



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4448/1
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2015 SENATE BILL 617

January 22, 2016 - Introduced by Senator MARKLEIN, cosponsored by Representative KOOYENGA. Referred to Committee on Government Operations and Consumer Protection.

1 AN ACT **to repeal** 49.34 (5m) (b) 3.; **to consolidate, renumber and amend**
2 46.036 (5m) (b) 1. and 2. and 49.34 (5m) (b) 1. and 2.; **to amend** 46.036 (3) (a),
3 46.036 (5m) (a) 2., 46.036 (5m) (e), 46.036 (5m) (em), 49.34 (3) (a), 49.34 (5m)
4 (a) 2., 49.34 (5m) (em), 301.08 (2) (c) 1. and 301.08 (2) (e); and **to create** 301.08
5 (2) (em) of the statutes; **relating to:** surplus retention limitations for providers
6 of rate-based services purchased by the Department of Children and Families,
7 the Department of Corrections, the Department of Health Services, or a county
8 department of human services, social services, community programs, or
9 developmental disabilities services.

Analysis by the Legislative Reference Bureau

This bill makes certain changes with respect to the retention and disposition of surpluses generated by a provider of rate-based client services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services (county department).

Current law permits a nonprofit, nonstock corporation (provider) that contracts with DCF, DOC, DHS, or a county department to provide client services on the basis

SENATE BILL 617

of a unit rate per client service to retain up to 5 percent of the contract amount if revenues under the contract for the provision of a rate-based service, which is defined under current law as a service that is reimbursed through a prospectively set rate, exceed the allowable costs incurred in the contract period. Current law permits a provider to use those retained funds to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by that service.

This bill provides that a provider of a rate-based service is permitted to retain *not less than* 5 percent of the revenue received under the contract or a lesser amount determined in the sole discretion of the provider. The bill also eliminates the authority of a provider of a rate-based service to use those retained funds to cover deficits incurred in preceding or future contract periods and instead permits a provider of that service to use those retained funds to address the programmatic needs of any client of the provider, not just the clients served by that service. In addition, the bill provides that if on December 31 of any year the amount accumulated by the provider of a rate-based service from all contract periods ending during that year for the rate-based service exceeds the amount retained by the provider for that rate-based service, the provider must provide written notice of that excess to all purchasers of that rate-based service and, upon the written request of such a purchaser received no later than six months after the date of the notice, must return to the purchaser the purchaser's proportional share of that excess. The bill, however, does not guarantee the generation of a surplus by a provider of a rate-based service.

Current law also permits a provider of a rate-based service to accumulate funds from more than one contract period, except that if the amount accumulated by a provider for all contract periods for a rate-based service exceeds 10 percent of the amount of the provider's current contract for that rate-based service, the provider must, at the request of a purchaser of the rate-based service, return to that purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client service in the next contract period. In addition, current law provides that if a provider has held for four consecutive contract periods accumulated funds for a rate-based service equal to 10 percent of the amount of the provider's current contract for that rate-based service, the provider must apply 50 percent of those accumulated funds to reducing its unit rate per client service in the next contract period. This bill eliminates those 10 percent accumulated surplus retention limits.

Finally, the bill provides that if on the effective date of the bill, the amount accumulated by a provider of a rate-based service from all contract periods ending before that date for all rate-based services provided by the provider exceeds 10 percent of the provider's total contract amount for all rate-based services provided by the provider in the year before the effective date of the bill, the provider must provide written notice of that excess to all purchasers of that rate-based service and, upon the written request of such a purchaser received no later than six months after

SENATE BILL 617

the date of the notice, must return to the purchaser the purchaser's proportional share of that excess.

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

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

1 **SECTION 1.** 46.036 (3) (a) of the statutes is amended to read:

2 46.036 (3) (a) Purchase of service contracts Contracts under this section shall
3 be written in accordance with rules promulgated and procedures established by the
4 department. Contracts for client services shall show the total dollar amount to be
5 purchased and; shall show for each service the number of clients to be served,
6 number of client service units, the unit rate per client service, and the total dollar
7 amount for each service; shall permit the provider of a rate-based service to generate
8 a surplus of revenue earned under the contract over allowable costs incurred in the
9 contract period; and shall permit a nonprofit corporation that is a provider of a
10 rate-based service to retain from that surplus the amounts specified in sub. (5m) (b)
11 or (em), whichever is applicable. Nothing in this paragraph shall be construed to
12 guarantee the generation of a surplus by a provider of a rate-based service.

13 **SECTION 2.** 46.036 (5m) (a) 2. of the statutes is amended to read:

14 46.036 (5m) (a) 2. "Rate-based service" means a service or a group of similar
15 services, as determined by the department, provided under one or more contracts
16 between a provider and the purchaser of those services that is reimbursed through
17 a prospectively set rate and that is distinguishable from other services or groups of
18 similar services by the purpose for which funds are provided for that service or group
19 of similar services and by the source of funding for that service or group of similar
20 services.

SENATE BILL 617

1 **SECTION 3.** 46.036 (5m) (b) 1. and 2. of the statutes are consolidated,
2 renumbered 46.036 (5m) (b) and amended to read:

3 46.036 (**5m**) (b) Subject to subd. 2. and pars. (e) and (em), if revenue under a
4 contract for the provision of a rate-based service exceeds allowable costs incurred in
5 the contract period, the provider ~~may~~ shall be permitted to retain from the surplus
6 generated by that rate-based service ~~up to 5% not less than 5 percent~~ of the revenue
7 received under the contract. A provider that retains a surplus ~~under this subdivision~~
8 shall or a lesser amount determined in the sole discretion of the provider, which
9 retained amount shall be the property of the provider, and to use that retained
10 surplus ~~to cover a deficit between revenue and allowable costs incurred in any~~
11 preceding or future contract period for the same rate-based service that generated
12 the surplus or to address the programmatic needs of clients served by the same
13 rate-based service that generated the surplus. ~~2.. If on December 31 of any year the~~
14 amount accumulated by a provider from all contract periods ending during that year
15 for a rate-based service exceeds the total amount retained under this paragraph for
16 that rate-based service, the provider shall provide written notice of that excess to all
17 purchasers of that rate-based service and, upon the written request of such a
18 purchaser received no later than 6 months after the date of the notice, shall return
19 to the purchaser the purchaser's proportional share of that excess. Subject to pars.
20 (e) and (em), a provider may accumulate funds from more than one contract period
21 under this paragraph, except that, if at the end of a contract period the amount
22 accumulated from all contract periods for a rate-based service exceeds 10% of the
23 revenue received under all current contracts for that rate-based service, the
24 provider shall, at the request of a purchaser, return to that purchaser the purchaser's
25 proportional share of that excess and use any of that excess that is not returned to

SENATE BILL 617

1 a purchaser to reduce the provider's unit rate per client for that rate-based service
2 in the next contract period. If a provider has held for 4 consecutive contract periods
3 an accumulated reserve for a rate-based service that is equal to or exceeds 10% of
4 the revenue received under all current contracts for that rate-based service, the
5 provider shall apply 50% of that accumulated amount to reducing its unit rate per
6 client for that rate-based service in the next contract period. Nothing in this
7 paragraph shall be construed to guarantee the generation of a surplus by the
8 provider of a rate-based service.

9 **SECTION 4.** 46.036 (5m) (e) of the statutes is amended to read:

10 46.036 (5m) (e) Notwithstanding par. (b) 1. and 2., the department or a county
11 department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that purchases care and
12 services from an inpatient alcohol and other drug abuse treatment program that is
13 not affiliated with a hospital and that is licensed as a community-based residential
14 facility, may allocate to the program an amount that is equal to the amount of
15 revenues received by the program that are in excess of the allowable costs incurred
16 in the period of a contract between the program and the department or the county
17 department for purchase of care and services under this section. The department or
18 the county department may make the allocation under this paragraph only if the
19 funds so allocated do not reduce any amount of unencumbered state aid to the
20 department or the county department that otherwise would lapse to the general
21 fund.

22 **SECTION 5.** 46.036 (5m) (em) of the statutes is amended to read:

23 46.036 (5m) (em) Notwithstanding pars. (b) 1. and 2. and (e), a county
24 department under s. 46.215, 51.42, or 51.437 providing client services in a county
25 having a population of 500,000 or more or a nonstock, nonprofit corporation

SENATE BILL 617

1 providing client services in such a county may not retain a surplus under par. (b) 1.,
2 or accumulate funds under par. (b) 2., or allocate an amount under par. (e) from
3 revenues that are used to meet the maintenance-of-effort requirement under the
4 federal temporary assistance for needy families program under 42 USC 601 to 619.

5 **SECTION 6.** 49.34 (3) (a) of the statutes is amended to read:

6 49.34 (3) (a) Purchase of service contracts Contracts under this section shall
7 be written in accordance with rules promulgated and procedures established by the
8 department. Contracts for client services shall show the total dollar amount to be
9 purchased and; shall show for each service the number of clients to be served,
10 number of client service units, the unit rate per client service, and the total dollar
11 amount for each service; shall permit the provider of a rate-based service to generate
12 a surplus of revenue earned under the contract over allowable costs incurred in the
13 contract period of not less than 5 percent of the revenue received under the contract;
14 and shall permit a nonprofit corporation that is a provider of a rate-based service to
15 retain from that surplus the amounts specified in sub. (5m) (b) or (em), whichever
16 is applicable. Nothing in this paragraph shall be construed to guarantee the
17 generation of a surplus by a provider of a rate-based service.

18 **SECTION 7.** 49.34 (5m) (a) 2. of the statutes is amended to read:

19 49.34 (5m) (a) 2. "Rate-based service" means a service or a group of similar
20 services, as determined by the department, provided under one or more contracts
21 between a provider and the purchaser of those services that is reimbursed through
22 a prospectively set rate and that is distinguishable from other services or groups of
23 similar services by the purpose for which funds are provided for that service or group
24 of similar services and by the source of funding for that service or group of similar
25 services.

SENATE BILL 617

1 **SECTION 8.** 49.34 (5m) (b) 1. and 2. of the statutes are consolidated, renumbered
2 49.34 (5m) (b) and amended to read:

3 49.34 (5m) (b) Subject to subds. 2. and 3. and par. (em), if revenue under a
4 contract for the provision of a rate-based service exceeds allowable costs incurred in
5 the contract period, the provider ~~may shall be permitted to retain from the surplus~~
6 generated by that rate-based service ~~up to 5% not less than 5 percent of the contract~~
7 amount. A provider that retains a surplus under this subdivision shall ~~revenue~~
8 ~~received under the contract or a lesser amount determined in the sole discretion of~~
9 ~~the provider, which retained amount shall be the property of the provider, and to use~~
10 that retained surplus to cover a deficit between revenue and allowable costs incurred
11 in any preceding or future contract period for the same rate-based service that
12 generated the surplus or to address the programmatic needs of clients served by the
13 same rate-based service that generated the surplus. This subdivision does not apply
14 to a child welfare agency that is authorized under s. 48.61 (7) to license foster homes,
15 a group home, as defined in s. 48.02 (7), or a residential care center for children and
16 youth, as defined in s. 48.02 (15d). 2.. If on December 31 of any year the amount
17 accumulated by a provider from all contract periods ending during that year for a
18 rate-based service exceeds the total amount retained under this paragraph for that
19 rate-based service, the provider shall provide written notice of that excess to all
20 purchasers of the rate-based service and, upon the written request of such a
21 purchaser received no later than 6 months after the date of the notice, shall return
22 to the purchaser the purchaser's proportional share of that excess. Subject to subd.
23 3. and par. (em), a provider may accumulate funds from more than one contract
24 period under this paragraph, except that, if at the end of a contract period the amount
25 accumulated from all contract periods for a rate-based service exceeds 10% of the

1 amount of all current contracts for that rate-based service, the provider shall, at the
2 request of a purchaser, return to that purchaser the purchaser's proportional share
3 of that excess and use any of that excess that is not returned to a purchaser to reduce
4 the provider's unit rate per client for that rate-based service in the next contract
5 period. If a provider has held for 4 consecutive contract periods an accumulated
6 reserve for a rate-based service that is equal to or exceeds 10% of the amount of all
7 current contracts for that rate-based service, the provider shall apply 50% of that
8 accumulated amount to reducing its unit rate per client for that rate-based service
9 in the next contract period. The department may grant an exception to this
10 subdivision upon request of a provider that is a child welfare agency that is
11 authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s.
12 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02
13 (15d). Nothing in this paragraph shall be construed to guarantee the generation of
14 a surplus by the provider of a rate-based service.

15 **SECTION 9.** 49.34 (5m) (b) 3. of the statutes is repealed.

16 **SECTION 10.** 49.34 (5m) (em) of the statutes is amended to read:

17 49.34 (5m) (em) Notwithstanding par. (b) 1. and 2., a county department under
18 s. 46.215, 51.42, or 51.437 providing client services in a county having a population
19 of 500,000 or more or a nonstock, nonprofit corporation providing client services in
20 such a county may not retain a surplus generated by a rate-based service or
21 accumulate funds from more than one contract period for a rate-based service from
22 revenues that are used to meet the maintenance-of-effort requirement under the
23 federal temporary assistance for needy families program under 42 USC 601 to 619.

24 **SECTION 11.** 301.08 (2) (c) 1. of the statutes is amended to read:

SENATE BILL 617

1 301.08 (2) (c) 1. Purchase of service contracts Contracts under this section shall
2 be written in accordance with rules and procedures established by the department.
3 Contracts for client services shall show the total dollar amount to be purchased and;
4 shall show for each service the number of clients to be served, number of client service
5 units, the unit rate per client service, and the total dollar amount for each service;
6 shall permit the provider of a rate-based service to generate a surplus of revenue
7 earned under the contract over allowable costs incurred in the contract period; and
8 shall permit a nonprofit corporation that is a provider of a rate-based service to
9 retain from that surplus the amounts specified in par. (em) 2. or 5., whichever is
10 applicable. Nothing in this subdivision shall be construed to guarantee the
11 generation of a surplus by a provider of a rate-based service.

12 **SECTION 12.** 301.08 (2) (e) of the statutes is amended to read:

13 301.08 (2) (e) The Except as provided in par. (em), the purchaser shall recover
14 from provider agencies money paid in excess of the conditions of the contract from
15 subsequent payments made to the provider.

16 **SECTION 13.** 301.08 (2) (em) of the statutes is created to read:

17 301.08 (2) (em) 1. In this paragraph:

18 a. "Provider" means a nonstock corporation organized under ch. 181 that is a
19 nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this
20 section to provide client services on the basis of a unit rate per client service or a
21 county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that contracts
22 under this section to provide client services on the basis of a unit rate per client
23 service.

24 b. "Rate-based service" means a service or a group of similar services, as
25 determined by the department, provided under one or more contracts between a

SENATE BILL 617

1 provider and the purchaser of those services that is reimbursed through a
2 prospectively set rate and that is distinguishable from other services or groups of
3 similar services by the purpose for which funds are provided for that service or group
4 of similar services and by the source of funding for that service or group of similar
5 services.

6 2. Subject to subd. 5., if revenue under a contract for the provision of a
7 rate-based service exceeds allowable costs incurred in the contract period, the
8 provider shall be permitted to retain from the surplus generated by that rate-based
9 service not less than 5 percent of the revenue received under the contract or a lesser
10 amount determined in the sole discretion of the provider, which retained amount
11 shall be the property of the provider, and to use that retained surplus to address the
12 programmatic needs of clients. If on December 31 of any year the amount
13 accumulated by a provider from all contract periods ending during that year for a
14 rate-based service exceeds the total amount retained under this subdivision for that
15 rate-based service, the provider shall provide written notice of that excess to all
16 purchasers of that rate-based service and, upon the written request of such a
17 purchaser received no later than 6 months after the date of the notice, shall return
18 to the purchaser the purchaser's proportional share of that excess. Subject to subd.
19 5., a provider may accumulate funds from more than one contract period under this
20 subdivision. Nothing in this subdivision shall be construed to guarantee the
21 generation of a surplus by a provider of a rate-based service.

22 5. Notwithstanding subd. 2., a county department under s. 46.215 providing
23 client services in a county having a population of 750,000 or more or a nonstock,
24 nonprofit corporation providing client services in such a county may not retain a
25 surplus generated by a rate-based service or accumulate funds from more than one

SENATE BILL 617

1 contract period for a rate-based service from revenues that are used to meet the
2 maintenance-of-effort requirement under the federal temporary assistance for
3 needy families program under 42 USC 601 to 619.

4 6. All providers that are subject to this paragraph shall comply with any
5 financial reporting and auditing requirements that the department may prescribe.
6 Those requirements shall include a requirement that a provider provide to any
7 purchaser and the department any information that the department needs to claim
8 federal reimbursement for the cost of any services purchased from the provider and
9 a requirement that a provider provide audit reports to any purchaser and the
10 department according to standards specified in the provider's contract and any other
11 standards that the department may prescribe.

SECTION 14. Nonstatutory provision.

13 (1) RATE-BASED SERVICE CONTRACTS. If on the effective date of this subsection,
14 the amount accumulated by a provider, as defined in sections 46.036 (5m) (a) 1. and
15 49.34 (5m) (a) 1. of the statutes and as defined in section 301.08 (2) (em) 1. a. of the
16 statutes, as created by this act, from all contract periods ending before that date for
17 all rate-based services, as defined in sections 46.036 (5m) (a) 2. and 49.34 (5m) (a)
18 2. of the statutes and as defined in section 301.08 (2) (em) 1. b. of the statutes, as
19 created by this act, provided by the provider exceeds 10 percent of the provider's total
20 contract amount for all rate-based services provided by the provider in the year
21 before the effective date of this subsection, the provider shall provide written notice
22 of that excess to all purchasers of that rate-based service and, upon the written
23 request of such a purchaser received no later than 6 months after the date of the
24 notice, shall return to the purchaser the purchaser's proportional share of that
25 excess.

SENATE BILL 617**SECTION 15****1 SECTION 15. Initial applicability.**

2 (1) RATE-BASED SERVICE CONTRACTS. This act first applies to a contract under
3 which a provider commences performance on the effective date of this subsection.

4 SECTION 16. Effective date.

5 (1) RATE-BASED SERVICE CONTRACTS. This act takes effect on the January 1 after
6 publication.

7 (END)