



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PUBLIC ASSISTANCE PROGRAM INTEGRITY

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Wisconsin Works and Wisconsin Shares: Fraud Prevention and Detection, Collection of Overpayments, and Penalties for Fraudulent Activity

DATE: July 28, 2010

This Memo describes current law relating to fraud prevention and investigation under Wisconsin Works (W-2) and Wisconsin Shares, sanctions and penalties for violations under W-2 and Wisconsin Shares, collection of overpayments under those programs, and penalties for violations relating to public assistance programs, in general.

BACKGROUND

The Department of Children and Families (DCF) administers the W-2 program. The program is funded by the federal Temporary Assistance to Needy Families (TANF) block grant and state maintenance-of-effort funds. At the local level, the W-2 program is administered by individual W-2 agencies. According to DCF, in calendar year 2009, there were 20,904 W-2 participants.

The W-2 agency assigns W-2 participants who meet financial and nonfinancial eligibility criteria to unsubsidized employment or to subsidized employment. In general, there are three types of subsidized employment: trial jobs, community service jobs, and transitional placements. Under the trial jobs program, the W-2 agency provides a wage subsidy to an employer that employs a participant and agrees to make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy has terminated. The wage subsidy may not exceed \$300 per month for full-time employment. W-2 participants placed in a community service job or a transitional placement are paid an hourly wage by the W-2 agency. [s. 49.147 (3), (4), and (5), Stats.]

DCF also administers Wisconsin Shares which provides child care subsidies to eligible individuals. [See s. 49.155, Stats.] Wisconsin Shares is part of W-2 and, for many purposes, the W-2

laws apply to the Wisconsin Shares program. According to DCF, as of June 2010, Wisconsin Shares served 32,166 families.

Individuals may also receive job access loans and transportation assistance under W-2. In addition, there are W-2 benefits specific to pregnant women, noncustodial parents, and minor custodial parents. [See ss. 49.147 (6), 49.148 (1m), 49.157, and 49.159, Stats.]

Data is available from DCF on intentional and erroneous overpayments of W-2 benefits on a yearly basis since 2005 and on Wisconsin Shares fraud expenditures and overpayment collections on a monthly basis since December 2009.

Table 1 sets forth the number of claims of overpayments due to intentional W-2 program violations, client error, and administrative error and the amount of benefits improperly received as a result of those violations and errors.

Table 1: W-2 Overpayment Claims and Amounts of Overpayments from Calendar Year 2005 to 2010

Year	Intentional Violations		Client Error		Administrative Error	
	Claims	Amount	Claims	Amount	Claims	Amount
2005	33	\$41,074.00	151	\$161,189.97	132	\$57,463.77
2006	17	\$12,394.50	124	\$201,370.30	69	\$27,991.00
2007	38	\$23,619.00	126	\$108,419.51	25	\$5,023.55
2008	4	\$8,981.00	148	\$127,669.50	48	\$12,007.24
2009	86	\$62,501.70	123	\$110,879.05	79	\$29,496.73
2010 (through June)	2	\$2,969.00	38	\$32,553.60	46	\$15,169.41

Table 2 sets forth the DCF expenditures related to fraud prevention and investigation, expenditures related to recovering overpayments due to error or fraud, and overpayments or restitution collected by DCF from December 2009 through June 2010.

Table 2: DCF Expenditure for Fraud Prevention and Investigation and Recovering Overpayments and Overpayments Collected from December 2009 to June 2010

Month	Expenditures -- Fraud Prevention and Investigation	Expenditures -- Recovering Overpayments Due to Error or Fraud	Overpayments Collected -- Responsibility of Child Care Subsidy Recipient	Overpayments Collected -- Responsibility of Child Care Provider
December 2009	\$118,000	\$43,200	\$51,939	\$40,155
January 2010	\$120,100	\$44,450	\$288,045	\$84,525
February 2010	\$152,600	\$36,200	\$1,010,833	\$122,854
March 2010	\$199,600	\$32,300	\$161,109	\$36,417
April 2010	\$156,300	\$31,800	\$86,940	\$32,377
May 2010	\$182,500	\$30,000	\$58,831	\$67,061
June 2010	\$196,300	\$29,044	\$70,575	\$62,781

For calendar 2010, DCF has allocated \$605,000 for fraud investigation. \$60,500 is allocated to W-2 agencies for W-2 fraud activities. The remaining \$544,500 is allocated to counties and tribes for child care fraud activities. Milwaukee County is allocated \$284,028 of this funding. [See *Administration of Child Care Programs Contract 2010 Allocations*, DCF Division of Early Care and Education Administrator's Memo Series, DECE 09-03, dated December 30, 2009.]

FRAUD INVESTIGATION AND REDUCTION AND ERROR REDUCTION

Fraud Investigation by DCF

Under current law, DCF must establish a program to investigate suspected fraudulent activity on the part of W-2 recipients.¹ DCF's activities under this provision may include any of the following:

- Comparisons of information provided to DCF by an applicant and information provided by the applicant to other federal, state, and local agencies.
- Development of an advisory welfare investigation prosecution standard.
- Provision of funds to county departments of health or social services to encourage activities to detect fraud.

Current law also requires DCF to cooperate with district attorneys regarding fraud prosecutions. [s. 49.197 (1m), Stats.]

Local Fraud Investigation

Under current law, if a county department, W-2 agency, or tribal governing body administers the W-2 program, the county department, W-2 agency, or tribal governing body may establish a program to investigate suspected fraudulent activity on the part of W-2 participants, including persons receiving a Wisconsin Shares child care subsidy, and to recover incorrect payments made or incorrect benefits provided as a result of fraudulent activity.

A county department, W-2 agency, or tribal governing body that establishes a program to investigate fraudulent activity must advise both DCF and DHS of the date on which the program was established and, on an ongoing basis, of any amounts recovered as a result of the program.

The county department, W-2 agency, or tribal governing body may retain any amounts recovered and use that money for any purpose for which funding under the TANF block grant may be used under federal law. If the amount is recovered with respect to the Wisconsin Shares program by Milwaukee County due to the efforts of an employee of that county who is supervised by DCF or DHS, the amount recovered must be credited to the appropriation account for child care and temporary assistance overpayment recovery. All moneys in this appropriation may be used for costs related to recovering

¹ Current statutes also permit the Department of Health Services (DHS) to contract with DCF to investigate suspected fraudulent activity on the part of recipients of Medical Assistance (MA), food stamp benefits, Supplemental Security Income (SSI) payments, payments for the support of children of SSI recipients, and health care benefits under the Badger Care health care program and to conduct activities to reduce errors in those programs. DHS does not currently contract with DCF to conduct these activities.

overpayments and incorrect or disallowed payments, for activities to reduce errors under W-2, and for any public assistance purpose listed in s. 49.175 (1), Stats., for which TANF and other economic support funds are allocated. [ss. 20.437 (2) (me) and 49.197 (2), Stats.]

State Error Reduction Activities

Under current law, DCF must conduct activities to reduce payment errors in W-2. [s. 49.197 (3) to (5), Stats.]

Reporting Suspected Fraudulent Activity

Current law provides that, if any employee of DCF, a county, or a tribal governing body reasonably suspects that fraudulent activity, as described above, has occurred or is occurring, the employee must immediately report the facts and circumstances contributing to that suspicion to the employee's immediate supervisor.

An immediate supervisor who receives a report from an employee must immediately evaluate the report to determine whether there is reason to suspect that fraudulent activity has occurred or is occurring. If the supervisor determines that there is reason to suspect that fraudulent activity has occurred or is occurring, the supervisor must immediately report the facts and circumstances contributing to that suspicion to the unit of DCF that is responsible for investigating fraudulent activity. If the supervisor is an employee of a county having a population of 145,000 or more (Milwaukee, Dane, Waukesha, Brown, Racine, Outagamie, Kenosha, Winnebago, and Rock Counties), the supervisor must also immediately report those facts and circumstances to the sheriff.

Any person who fails to report, as described above, may be required to forfeit not more than \$1,000. Any person participating in good faith in making a report of suspected fraudulent activity, as described above, or in initiating, participating in, or testifying in, any action or proceeding in which fraudulent activity is alleged has immunity from any liability, civil or criminal, that results by reason of the action. Under this provision, good faith is presumed. Also, DCF, a county, a tribal governing body, or an employee of DCF, a county, or a tribal governing body may not take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith reported suspected fraudulent activity or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity was alleged. [s. 49.197 (6), Stats.]

Reviews of Eligibility

Under current law, a W-2 agency must periodically review an individual's eligibility. [s. 49.145 (4), Stats.] DCF is also required to conduct a program to periodically verify eligibility of W-2 participants through a check of school enrollment records of local school boards. [s. 49.32 (7) (a), Stats.]

Current law also requires DCF to periodically match the records of Aid to Families with Dependent Children (AFDC) recipients with the records of public assistance recipients in other states, to verify residency, and with records of persons in correctional facilities. [s. 49.32 (7) (b) to (d), Stats.] Because the AFDC program is no longer in effect, it appears that this provision is obsolete.

Finally, current law requires DCF to make a periodic check of the amounts earned by AFDC and W-2 recipients through a check of the amounts credited to the recipient's Social Security number. DCF must make an investigation into any discrepancies between the amount credited to a Social Security number and the amount reported as income. [s. 49.32 (8), Stats.] Again, it appears that the provision relating to AFDC recipients is obsolete.

W-2 OVERPAYMENTS

Notice of Overpayment

Under DCF administrative rules, a county, tribal governing body, W-2 agency, or DCF must determine whether an overpayment has been made in the W-2, Wisconsin Shares, or AFDC program and, if so, the amount of the overpayment. The county, the tribal governing body, the W-2 agency, or DCF must send a notice of the overpayment to the address of a debtor as it appears on DCF's records. The notice must include the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and notice of the right to appeal the overpayment determination. [s. DCF 101.23 (2) (a) to (c), Wis. Adm. Code.]

Liability for Overpayments

Under DCF administrative rules, liability for overpayments extends to any parent, non-marital coparent, or stepparent whose family receives W-2 or AFDC benefits during the period that he or she is an adult member of the same household, but his or her liability is limited to that period. Liability for repayment of an overpayment is joint and several, meaning the repayment may be collected from one or all of the persons liable and all persons are liable for the full amount of the overpayment.

Liability for overpayments caused by administrative error is limited to one year prior to the date that the agency or DCF discovers the error for overpayments determined on or after August 1, 2005. "Administrative error" is defined as an error committed by an agency or DCF in determining benefits given that results in an overpayment. [s. DCF 101.23 (1) (a) and (3), Wis. Adm. Code.]

Recoupment of Overpayments

Simultaneous Collection

A county, tribal governing body, W-2 agency, or DCF may recover an overpayment by more than one method of collection at a time. [s. DCF 101.23 (4), Wis. Adm. Code.]

Current W-2 Participants

If an overpayment of benefits paid to a community service job or transitional placement participant is due to ***administrative error*** or ***client error***, the W-2 agency or DCF must recoup the overpayment from a debtor who continues to receive community service job benefits or transitional placement benefits by reducing the amount of the individual's benefit payment by no more than 10%. "Client error" is defined as an error caused by an individual who is a member of a W-2 or AFDC group reporting incorrect information or failing to report information due to misunderstanding or mistake that results in an overpayment.

The debtor may make a voluntary repayment in addition to the amount withheld from the benefit. The county, tribal governing body, or W-2 agency must ask a debtor who has received an overpayment to voluntarily repay the overpayment. If the debtor fails to pay voluntarily, the county, tribal governing body, or W-2 agency must refer the debt to DCF for further collection efforts. [s. 49.161 (2), Stats., and s. DCF 101.23 (1) (b) and (5) (a), Wis. Adm. Code.]

If an overpayment of benefits paid to a trial job, community service job, or transitional placement participant is the result of an *intentional violation* of current statute or administrative rules governing the W-2 program, the W-2 agency or DCF must recoup the overpayment from the debtor by deducting an amount from the debtor's benefits as a trial job, community service job, or transitional placement participant until the overpayment is recovered. The amount to be deducted each month may not exceed the following:

- If the overpayment is less than \$300, 10% of the amount of the monthly benefit payment.
- If the overpayment is at least \$300 but less than \$1,000, \$75.
- If the overpayment is at least \$1,000 but less than \$2,500, \$100.
- If the overpayment is \$2,500 or more, \$200.

“Intentional program violation” means a circumstance under which an individual who is a member of a W-2 or AFDC group² intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts that resulted in an overpayment. An intentional program violation may be determined based on an administrative hearing, a court finding, a signed waiver of an administrative hearing for an alleged intentional program violation, or a consent agreement in lieu of prosecution based on the same facts or events as the intentional program violation. [s. 49.161 (3), Stats., and s. DCF 101.23 (1) (g) and (5) (b), Wis. Adm. Code.]

Trial Job Participants

A W-2 agency is required to recover overpayments of benefits paid to a participant in a trial job. The amount that may be recovered under this provision may not exceed the amount that the W-2 agency or DCF paid in wage subsidies for that participant while the participant was ineligible to participate. The W-2 agency must ask a former participant in a trial job who received overpayments to voluntarily repay the overpayment. If a former participant does not voluntarily repay the overpayment, the W-2 agency must refer the debt to DCF for further collection action. [s. DCF 101.23 (6), Wis. Adm. Code.]

Recovery from “Windfall”

W-2 agencies providing W-2 benefits may recover payments if an individual acquires property by gift, inheritance, sale of assets, court judgment or settlement of any damage claim, or by winning a

² A W-2 group is an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent, and all dependent children with respect to whom the individual's child is a custodial parent. In addition, a W-2 group includes any nonmarital coparent or any spouse of the individual who resides in the same household and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. [s. 49.141 (1) (s), Stats.]

lottery or prize. The amount of the benefits the agency may recover is not limited to overpayment amounts. [s. 49.195 (1), Stats.]

Lien and Levy of Personal Property

If a person fails to pay DCF the amount of an overpayment, DCF may issue a warrant if there is no review or appeal pending or if the time for requesting a review or taking an appeal has expired. The warrant constitutes a lien upon the person's real and personal property located in the county in which the warrant is issued. DCF may also collect a debt to DCF by levy upon any property belonging to the debtor. The following is exempt from levy:

- A subsistence allowance of 75% of the individual's disposable earnings.
- An amount equal to 30 times the federal minimum hourly wage for each full week of the individual's pay period.
- An amount equal to 60 times the federal minimum hourly wage for a two-week pay period.
- An amount equal to 130 times the federal minimum hourly wage for a monthly pay period.
- The first \$1,000 of a bank account.

[s. 49.195 (3m) and (3n), Stats., and s. DCF 101.23 (9) and (10), Wis. Adm. Code.]

Tax Intercept

DCF may certify amounts that were overpaid to the Department of Revenue (DOR) so that the amount may be recovered through a tax intercept program. DCF must provide notice and a right to appeal such a certification. [s. 49.85, Stats.]

Waiver of Overpayment Recovery

Under current administrative rules, DCF may waive recovery of an overpayment if DCF has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts. [s. DCF 101.23 (13), Wis. Adm. Code.]

W-2 PROHIBITED CONDUCT

Violations

Under current law, a person, in connection with W-2, may not do any of the following:

- Knowingly and willfully make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment.
- Having knowledge of the occurrence of any event affecting the initial or continued eligibility for a benefit or payment under W-2, conceal or fail to disclose that event with an intent

fraudulently to secure a benefit or payment under W-2 either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

[s. 49.141 (6), Stats.]

Criminal Penalties and Suspension of Benefits

A person who is convicted of violating the above provisions in connection with furnishing items or services for which payment may be made under W-2 is guilty of a Class H felony.³ Any other person who is convicted of violating one of these provisions may be fined not more than \$10,000 or imprisoned for not more than nine months, or both.

In addition to the criminal penalties, above, a person must be suspended from participating in W-2 for a period of 10 years, beginning on the date of conviction, if the person is convicted in a federal or state court for any of the following:

- Knowingly and willfully making or causing to be made any false statement or representation of a material fact in any application for any benefit or payment with respect to his or her identity or place of residence for the purpose of receiving simultaneously from Wisconsin and at least one other state assistance funded by the TANF block grant.
- Fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving simultaneously from Wisconsin and at least one other state benefits under the MA program, the federal food stamp program, or the federal Supplemental Security Income (SSI) program.

A person who has been suspended from participating in W-2 for 10 years, as described above, may have his or her eligibility to participate in W-2 reinstated if he or she is pardoned by the President of the United States. [s. 49.141 (7), Stats.]

Damages

Under current law, if a person is convicted of a W-2 violation, as described above, the state has a cause of action for relief against the person in an amount equal to three times the amount of actual damages sustained as a result of the excess payments made in connection with the offense for which the person was convicted. Proof of a conviction of a W-2 violation is conclusive proof in a civil action of the state's right to damages and the only issue in controversy may be the amount of the actual damages sustained. Actual damages consist of the total amount of excess payments, any part of which is paid with state funds. [s. 49.141 (8), Stats.]

³ A *Class H felony* is punishable by a fine of not more than \$10,000 or imprisonment of not more than six years (a maximum term of confinement in prison of three years and a maximum term of extended supervision of three years), or both.

Kickbacks, Bribes, and Rebates

Under current law, whoever solicits or receives any remuneration in cash or in-kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made under W-2, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made under W-2 is guilty of a Class H felony, except that the person may be fined not more than \$25,000.

In addition, whoever offers or pays any remuneration in cash or in-kind to any person to induce the person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made under W-2, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made under W-2 is guilty of a Class H felony, except that the person may be fined not more than \$25,000.

These provisions do not apply to any of the following:

- A discount or other reduction in price obtained by a provider of social services, children's services, health care services, or economic support services or other entity under chs. 46 to 51 and 58, Stats., if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under W-2.
- An amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services.

[s. 49.141 (9), Stats.]

Prohibited Charges

Under current law, a service provider may not knowingly impose upon a W-2 recipient charges in addition to payments received for services under W-2 or knowingly impose direct charges upon a recipient instead of obtaining payment under W-2 unless benefits or services are not provided under W-2 and the recipient is advised of this fact prior to receiving the service. A person who violates this provision is guilty of a Class H felony, except that the person may be fined not more than \$25,000. [s. 49.141 (10), Stats.]

Suspension of Benefits for Intentional Program Violations

Under current law, if a court finds or it is determined after an administrative hearing that an individual who is a member of a W-2 group applying for or receiving W-2 benefits, for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has intentionally violated, on three separate occasions, any provision of current law relating to W-2 or any rules promulgated under that law, the W-2 agency may permanently deny W-2 benefits to the individual. [s. 49.151 (2), Stats., and s. DCF 101.21 (2), Wis. Adm. Code.]

Review of Agency Decisions

Under current law, any individual whose application for any component of W-2 is not acted upon by the W-2 agency with reasonable promptness or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position in which the individual was placed is inappropriate, may petition the W-2 agency for a review of such action. Review is unavailable if the action by the W-2 agency occurred more than 45 days prior to the submission of the petition for review. [s. 49.152 (1), Stats., and s. DCF 101.22 (1), Wis. Adm. Code.]

Upon a timely petition, the W-2 agency must give the applicant or participant reasonable notice and opportunity for a review. The W-2 agency must render its decision as soon as possible after the review and must send by first class mail a certified copy of its decision to the last-known address of the applicant or participant. The W-2 agency must deny a petition or refuse to grant relief if the petitioner does any of the following:

- Withdraws the petition in writing.
- Abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by representative at a scheduled review without good cause.⁴

[s. 49.152 (2) (a), Stats., and s. DCF 101.22 (2) (a), Wis. Adm. Code.]

DCF may review a W-2 agency decision if any of the following occurs:

- Within 21 days after the date on which the certified copy of the decision of the W-2 agency is mailed, the applicant or participant petitions DCF for a review of that decision.
- The W-2 agency requests DCF to review the decision of the W-2 agency.

If DCF reviews a W-2 agency's decision, DCF may make any additional investigation that it considers necessary. DCF must render its decision as soon as possible and must send a certified copy of its decision to the applicant or participant, the county clerk, if appropriate, and the W-2 agency. DCF's decision is final but may be revoked or modified as altered conditions may require. DCF must deny a petition or refuse to grant relief if the applicant or participant withdraws the petition in writing.

If, following review of a petition, the W-2 agency or DCF determines that an individual, whose application for a W-2 employment position was denied based on eligibility, was in fact eligible, or that

⁴ Good cause for failing to appear at a scheduled review may be any of the following circumstances:

- A required court appearance, including a required court appearance for a victim of domestic abuse.
- Other circumstances beyond the control of the participant but only as determined by the financial and employment planner.

[s. DCF 101.20, Wis. Adm. Code.]

the individual was placed in an inappropriate W-2 employment position, the W-2 agency must place the individual in the first available W-2 employment position that is appropriate for that individual, as determined by the W-2 agency or DCF.

If, following review of a petition, the W-2 agency or DCF determines that a participant's benefit was improperly modified or canceled, or was calculated incorrectly, the W-2 agency must restore the benefit to the level determined to be appropriate by the W-2 agency or DCF retroactive to the date on which the benefit was first improperly modified or canceled or incorrectly calculated. [s. 49.152 (2) (b) to (d) and (3), Stats., and s. DCF 101.22 (2) (b) and (c), Wis. Adm. Code.]

An individual or the individual's authorized representative may review the individual's entire case record to verify that the content accurately reflects statements and documentation of facts. The W-2 agency may not withhold any part of the record during preparation for review of a W-2 agency decision. [s. DCF 101.07 (3), Wis. Adm. Code.]

Notice Before Taking Certain Actions

Before taking any action against a participant that would result in a 20% or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W-2, a W-2 agency must do all of the following:

- Explain to the participant orally, in person, or by phone the proposed action and the reasons for the proposed action or make reasonable attempts to do so.
- After providing the explanation, provide the participant written notice of the proposed action and of the reasons for the proposed action.
- After providing the explanation or the attempts to provide an explanation and the notice, if the participant has not already been afforded a conciliation period for compliance, allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

DCF is required to promulgate rules that establish procedures for the notice and explanation and that define "reasonable attempts" for purposes of providing an explanation to a participant and "reasonable time" for purposes of giving a participant time to rectify a deficiency, failure, or other behavior. [s. 49.153, Stats.]

Provisions Specific to the Wisconsin Shares Child Care Subsidy Program

Recordkeeping by Child Care Providers

Current law contains specific recordkeeping requirements for child care providers who participate in Wisconsin Shares. With respect to attendance records, a child care provider must do all of the following:

- Maintain a written record of the daily hours of attendance of each child for whom the provider is providing care under Wisconsin Shares, including the actual arrival and departure times of each child.

- Retain the written daily attendance records for each child for at least three years after the child's last day of attendance, regardless of whether the child care provider is still receiving or is eligible to receive payments under Wisconsin Shares.

[s. 49.155 (6m), Stats.]

Refusal to Pay Child Care Providers

Under current law, if a child care provider is convicted of a serious crime or if a caregiver (e.g., employee) or a nonclient resident of the child care provider is convicted or adjudicated delinquent for committing a serious crime⁵ on or after his or her 12th birthday, DCF or the county department of human or social services must refuse to pay the child care provider for any child care provided under the Wisconsin Shares program beginning on the date of the conviction or delinquency adjudication.

If a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime or if a caregiver or a nonclient resident of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, DCF or the county department must immediately suspend payments to the child care provider until DCF obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment.

DCF or a county department may refuse to pay a child care provider if any of the following applies to the child care provider or to a caregiver or a nonclient resident of the child care provider:

- The person has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing an offense that is not a serious crime, but DCF, the county department, an agency contracting with DCF to license child care providers, or a school board contracting with a child care provider determines that the offense substantially relates to the care of children or DCF or the county department determines that the offense substantially relates to the operation of a business.
- The person is a caregiver or a nonclient resident and is the subject of a pending criminal charge that DCF, the county department, an agency contracting with DCF to license child care providers, or a school board contracting with a child care provider determines substantially relates to the care of children.
- The person has been determined to have abused or neglected a child.
- DCF or the county department reasonably suspects that the person has violated any provision under the Wisconsin Shares program or any rule promulgated to implement the Wisconsin Shares program.

[ss. 49.133 and 49.155 (7), Stats.]

⁵ "Serious crime" is defined under s. 48.685 (1) (c), Stats., and includes crimes against life and bodily security, certain alcohol and drug offenses, public assistance fraud, and, for child care providers, certain financial crimes.

Penalties for Child Care Providers

Under current law, DCF is required to promulgate rules to establish policies and procedures permitting DCF to do all of the following if a child care provider submits false, misleading, or irregular information to DCF or if a child care provider fails to comply with the terms of the Wisconsin Shares program and fails to provide to the satisfaction of DCF an explanation for the noncompliance:

- Recoup payments made to the child care provider.
- Withhold payments to be made to the child care provider.
- Impose a forfeiture on the child care provider.

The above penalties may be imposed on any child care provider subject to the Wisconsin Shares program statutes. Any officer, director, or employee of a child care provider that is a corporation, and any member, manager, or employee of a child care provider that is a limited liability company (LLC), who holds at least 20% of the ownership interest of the corporation or LLC and who has control or supervision of or responsibility for operating the child care business, including reporting for and receipt of payments under the Wisconsin Shares program, may be found personally liable for such amounts, including overpayments made under the Wisconsin Shares program, if the business, corporation, or LLC is unable to pay such amounts to DCF.⁶ [s. 49.155 (7m), Stats.]

Ineligibility for Benefits

Current law provides that if a court finds or if it is determined after an administrative hearing that an individual who is receiving or has received a child care subsidy under the Wisconsin Shares program has violated any provision of or rule promulgated under the Wisconsin Shares program, the individual is ineligible to receive a child care subsidy for up to five years, beginning on the date of the judgment or decision. [s. 49.155 (8), Stats.]

Overpayment Recovery and Sanctions

DCF and any agency that contracts with DCF to administer child care funds must take all reasonable steps necessary to recover from a parent funds paid to a child care provider or to that parent when the parent was not eligible for that level of child care benefit and the overpayment benefitted the parent because the parent paid less for child care expenses than the parent otherwise would have been required to pay. This requirement applies regardless of whether the overpayment was the result of administrative error, client error, or intentional program violation. The general provisions relating to collection of overpayments for the W-2 program, described above, apply to collection of child care subsidy overpayments.

⁶ Under this provision, ownership interest of a corporation or LLC includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of two or more of them, and such ownership interest of a parent corporation or LLC of which the corporation or LLC unable to pay such amounts is a wholly owned subsidiary. The personal liability of the officers, directors, and employees of the corporation and of the members, managers, and employees of an LLC is an independent obligation and survives dissolution, reorganization, bankruptcy, receivership, assignment of benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or LLC.

An overpayment includes excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason, including the following:

- The parent failed to report a change in circumstances that may affect his or her eligibility within 10 days of the change.
- The parent was absent from an activity approved for the receipt of a child care subsidy without good cause while the child was in the care of the child care provider.

An agency child care worker⁷ must determine good cause for absence from an approved activity if the approved activity is unsubsidized employment. A parent's absence from unsubsidized employment is considered good cause if the parent is using employer-approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

An agency administering child care funds must take all reasonable steps necessary to recoup or recover from a child care provider any overpayments made for child care services for which the provider was responsible or overpayments caused by administrative error that benefitted the provider. A provider is responsible for an overpayment if both of the following criteria are satisfied:

- The overpayment benefitted the child care provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf.
- The overpayment did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay.

If the agency administering child care funds has given notice to the child care provider that the provider is in violation of child care licensing or certification rules and the provider has not corrected the violation or if the provider submits false attendance reports, refuses to provide documentation of the child's actual attendance, or gives false or inaccurate child care price information, the agency or DCF may take one or more of the following steps:

- Refuse to issue new child care authorizations to a provider for not more than six months.
- Revoke existing child care authorizations to the provider.
- Refuse to issue payments to the provider until the provider has corrected the violation.

When DCF or an agency administering child care funds refuses to issue new authorizations, revokes existing authorizations, or refuses to issue payments to a child care provider, the agency must provide written notice to the parent as soon as possible before the effective date of the sanction.

⁷ An agency child care worker is a person employed by an agency administering child care funds whose duties include determining or redetermining child care subsidy eligibility, authorizing child care funds, making child care payments to child care providers, or determining and processing the recoupment of child care parent and provider overpayments.

If the child care provider has not repaid an overpayment, the agency or DCF may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider of no more than 50% of each payment.

If DCF refuses to issue payment based on a child care provider's violation of a requirement of Wisconsin Shares administrative rules, the provider may not hold the parent liable for payment other than the copayment and any amount that the parent agreed to above DCF's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider. [s. DCF 201.04 (5), Wis. Adm. Code.]

Monitoring of Child Care Programs

DCF or an agency administering child care funds may take one or more of the following steps to monitor a child care provider's compliance with Wisconsin Shares program requirements:

- Require the provider to submit documentation signed by the parent of the actual times that the child was dropped off to and picked up from the child care provider.
- Contact the parents to determine the child's actual attendance hours.
- Require the provider to submit attendance and payment records for families that pay for child care costs out of their own personal funds.
- Require the provider to have attendance records available at the child care site whenever DCF or the agency requests to review them.
- Make on-site inspections to monitor provision of authorized services.

[s. DCF 201.04 (6), Wis. Adm. Code.]

Provider Appeal Rights

A child care provider who contests any of the following actions may request a review by DCF:

- Refusal to issue new child care authorizations.
- Revocation of existing child care authorizations.
- Refusal to issue payment to the provider.
- Determination of the provider's payment amount.
- Collection of an overpayment, including determination of the amount of the overpayment, determination of the amount of the overpayment still owed, or a decision to recover the overpayment by means of certification to the DOR. The provider may make only one request for appeal on the basis for the overpayment claim. Any subsequent appeals are limited to questions of prior payment of the debt that DCF or the agency is proceeding against or mistaken identity of the debtor.

A request for a DCF review may be made by a child care provider or someone with legal authority to act on his or her behalf. The request must be in writing and received at the address provided on the notice within 30 days from the date printed on the notice of action. Upon receipt of a timely request for a DCF review, DCF must give the child care provider a contested case hearing. DCF is permitted to contract with the Division of Hearings and Appeals to conduct the reviews. [s. DCF 201.07, Wis. Adm. Code.]

GENERAL PUBLIC ASSISTANCE VIOLATIONS AND PENALTIES

Chapter 49, Stats., includes general penalties for public assistance violations in addition to the violations and penalties applicable to specific programs:

1. Any person who, with intent to secure public assistance, whether for himself or herself or for some other person, willfully makes any false representations is subject to the following penalties:
 - If the value of the assistance secured does not exceed \$300, the person may be required to forfeit not more than \$1,000.
 - If the value of the assistance exceeds \$300 but does not exceed \$1,000, the person may be fined not more than \$250 or imprisoned for not more than six months, or both.
 - If the value of the assistance exceeds \$1,000 but does not exceed \$2,000, the person may be fined not more than \$10,000 or imprisoned for not more than nine months, or both.
 - If the value of the assistance exceeds \$2,000 but does not exceed \$5,000, the person is guilty of a Class I felony.⁸
 - If the value of the assistance exceeds \$5,000 but does not exceed \$10,000, the person is guilty of a Class H felony.
 - If the value of the assistance exceeds \$10,000, the person is guilty of a Class G felony.⁹
2. Any person who willfully does any act designed to interfere with the proper administration of public assistance must be fined not less than \$10 nor more than \$100 or be punished by imprisonment for not less than 10 nor more than 60 days.
3. Any dependent person who sells or exchanges supplies or articles furnished to the person as assistance or who disposes of such supplies or articles in any other way than as directed, with intent to defraud the county or municipality furnishing the assistance, and any person who purchases any article knowing that it was furnished to another person as assistance

⁸ A *Class I felony* is punishable by a fine of not more than \$10,000 or imprisonment of not more than 3 ½ years (a maximum term of confinement in prison of 1 ½ years and a maximum term of extended supervision of 1 ½ years), or both.

⁹ A *Class G felony* is punishable by a fine of not more than \$25,000 or imprisonment of not more than 10 years (a maximum term of confinement in prison of five years and a maximum term of extended supervision of five years), or both.

must be fined not less than \$10 nor more than \$100 or be punished by imprisonment for not less than 10 nor more than 60 days.

4. Any person who does all of the following must be fined not more than \$500 or imprisoned for not more than 30 days, or both:
 - Without legal authority, sends or brings a person to a county, tribal governing body, or municipality or advises a person to go to a county, tribal governing body, or municipality for the purpose of obtaining public assistance.
 - Obtains a pecuniary advantage because the person is brought or sent or goes to a county, tribal governing body, or municipality.
5. Any person in charge of public assistance or any of the person's assistants who receives or solicits any commission or derives or seeks to obtain any personal financial gain through any purchase, sale, disbursement, or contract for supplies or other property used in the administration of public assistance must be punished under s. 946.13, Stats., the crime prohibiting private interest in a public contract. This offense is a Class I felony.
6. Where a person is originally eligible for assistance and receives any income or assets or both thereafter and fails to notify the officer or agency granting the assistance that he or she has received that income or those assets within 10 days and continues to receive such aid, such failure to notify the proper officer or agency of the receipt of the assets or income or both is considered fraud and the penalties under item 1., above, apply.
7. If any person obtains for himself or herself, or for any other person or dependents or both, assistance under ch. 49, Stats., on the basis of facts stated to the authorities charged with the responsibility of furnishing assistance and fails to notify those authorities within 10 days of any change in the facts as originally stated and continues to receive assistance based on the originally stated facts, that failure to notify is considered fraud and the penalties under item 1., above, apply.
8. Any person who accepts a relief voucher granted as relief and fails to tender the commodities authorized by the relief authorities to the relief recipient but instead refunds to the relief recipient cash or substitutes any alcohol beverages or cigarettes not authorized by the relief voucher is considered to have committed fraud and the penalties under item 1., above, apply.

Under current law, any person who makes any statement in a written application for aid under ch. 49, Stats., is considered to have made an admission as to the existence, correctness, or validity of any fact stated, which must be taken as *prima facie* evidence against the party making it in any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of ch. 49, Stats. [s. 49.95, Stats.]

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