training program) for a period of no more than 16 weeks. An employed person may not be required to participate in a week for more than 80% of the difference between 40 hours and the number of hours actually worked in an unsubsidized job. The county clerks of court are notified once a person completes 16 weeks of participation.

The statutes require the Department to contract with counties to administer this program and pay $200 for each person who participates. The current statutes are not clear on whether non-county W-2 agencies may administer the program. One section authorizes DWD to contract with counties to administer Children First, but does not mention W-2 agencies. However, the section requiring the $200 state payment directs the Department to reimburse the county or W-2 agency for each participant, and specifies that the county or W-2 agency must pay any additional costs.

Funding of $1,316,400 is currently budgeted for this program each year.

GOVERNOR

Increase the amount of the reimbursement provided to agencies that administer the Children First program from $200 to $400 per participant. In addition, clarify that the Department may contract with a W-2 agency to administer the program. As under current law, the county or W-2 agency administering the program would be required to pay any additional costs of the program.

DISCUSSION POINTS

1. The Children First program was created as a pilot program in Racine and Fond du Lac Counties in 1987 and has since been expanded to include all counties that choose to participate. The program provides the kinds of work experience and job training services available under the W-2 trial jobs or community service jobs programs. Job search and job orientation activities may also be provided. Specifically, program activities include assessment and orientation, employment search, job readiness and motivation, work experience training, GED attainment, adult basic education and parenting skills training.

2. The Governor recommends doubling the state reimbursement (from $200 to $400) in order to encourage more agencies to participate in the program. Although a total of $1,316,400 has been budgeted for the program, only $427,000 in expenditures is estimated for 1998-99 (based on actual expenditures through April), which reflects 2,135 participants. In 1997-98, the state had contracts with only 47 counties, of which only a portion applied for a reimbursement. The following table shows the number of people who have participated in Children First annually since 1994 and the amount reimbursed by the state.

	Number of Participants	Amount Reimbursed
1994	1,221	$244,200
1995	1,400	280,000
1996	1,334	266,800
1997	1,894	378,800
1998	1,814	362,800

3. The administration indicates that the cost of doubling the reimbursement could be absorbed within the current funding level of $1,316,400 per year. However, even if the current level of participation increases by one-third, the amount of funding required would be about $1,140,000 annually. Funding for Children First could be reduced by $176,400 each year to reflect past participation levels even if the Governor's recommendation is approved.

4. Information on the actual amount spent by the counties on Children First-related activities is not readily available. However, it is likely that expenditures vary depending on the types of services provided. The Dane County Department of Human Services indicated that it spent an average of $665 on each Children First participant to provide similar services as offered under its food stamp employment and training program. Increasing the reimbursement level to $600 per person would increase the total cost to an estimated $1,800,000 each year.

5. If the proposed increase in the reimbursement rate is not adopted, funding for the program could be reduced by $866,400 each year to provide total funding of $450,000 for the program annually. This level of funding reflects 5.4% growth over the estimate for the 1998-99 fiscal year.

6. In December of 1995, a report on the Children First program was prepared based on the 1994 program, which included 1,221 noncustodial parents in 23 counties. Of the persons referred to the program 82.5% were unemployed, 13.7% were underemployed and the remaining 3.8% were referred for another reason (many were self-referred).

The report also found that only 47.1% of Children First participants had a high school diploma; 31.6% also had additional training beyond high school and 12.7% had a technical school or college diploma. When participants were surveyed to determine whether there was a barrier to employment, 65.4% identified no barrier. Of the remaining participants, the most common barrier was, in order of frequency, lack of motivation, no high school diploma, lack of work experience and technical skills, transportation problems (including no driver's license), medical problems, alcohol and drug problems, low functioning level (including not being able to read) and criminal history.

The report also found that 53.8% of counties indicated that the $200 reimbursement level was adequate to cover expenses. However, the other counties (46.2%) found that the $200 was too small to provide the level of service their clients required.

Finally, an analysis was conducted on the amount of child support paid by 188 Children First participants referred to the program during the first six months of 1994. According to the data, the participants made an average monthly payment of $38.78 prior to the program, which increased to an average of $78.51 during the first six months after completion and an average of $71.87 in the seventh to twelfth months after completion. The proportion of participants making a support payment also increased from 40.4% prior to the program to 71.3% in the first six months after completion to 66% in the seventh through twelfth months after completion.

7. According to information from the Kids Information Data System (KIDS), there are approximately 355,000 support cases with a court order in the state, of which an estimated 122,600 (34.5%) do not make payments on a regular basis. As noted above, there have been approximately 2,000 program participants in recent years. This reflects 0.6% of all support cases with a court order and 1.6% of cases with nonpayments. It could be argued that the Children First program should be eliminated given the current low levels of participation.

ALTERNATIVES

1. Adopt the Governor's recommendation to increase the reimbursement provided to agencies that administer the Children First program from $200 per participant to $400 per participant. Funding for the program would not be modified under this alternative.

2. Adopt the Governor's recommendation to increase the reimbursement to $400 per participant. Decrease funding for the program by $176,400 each year to reflect recent participation levels. Total funding of $1,140,000 per year would be provided under this alternative.

Alternative 2	FED
1999-01 FUNDING (Change to Bill)	- $352,800

3. Increase the reimbursement to $300 per participant. Decrease funding for the program by $516,400 each year to reflect recent participation levels. Under this option, total program funding would be $800,000 annually.

Alternative 3	FED
1999-01 FUNDING (Change to Bill)	- $1,032,800

4. Increase the reimbursement to $600 per participant. Increase funding by $483,600 annually to reflect recent participation levels. Under this option, total funding would be $1,800,000 annually.

Alternative 4	FED
1999-01 FUNDING (Change to Bill)	$967,200

5. Maintain the current law $200 reimbursement amount. Decrease funding by $866,400 each year to reflect recent participation levels. Total funding of $450,000 per year would be provided under this alternative.

Alternative 5	FED
1999-01 FUNDING (Change to Bill)	- $1,732,800

6. Eliminate the Children First program and reduce funding by $1,316,400 each year.

Alternative 6	FED
1999-01 FUNDING (Change to Bill)	- $2,632,800

Prepared by: Kelsie Doty

Gov Agency: DWD (Economic Support & Child Care) – Early Childhood Excellence Initiative

*******NOTE:** *The Burke 1% for prevention motion should be in lieu of action on Paper No. 1101 and if possible, should be taken up first.*

Recommendations:

Paper No. 1101 **Alternative:** 3

Comments:

Deletes the Governor's recommendation to provide $10 million annually for early childhood excellence initiative and instead provides $5.1 million annually for Family Resource Centers. This additional funding would be used for early childhood excellence programs for TANF-eligible children under the age of five by providing outreach and training for parents and training for child care providers.

This alternative builds upon existing programs to reduce child abuse and neglect. The Governor's early childhood excellence center proposal duplicates services provided by existing state programs. Investing in existing programs proven to reduce child abuse and neglect is a wiser investment than allocating dollars to this new initiative.

****** ***Burke motion: (In lieu of Paper 1101) 1% For Prevention***

- Research has demonstrated a strong link between child maltreatment and criminal behavior.
  - A study sponsored by the National Institute of Justice found that childhood abuse increased the odds of future delinquency and adult criminality overall by 40 percent.
  - Medical experts tell us that child abuse and neglect can cause abnormal brain development, making children ill-equipped to respond positively to the world around them in later years.
  - An investment in child abuse prevention *IS* an investment in crime prevention.

See next page → → →

- 1% for Prevention Pledge – A broken promise.

  - Recognizing this strong link between child abuse and future delinquency, Wisconsin became a national leader last session by tying funding for child abuse and neglect prevention to the corrections budget.
  - As part of the new truth in sentencing law, the legislature committed to setting aside an amount equal to 1% of the corrections budget to fund child abuse and neglect prevention efforts.
  - The 1% for prevention promise rang hollow when DHFS requested no new money for prevention efforts.

- The state should honor its commitment to child abuse and neglect prevention funding by investing "new money" in existing program with a proven track record in reducing child abuse and neglect and building upon discoveries in early childhood brain development research.

  - I worked with AG Doyle, Assembly Minority leader Shirley Krug, the Child Abuse and Neglect Prevention Board and advocacy groups to develop a statewide child abuse and neglect prevention initiative.
  - Under this 1% for prevention plan (*$10 million TANF each year of the biennium*):

    - 25% goes to the Child Abuse & Neglect Prevention Board for strengthening families by expanding the number of Family Resource Centers statewide from 17 to 27 and the number of community-based prevention grants from 21 to 28.
    - 25% goes to DHFS to fund prevention of child abuse & neglect grants (POCAN) for an additional 20 counties and 3 Indian tribes for home visitation programs for first-time parents.
    - 50% goes to the Governor's Early Childhood Excellence Initiative to develop state of the art centers providing a rich, stimulating environment to help children reach their full potential.

  - This initiative will move us closer to achieving the goal of having comprehensive prevention programs available in all communities.

Prepared by: Deb

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June 1, 1999 Joint Committee on Finance Paper #1101

TANF

Early Childhood Excellence Initiative (DWD -- Economic Support and Child Care)

[LFB 1999-01 Budget Summary: Page 697, #43]

CURRENT LAW

No provision.

GOVERNOR

Provide $10,000,000 annually in federal funding for an early childhood excellence initiative. Require the Department to establish a grant program to develop at least five early childhood centers for children under age five who are eligible for temporary assistance to needy families (TANF) funds. Require centers that are awarded a grant to provide outreach and training for parents of the children served by the center and training for child care providers. Further, require the Department to establish a grant program under which a child care provider that receives training at an early child center may apply for a grant to establish an early childhood program that serves TANF-eligible children under the age of five.

Specify that all grant recipients would have to emphasize stimulation of the child's language skills and senses of vision and touch. Require all grant recipients to contribute matching funds from local or private sources equal to 25% of the grant amount awarded.

DISCUSSION POINTS

1. The administration indicates that this proposal was recommended based on research on young children's brain development which found that proper stimulation and nutrition in the

early years can have a long-term impact on a child's educational, social and emotional development and the absence of proper stimulation or negative experiences can have detrimental effects.

2. The intent of this provision is for the funding to be used to develop early childhood centers that include appropriate environmental stimuli at the appropriate time in a child's development through the use of music, reading, foreign language and educational games. In addition, parents would be required to participate in the program before or after work and would be given written materials that describe the importance of the early years of a child's brain development.

3. The sites would be selected by DWD through a competitive process. The intent is for there to initially be two sites in Milwaukee County and three sites in other urban and rural areas of the state. The Office of Child Care in DWD would administer and evaluate the program.

4. Although not specified in the bill, the administration indicates that the intent is for grant recipients to have operated a child care center that is licensed by the state and that serves children of families with income under 200% of the federal poverty level. The program would also be required to have experience caring for children age four and younger, including infants and toddlers, and have experience in parenting programs. Finally, extra consideration would be given to Head Start programs and to programs that collaborate with Family Resource Centers.

5. In addition, the administration indicates that in order to be eligible for a grant, the applicant would have to describe how it would meet the following minimum requirements: (a) provide a rich, stimulating environment for children age four and younger; (b) train low-income parents on effective parenting skills to enhance the development of young children; and (c) train child care providers to establish an early childhood program of excellence. The applicant would also be required to provide grants to reimburse child care providers for expenses incurred in improving their programs for young children. As noted, grant recipients would be required to contribute an amount equal to 25% of the grant awarded.

6. Parents would be eligible for a child care subsidy for the time their children spend at the center, as long as the parent is participating in an eligible work or educational activity. The parent would be subject to the child care copay requirements.

7. There are programs that currently exist that offer similar services to the same population. Head Start provides early childhood education, nutrition, health and social services to children age three to five and encourages parent involvement in their child's education. The Early Head Start program is for infants and toddlers and helps develop positive relationships between the parent and child. These programs are structured in recognition that children are vulnerable to the effects of negative caregiving environments. Families with income at or below the federal poverty level are eligible for Head Start services. As part of the budget, the Governor recommends deleting the $4.95 million in GPR supplemental funding that is provided each year for Head Start and instead would provide $9.9 million per year in federal funds.

8. States have implemented a number of different policies to improve the quality of child care in response to the recent research on early brain development. Some of the actions taken by other states include increasing the reimbursement rate for subsidized providers, creating programs to attract and retain good child care workers, increasing the number of Head Start spots, providing training and technical assistance to providers and promoting high quality standards for early childhood care.

9. In addition to the early childhood excellence initiative, the Governor's budget includes funding to improve the quality of child care through the indirect child care programs (such as the child care careers education program, training and technical assistance grants and funding for start-up and expansion grants and loans). In addition, the bill would increase the initial income eligibility limit for the subsidy program and lower the copays for parents. Finally, the bill would increase funding for Head Start. It could be argued that these other child care initiatives address many of the same policy goals as the early childhood excellence initiative.

10. Family Resource Centers (FRC) provide services and support systems to emphasize the family in order to prevent child abuse and neglect, including making parents aware of early childhood development. The Centers' activities and operations are funded with grants received from the Child Abuse and Neglect Prevention Board (the Joint Committee on Finance approved an annual funding level of $2.3 million for the Centers at its May 6th meeting). Some of the services provided by FRCs include parent-education courses, drop-in programs, developmentally appropriate parent and child activities and individual family consultations and support. The Centers are also used by child care providers for on-going education and support and are often located with Head Start programs. In addition, the Centers have participated in the early childhood brain development training initiative statewide. The services provided by the 17 FRCs, which are located throughout the state, are available to all families, regardless of income.

The services provided by the FRCs differ from the early childhood excellence initiative in that the FRCs focus on the prevention of child abuse and neglect while the early childhood excellence programs would emphasize early childhood brain development. In addition, the FRCs only care for children while the parent is at the Center; the early childhood excellence programs would also provide child care services for the parent.

11. Because similar services are provided by existing state programs, the Committee could delete the Governor's proposal to create a new early childhood excellence program.

12. As another alternative, $300,000 could be provided annually for each of the 17 FRCs ($5.1 million in total per year) to enhance their early childhood development activities. This funding level was derived based on discussions with staff at the Child Abuse and Neglect Prevention Board. The Centers could be directed to use this funding to carry out the activities specified in the bill for TANF-eligible children, such as providing outreach and training for parents, training for child care providers and emphasizing the stimulation of the child's language skills and senses of vision and touch. The 25% local matching requirement could be retained.

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June 1, 1999 Joint Committee on Finance Paper #1102

TANF

Workforce Attachment Fund
(DWD -- Economic Support and Child Care)

[LFB 1999-01 Budget Summary: Page 696, #42]

CURRENT LAW

No provision

GOVERNOR

Provide $10,000,000 in 1999-00 and $20,000,000 in 2000-01 for post-employment services that promote job retention and advancement and improve the basic skills and literacy of former Wisconsin Works (W-2) participants and of individuals who have not participated in W-2 but who are eligible for assistance funded with federal temporary assistance to needy families (TANF) revenues.

DISCUSSION POINTS

1. The bill contains no specific statutory requirements related to the workforce attachment funding. The following sections provide a more detailed description of the program according to information provided from the Department of Workforce Development (DWD).

2. Funding would be provided for: (a) job readiness and placement services to persons who are unemployed; (b) basic skills development, literacy, barrier remediation and support services; (c) post employment services to assist with job retention; (d) incumbent worker training to promote job advancement and increased earnings; and (e) services to employers to retain workers and provide career progression paths. The Department further indicates that these funds would be

provided to local agencies through two "tracks."

3. Under Track 1, funding would be provided to W-2 agencies to provide job retention and advancement follow-up services for individuals who participated in programs operated by the W-2 agencies. The agencies would be required to use funding to serve persons who: (a) were previously in W-2 subsidized employment positions; (b) previously received case management services; (c) applied for W-2 and were initially placed in unsubsidized employment; or (d) were previously in the food stamp employment and training (FSET) program. Funding would be used for services to former W-2 clients who have been employed for six months and have family income under 200% of the federal poverty level. W-2 agencies would be allowed to subcontract with state agencies, private industry councils or workforce development boards, technical colleges, community-based organizations or local units of government.

4. A minimum amount of funding would be provided to each W-2 agency, with additional funding provided based on the agency's caseload, including case management, FSET, diversion, noncustodial parent and child care cases.

5. Under Track 2, funding would be provided to workforce development area (WDA) boards to serve families whose income is under 200% of the federal poverty level and who are not receiving services from a W-2 agency. The WDA boards would be allowed to establish specific local target groups that may have special needs, language barriers or other barriers to employment.

6. Funding would be allocated to WDA boards based on a formula that would consider the population under 200% of the federal poverty level in the area, and other labor market factors such as labor force participants and local unemployment rates.

7. The Department is also considering reserving funding in an undetermined amount for statewide projects, such as the development of learning centers that would be based at worksites. These funds would not be limited to W-2 agencies and WDA boards, but organizations receiving funding would have to collaborate with these agencies.

8. Both W-2 agencies and WDA boards would be expected to offer services to employers including: (a) job development and placement; (b) workplace assessments of training needs and training for incumbent workers; (c) assisting employers with recruitment and retention; (d) assisting employers with intensive job retention services, such as employe assistance programs and crisis resolution; (e) coordinating support services for employes such as child care, health care and transportation; and (f) assisting employers to develop and implement upward mobility programs for their workers. Performance measures would include employment placement for unemployed persons, job retention, increased earnings and increased child support collections for noncustodial parents.

9. According to the Governor's W-2 Education and Training Committee, supporting advancement opportunities or upward mobility for entry level workers will result in at least two valuable outcomes: (a) an increase in the likelihood of people achieving self-sufficiency as a result

of wage progression and skill enhancement; and (b) sufficient opportunities for those seeking entry-level positions will continue to exist as people advance through these jobs. One of the recommendations of this Committee was to encourage W-2 agencies, job centers, employers and education providers to offer training at the worksite.

10. Many national organizations also cite the need for job retention and advancement as the next step in successful welfare reform. According to the National Governor's Association, basic skills training that is connected to the workplace and occupational skills training have the potential to work well. In particular, partnerships between employers and educational institutions help ensure that basic skills training is reinforced.

11. Although the Department's proposal appears comprehensive, specific statutory provisions regarding the workforce attachment fund have not been included in the bill. If the Committee approves the funding recommended by the Governor, it could also specify in the statutes: (a) the services to be provided; (b) how the funding would be allocated; and (c) general performance measures. These provisions would be based on the descriptions above.

12. It should also be noted that the Governor's proposal specifies that services would be provided to families who are eligible for TANF funding , but does not further define TANF-eligible. Federal regulations allow the state to specify the income eligibility criteria for these services. The Department has indicated that services would be provided to families whose income is at or below 200% of the federal poverty level. The Committee may wish to specify this income level in the statutes.

13. In addition, as noted above, the amount of funding that would be provided to W-2 agencies, to WDA boards and reserved for statewide projects has not yet been determined. Therefore, the Committee may also wish to specify the amount that would be provided for each of these "tracks". For example, DWD could be required to provide one-third of the amount to each.

14. In evaluating this proposal, it should also be noted that three other funding sources are already provided for these services in the Department: W-2 agency contracts, federal workforce investment act (WIA) funds and the partnership for full employment (PFE) initiative.

- *W-2 agency contracts.* It could be argued that the workforce attachment funding would duplicate funding already provided to the W-2 agencies in several ways. First, two of the activities described earlier for which these funds are to be used are: job readiness and placement services to persons who are unemployed; and basic skills development, literacy, barrier remediation and support services. W-2 agencies must provide these services under the current W-2 agency contract. According to the W-2 agency manual, W-2 agencies must provide appropriate job skill development as included in a participant's employability plan, including writing and math skills, literacy, remedial education, employer expectations, and other basic skills. It could be argued that participants who are in subsidized employment positions should be receiving these services, and should have obtained necessary skills prior to entering employment.

Second, as noted earlier, the Department indicates that W-2 agencies could use workforce attachment funds to provide services to participants who applied for W-2 and were initially placed in unsubsidized employment. According to the W-2 manual, W-2 agencies currently must provide services to these individuals if the individual states in writing that he or she would like to receive case management services. Therefore, it appears that this is a duplication of funding.

Finally, the request for proposals (RFP) to administer the next W-2 agency contracts requires W-2 agencies to provide case management follow-up services to participants leaving W-2 subsidized employment positions for unsubsidized employment. These services are intended to help participants retain and advance in employment. Furthermore, performance bonuses under the next W-2 agency contract, according to the RFP, would be based on the number of participants that obtain an unsubsidized job and are still in a job six months after leaving the program.

The Department recognizes that duplication of services could be a concern and has indicated that W-2 agencies would be required to provide services above those required under the W-2 agency contract. Services would be provided to individuals after the 180-day follow-up period required under the W-2 agency contract has expired or to other former W-2 participants.

- *Workforce Investment Act.* A new federal law known as the Workforce Investment Act (WIA) requires the coordination and collaboration of up to 17 different federal programs through the Job Center model. The WIA requires local workforce development boards to provide job search and placement assistance, labor market information, initial assessment of skills and needs, information about available services and follow-up job-retention services as core services that must be provided to all adults, with priority given to recipients of public assistance and other low-income individuals.

The Department has indicated that new requirements for coordination and collaboration will stretch resources currently provided to the Job Centers. Furthermore, local areas have indicated to the Department that various organizations are attempting to provide job retention services, but none has done so in a comprehensive manner. The Job Centers are positioned to provide coordination at the local level. The workforce attachment funds would allow the workforce development area boards to enhance those services currently provided.

- *Partnership for Full Employment.* Under 1997 Wisconsin Act 27 (the 1997-99 biennial budget), $3.5 million in federal TANF funding was allocated to the partnership for full employment. These funds are ongoing, and have been included in the Governor's proposal. Under the partnership for full employment, employment and training programs are provided to both job seekers and employers through the Job Centers, and resources such as the JobNet (a computer system for accessing employment opportunities) are enhanced. The Department has indicated that funding provided under the PFE is used for purposes that help participants indirectly, and the workforce attachment funding would be tied more directly to services for particular individual.

15. Because other funding sources are currently provided for these services, the Committee could delete the funding recommended by the Governor for workforce attachment.

16. On the other hand, additional funding may allow W-2 agencies, the WDA boards and other organizations to more effectively serve low-income working families. Current programs that promote job retention and advancement could be enhanced, and new programs may be developed. However, because dollars are already provided for these services through the W-2 agency contracts, the job centers and the partnership for full employment, it is unclear that the full amount of funding recommended by the Governor is necessary provide these services. It is difficult to determine the appropriate funding level. Therefore, the Committee could approve a lower amount. Also, it may be advantageous to place any funding for this program in the Committee's appropriation for release only after the details of the program have been developed.

17. As a final alternative, the Legislative Council Special Committee on State Strategies for Economic Development is currently considering a proposal that would provide funding for one year to the Wisconsin Technical College System (WTCS) Board to establish a statewide job retention skills development program to assist employers to retain new employes, build the job skill levels of those employes and assist those employes in attaining higher wages and long-term careers.

18. Under the proposal, job retention curriculums and programs would be made available to all employers in the state and would be offered at employment sites whenever possible. The WTCS Board would be required to coordinate with employers, technical college district boards, W-2 agencies, local units of government and labor organizations. The Board would also be required to consult with employers, district boards and DWD to develop standards to assess the job retention skills of participants before and after participation in the program. Any case management services offered by W-2 agencies to W-2 participants who move from a subsidized employment position to an unsubsidized job would have to be coordinated with a program offered by the technical colleges.

19. The technical college system would be expanding the services it currently provides by developing a curriculum to stabilize the participant's position in the workplace through skill development such as those needed to: (a) achieve punctuality and consistency in attendance at employment; (b) work effectively in a team; (c) effectively communicate with supervisors and co-workers; and (d) solve basic workplace-related personal and interpersonal problems. In practice, responsibility for developing the curriculum would rest with the technical college district board.

An initial funding amount of $200,000 was identified for these services by the Legislative Council Committee. Actual costs for these services based on a revised budget would be $350,000 in 1999-01. With this funding amount the technical colleges have indicated that a program could be developed that includes all of the following: (a) an assessment tool that would be used prior to and after training to measure skills of the employe and employe retention, including training of staff at job centers and technical colleges on how to use the assessment and counsel participants based on the results; (b) development of material for supervisory employes of businesses and other team members; (c) a customized curriculum that would be designed to address needed skills as identified in the assessment; (d) testing of the curriculum through focus groups and piloting of the program; and (e) administrative costs for manuals and travel involved in piloting the program. The pilot assumes that 200 participants would receive the training. If a lower amount of funding is provided, a

smaller number of pilots and focus groups would occur, which would also result in fewer administrative costs.

20. Finally, employers would have continued involvement in job retention efforts. The technical college district boards would be required to assist employers in providing ongoing job retention skills development and reinforcement activities in the workplace. The district board would be allowed to charge employers a fee for the program and services offered.

21. If the Committee approves the Governor's recommendation, the technical colleges could compete for funding under the statewide projects. However, the Committee could also require DWD to contract directly with WTCS districts.

22. Using the curriculum developed by the technical colleges, employers would pay for the cost of the training which is be estimated at $350 per employe. Given the strong economy, employers likely would be willing to provide such training if it results in employes that remain on the job for a longer period of time.

23. However, as an incentive to employers to provide job retention and career advancement training, TANF funds could be used to reimburse employers for the costs of the training for low-income workers who are also TANF-eligible (generally, those who have minor children). It is unclear how many employers would take advantage of such reimbursement, or how such a system could be administered. Therefore, the Committee could place a portion of the funding provided for the workforce attachment program, such as $3.0 million, in the Committee's program supplements appropriation and require DWD to submit a report to the Committee by July 1, 2001, that would describe the need for such a reimbursement, detail how such a reimbursement could be administered and provide an estimate of the costs.

ALTERNATIVES

A. Overall Funding Amount and Statutory Provisions

1. Approve the Governor's proposal to provide $10,000,000 FED in 1999-00 and $20,000,000 FED in 2000-01 for post-employment services that promote job retention and advancement and improve the basic skills and literacy of former W-2 participants and of individuals who have not participated in W-2 but who are eligible for TANF funded assistance.

2. Modify the Governor's proposal by: (a) specifying that funding would have to be used for job readiness and placement services to unemployed persons; basic skills development; post employment services to assist with job retention; incumbent worker training to promote job advancement and increased earnings; and services to employers to retain workers and provide career progression paths; (b) requiring that DWD allocate an equal amount of funding to each W-2 agency, with additional funding provided based on the agency's case management, FSET, diversion, noncustodial parent, and child care cases; and to WDA boards based on a formula that considers the population under 200% of the federal poverty level in the area, labor force participation and local

unemployment rates; and (c) requiring DWD to include in all contracts for workforce attachment funds performance measures based on employment placement for unemployed persons, job retention, increased earnings and increased child support collections for noncustodial parents.

3. Modify the Governor's proposal by specifying that: (a) one-third of the total funding amount (or a different amount) would have to be distributed to W-2 agencies; (b) one-third of the total funding amount (or a different amount) would have to be distributed to workforce development area boards; and (c) one-third of the total funding amount (or a different amount) would have to be distributed by DWD for statewide projects.

4. Modify the Governor's proposal by specifying that services would be provided to individuals whose income is at or below 200% of the federal poverty level.

5. Modify the Governor's proposal by reducing the funding (by any amount).

6. Place all funds into the Committee's appropriation for release under s. 13.10 upon approval of specifics regarding the program's design and planned implementation.

7. Maintain current law. Under this provision, no funding would be provided for a workforce attachment fund.

Alternative A7	FED
1999-01 FUNDING (Change to Bill)	- $30,000,000

B. Technical College Curriculum

1. Of the funding amounts approved above, provide $350,000 (or a different amount) in 1999-01 and require DWD to contract with the technical college district boards to develop: (a) an assessment tool that would be used prior to and after training to measure skills of the employe and employe retention; (b) a customized curriculum that would be designed to address needed skills as identified in the assessment; and (c) testing of the curriculum through focus groups and piloting of the program.

2. If funding for the workforce attachment is deleted, provide $350,000 FED (or a different amount) in 1999-01 and require DWD to contract with the technical college district boards to develop: (a) an assessment tool that would be used prior to and after training to measure skills of the employe and employe retention; (b) a customized curriculum that would be designed to address needed skills as identified in the assessment; and (c) testing of the curriculum through focus groups and piloting of the program.

Alternative B2	FED
1999-01 FUNDING (Change to Bill)	$350,000

C. Employer Reimbursement

1. Of the funding amounts approved above, place $3.0 million FED (or a different amount) in 1999-00 in the Committee's program supplements appropriation and require DWD to submit a report to the Committee by July 1, 2001, that describes the need to reimburse employers for training low-income workers who are TANF-eligible, detail how such a reimbursement could be administered and provide a cost estimate.

2. If the funding recommended by the Governor is deleted, provide $3.0 million FED (or a different amount) in 1999-00 to be placed in the Committee's program supplements appropriation. Require DWD to submit a report to the Committee by July 1, 2001, that describes the need to reimburse employers for training for low-income workers who are TANF-eligible, detail how such a reimbursement could be administered and provide a cost estimate.

Alternative C2	FED
1999-01 FUNDING (Change to Bill)	$3,000,000

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