Gov Agency: Tribal Gaming Revenue Allocations – Department of Health and Family Services – Indian Health Program Funding

Recommendations:

Paper No.: 163 **Alternative(s):** A2, B1, C1

Comments: Alt. A2 provides additional PR for MA tribal outreach to make up for the federal funds that will be lost in September.

Alt. B1 would put PR in a contingency fund to support BadgerCare premiums for tribal members. Alt. B2 is also acceptable. This would put the PR funds in the Committee's supplemental appropriation until we can determine if the feds will be paying the premiums or not.

Alt. C1 would substitute PR for GPR to support tribal federally qualified health centers under the MA program.

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Tribal Gaming Revenue Allocations

Indian Health Program Funding (DHFS -- Public Health)

[LFB 1999-01 Budget Summary: Page 287, #8]

CURRENT LAW

No provision.

GOVERNOR

Direct the Department of Administration (DOA) to transfer $2,055,000 PR in 1999-00 and $2,115,000 PR in 2000-01 from tribal gaming revenues to the Division of Public Health to support: (a) tribal MA outreach positions ($240,000 in 1999-00 and $300,000 in 2000-01); (b) federally qualified health centers (FQHCs) ($825,000 annually); and (c) a BadgerCare premium contingency fund for Native American families ($990,000 annually).

DISCUSSION POINTS

Tribal MA Outreach Positions

1. P.L. 104-193, the federal welfare reform legislation, authorized $500 million on a one-time basis to support MA administrative costs states incur as a result of the separation of the MA program and economic assistance programs. Under the formula used to allocate these funds between states, Wisconsin may receive up to $17.6 million to support these costs. The state match rate for funding provided under this formula is 25% for certain activities and 10% for other specified activities. This funding is available for states to expend through September 30, 1999.

2. On June 23, 1998, the Joint Committee on Finance approved $11.4 million ($1.1

million GPR and $10.3 million FED) to support DHFS medical assistance (MA) outreach activities. All of the activities included in the state's MA outreach plan are eligible for a 90% federal match. Of the total $11.4 million in funding, $600,000 was provided to support tribal MA outreach activities.

For the period beginning July 1, 1998, through September 30, 1999, DHFS will award a total of $612,300 to the state's eleven tribes to support MA outreach activities. The annualized cost of funding these outreach activities is approximately $490,000.

3. Tribal health clinics provide health care services to tribal members, their non-native spouses and children and tribal employes (native and non-native). Some clinics also provide services to local residents and employes of nearby business. For example, the Lac de Flambeau tribe provides services to Simpson Electric employes. The clinics are supported with funding from a variety of sources, including: (a) federal Indian Health Service funding; (b) tribal medical relief block grant funds ($800,000 GPR annually); (c) cooperative American Indian health project funding ($120,000 GPR annually); (d) state, federal and private grant funding, as available; and (e) reimbursement from third-party payers, such as MA or commercial health insurance policies. Under MA, tribal clinics are eligible for cost-based reimbursement.

4. Tribes have used the MA outreach funds to hire benefit specialists to staff outstationing sites at tribal health clinics. The benefit specialists:

- Identify individuals who are potentially eligible for MA or other medical resources such as Medicare, veterans benefits, private insurance or children's health services;
- Assist individuals who are uninsured or underinsured determine whether they are eligible for assistance;
- Help potential recipients apply for MA or other medical resources;
- Submit MA applications and verification materials for approval through the local county agency or tribal system;
- Provide transportation to the outstation or county social service agency;
- Visit homes and hospitals to interview and assist patients as necessary; and
- Help current and potential recipients understand their MA rights under federal law.

5. Locating benefits specialists at tribal health clinics is an effective outreach tool. When uninsured, pregnant women and other potential MA recipients come to the clinic for health care services, they can obtain information about the MA program from benefits specialists. Some tribal benefits specialists have established relationships with local hospitals so that uninsured individuals who are admitted for an inpatient hospital stay can receive assistance for enrolling in MA while they are in the hospital. Once DHFS implements BadgerCare, the tribal benefits

specialists could also be an effective outreach tool for BadgerCare enrollment. The tribal benefits specialists work with county income maintenance workers, who are responsible for completing the formal MA application process.

6. As previously indicated, the MA outreach funding that currently supports these tribal outreach activities will no longer be available after September, 1999. The bill would provide $240,000 PR in 1999-00 and $300,000 PR in 2000-01 to tribes to support tribal benefits specialists. This level of funding is approximately 49% in 1999-00 and 61% in 2000-01 of the total funding received in the 1997-99 biennium on an annualized basis. If the Committee wanted to support these activities at their current level, it could provide an additional $250,000 PR in 1999-00 and $190,000 PR in 2000-01 to support tribal benefit specialists at tribal health clinics.

BadgerCare Premiums

7. The administration allocated $990,000 PR annually of Indian gaming receipts to establish a contingency fund to support the costs of BadgerCare premiums for Native American families. Under BadgerCare, the state's insurance program for low-income, uninsured families, families with income above 150% of the federal poverty level (FPL) are required to pay a premium. BadgerCare premiums are 3.0% of a family's income. (On April 30, 1999, DHFS submitted a request to the Committee, under 14-day passive review, to increase premiums to 3.5% of a family's income.) There has been discussion at the federal level regarding the possible exclusion of Native American families from cost-sharing requirements under BadgerCare.

8. Conversations between the Great Lakes Inter-Tribal Council, Inc. (GILTC) and the federal Department of Health and Human Services, Health Care Financing Association (HCFA), regarding the issue of premium requirements under BadgerCare began a year ago. In October, 1998, the GILTC adopted a resolution requesting an exemption from paying BadgerCare premiums for tribal families.

The argument has been made by the tribes that, under Treaty provisions, the federal government is responsible for providing health care to tribal members and therefore, tribal members should not be required to pay premiums under the BadgerCare program. According to the GLITC, the Indian Health Care Improvement Act (P.L. 94-437) summarizes the U.S. government's responsibility to provide health care to tribes. The Act states, "The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people to assure the highest possible health status for Indians and to provide all resources necessary to affect that policy."

9. Currently, the federal government is meeting this responsibility by providing financial assistance to tribes for health care services through funding and technical assistance provided by the IHS. Tribal clinics provide some health care services directly with IHS funding, such as primary care, mental health, dental and pharmacy services. Other services, such as emergency, specialty and acute health care services, are provided under contracts with non-tribal health care providers. These contracts are supported with IHS contract health service (CHS) funds.

10. It has been argued that recent IHS funding levels have not kept pace with inflation and that the federal government is not currently meeting its obligation to provide adequate health care resources to tribes. In a letter addressed to HCFA, the GILTC noted that the medical inflation rate for services purchased with CHS funding has been between 9% and 14% a year, while funding for CHS has increased approximately 3% annually from 1993 to 1997. A study conducted by the GILTC in March, 1998, estimated that for all tribes the unmet financial need for referral care is between $4 million and $7 million per year and that the average tribal contributions for health care costs is "roughly equivalent to total funding received by the average tribe from IHS."

11. Under current state law, Native American families are not exempt from premium payments under BadgerCare. In addition, the federal waiver approved by HCFA, which authorizes certain aspects of the BadgerCare program, does not exempt Native Americans from premium payments. The BadgerCare program would enroll families in the state's MA program. Under current state and federal law, nominal cost-sharing is allowable under MA. Native American families are also not exempt from these cost sharing requirements.

12. HCFA has not yet notified GLITC or DHFS as to whether or not it would exempt Native American families from paying BadgerCare premiums. Recently, GLITC was informed that this issue had been referred to the White House. HCFA has not been able to provide a date by which this issue would be resolved.

13. DHFS staff indicate that they do not consider the payment of premiums on behalf of Native American families a state obligation. If HCFA determines that tribal families should be exempt from paying premiums, it would not necessarily be the state's obligation to pay those premiums. The Department contends that the contingency fund was established to support BadgerCare premiums on behalf of Native American families if DHFS made a policy decision to pay premiums on behalf of Native American families. Therefore, the Committee could eliminate the BadgerCare premium contingency fund and redirect $990,000 PR annually to other activities that meet the requirements of the Indian gaming contracts.

14. However, it could be argued that Native American families who would be subject to the BadgerCare premium requirements would be less likely to participate than other families because Native American families are eligible to receive free health care services at tribal health clinics. It may be beneficial to maximize the number of eligible Native American families that participate in BadgerCare because the benefits package available to families under BadgerCare is more comprehensive than the health care services available at tribal clinics. In addition, maximizing BadgerCare enrollment for families receiving services at tribal clinics would "free up" limited resources to serve uninsured tribal members who are not eligible for MA or BadgerCare.

15. When preparing its estimate for the contingency fund, DHFS estimated that 1,500 Native American families with income between 150% and 185% of the federal poverty level (FPL) would be enrolled in BadgerCare for an average of 12 months in each year of the biennium and that the average premium per family would be $55. Consequently, the bill provides $990,000 PR annually to fully-subsidize premium payments for these families.

16. Based on information collected from GLITC, the Statistical Abstract of the United States and the U.S. Bureau of the Census, it is estimated that $300,000 PR and $400,000 PR would be required to subsidize the full premium cost of Native American families with income between 150% and 185% of the FPL who would participate in BadgerCare. Therefore, the Committee could establish a contingency fund and redirect $690,000 PR in 1999-00 and $590,000 PR in 2000-01 to other activities that meet the purposes specified in the gaming compact memoranda of understanding (MOU).

17. At this time, there is considerable uncertainty about the outcome of the discussions between the tribes and HCFA regarding the issue of premium payments. Consequently, the Committee could place the contingency funds in its appropriation until this issue has been resolved. The Committee could require DHFS to submit a request for the release of these funds under 14-day passive review once the Department has received a written decision from HCFA on this issue. Under this option, if the contingency funds were not needed to support BadgerCare premiums, the Committee could consider other alternative uses for these funds. In addition, if HCFA did not exempt Native American families from BadgerCare premiums, the Committee could decide whether, as a matter of policy, the state should exempt these families from BadgerCare premiums.

Federally-Qualified Health Centers and Other Technical Corrections

18. The administration allocated $825,000 PR annually of Indian gaming revenues to replace GPR funds currently budgeted to support tribal federally qualified health centers (FQHCs) under the state's medical assistance program. However, the bill does not reduce MA benefits funding to reflect the administration's intent, nor does it budget the PR funds in DHFS for this purpose. This issue was identified in DOA Secretary Bugher's April 15, 1999, memorandum to the Co-Chairs of the Committee that identified modifications to the budget requested by the administration.

In addition to this technical correction, several other corrections are required to implement the Governor's recommendations. These include: (a) increasing the Department's Division of Health Care Financing (DHCF) inter-agency aids appropriation by $825,000 PR annually to reflect the transfer of Indian gaming receipts from the Department of Revenue to DHFS to support tribal FQHC MA payments; (b) increasing the DHCF inter-agency aids appropriation to reflect the total funding provided to support tribal benefits specialists ($240,000 PR in 1999-00 and $300,000 PR in 2000-01); and (c) increasing the DHCF inter-agency aids appropriation by $990,000 PR annually to reflect funding for a BadgerCare premium contingency fund.

Compatibility with Purposes of Indian Gaming Revenues

19. The tribes have testified that many of the purposes for which tribal gaming revenue is proposed in the Governor's budget are not consistent with the purposes specified in the state-tribal memoranda of understanding (MOU) relating to the use of the additional payments. Generally, these purposes are: (a) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; (b) economic development initiatives in regions around casinos; (c) promotion

of tourism within the state; and (d) support of programs and services of the county in which the tribe is located.

It could be argued that, while increasing access to health services through MA outreach and providing funds to exempt tribal members from BadgerCare premium requirements would provide direct benefits to tribal members, these activities do not directly correspond with the purposes expressed in the MOU described above. Further, the Governor's recommendations relating to funding for FQHCs represents a substitution of current GPR funding for the program, rather than an increase in funding to support services provided by FQHCs.

ALTERNATIVE

A. Tribal Outreach

1. Adopt the Governor's recommendation to provide $240,000 PR in 1999-00 and $300,000 PR in 2000-01 to support tribal outreach activities. In addition, increase DHFS funding by these amounts to reflect the Governor's intent.

Alternative A1	PR
1999-01 FUNDING (Change to Bill)	$540,000

2. Modify the Governor's recommendation by providing an additional $250,000 PR in 1999-00 and $190,000 PR in 2000-01 so that a total of $490,000 PR annually would be provided for tribal outreach activities.

Alternative A2	PR
1999-01 FUNDING (Change to Bill)	$980,000

3. Maintain current law.

B. BadgerCare Premiums Contingency Fund

1. Modify the Governor's recommendation by providing $300,000 PR in 1999-00 and $400,000 PR in 2000-01 to reflect the reestimated cost of establishing a contingency fund to support BadgerCare premiums for Native American families. In addition, increase PR funding for DHFS by this amount to reflect the Governor's intent.

Alternative B1	PR
1999-01 FUNDING (Change to Bill)	$700,000

2. Modify the Governor's recommendation by providing $300,000 PR in 1999-00 and $400,000 in 2000-01 in the Committee's supplemental appropriation and require DHFS to submit a request for the release of these funds, under a 14-day passive review process once DHFS receives a written decision from HCFA on whether Native Americans will be required to pay premiums under the BadgerCare program.

Alternative B2	PR
1999-01 FUNDING (Change to Bill)	$700,000

4. Maintain current law.

C. Federally Qualified Health Centers and Technical Correction

1. Adopt the Governor's recommendation to provide $825,000 PR annually to support tribal federally qualified health centers under the MA program. In addition, increase PR funding by this amount to reflect this intent. Further, decrease MA benefits funding by $825,000 GPR annually.

Alternative C1	GPR	PR	TOTAL
1999-01 FUNDING (Change to Bill)	- $1,650,000	$1,650,000	$0

2. Maintain current law.

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