September 1, 2010

Sarah Barry
Office of Senator Robert Jauch
State Capitol, Room 118 South
P.O. Box 7882
Madison, WI 53707-7882

RE: Public Assistance Program Integrity

Dear Ms. Barry:

I am writing to expand on some of the issues I identified in response to your request that committee members suggest issues for the committee to examine.

Distinguishing between fraud or intentional program violations and agency, client or provider error.

Recently enacted legislation and rules impose significant sanctions on recipients of public assistance and providers, especially with respect to child care assistance, for any violations of program statutes or rules. It is important to distinguish between fraud and intentional program violations and unintentional errors which are also violations of program statues and rules. Unintentional errors by recipients, providers and agencies can result from simple mistakes, confusion, or misunderstandings about program requirements. Yet because they are violations of statutes or rules, these errors can subject recipients to significant penalties.

Under 49.155(8), created by 2009 Wisconsin Act 76, a parent who is convicted of a violation of the child care assistance statute or rule may be disqualified from receiving assistance for 5 years. The same provision also imposes this 5-year disqualification if it is determined after an administrative hearing that the parent violated the child care assistance statute or rule, without regard to the nature of the violation or whether the violation is intentional or unintentional. Thus, a routine administrative finding that a parent failed to timely report a change in her work schedule or an increase in wages that resulted in a small overpayment of child care benefits, and which the child care agency itself would likely classify as an "unintentional client error" could lead to the same disqualification that is imposed for conviction of a crime, which requires a showing of intent to violate the statute.

The financial and non-financial eligibility and reporting requirements for the various public benefits programs are not uniform. For example, while it is not necessary to report an increase in income under the Food Stamp program rules unless income reaches a prescribed threshold, W-2 participants and parents who receive child care assistance must report any change in circumstances that may affect eligibility within 10 days. The W-2 income eligibility limit is 115% of the federal poverty level. Applicants for child care assistance must have an income below 185% of the poverty level to be eligible, but once eligible they remain eligible so long as their income remains below 200% of the federal poverty level. Assets affect eligibility for some programs, but not others. These differences contribute to misunderstandings about program requirements and result in reporting errors and other mistakes by recipients.

Using child care assistance as an example, the following are the kinds of events that may affect eligibility for child care assistance, or the hours of care authorized, or the parent co-pay, all of which can result in an overpayment if not reported within 10 days. Under 49.155(8), each of these can now result in a 5-year disqualification for child care assistance:

> An increase in income to over 200% of the poverty level. Although gross income is used to determine financial eligibility, parents often look only at net income and may fail to initially report a change that makes them ineligible.
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> A small increase in income that may move a parent into a higher co-pay bracket.
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> A layoff can result in a change in the hours of care authorized or ineligibility. If a parent expects the layoff to be brief, he may not report it.
>
> A change in a work schedule or class schedule (some education activities are approved for child care) can result in a reduction in hours of care authorized, but may not be reported if the change is a minor one.

Parents in W-2 or in the FSET program are provided with child care so that they may participate in assigned activities, including work experience, education and training, and a job search. Parents who are not on W-2 or in FSET are provided with child care assistance so they can work, but not to look for work. Many working parents, especially parents who have participated in W-2 or FSET, don't understand this distinction and don't know that child care assistance is not provided to look for a job, even when they receive unemployment compensation. Often, when they are laid off or lose a job, they continue to take their children to child care so that they can look for work. The parent's failure to report the loss of the job is usually discovered when the parent reports the new job and change in income. While the failure to report these events typically results in an overpayment which may be recovered from the parent, it is not an intentional or deliberate attempt to evade program rules.

Child care providers may provide care for children under two types of authorizations: attendance-based authorizations or enrollment-based authorizations. For enrollment-based authorizations, the provider is paid for a set number of hours per week for a child, whether the child attends or not. This reserves a spot for the child with the provider and guarantees the provider that she will be paid for holding that slot for the child for the prescribed number of hours. Under child care program rules, the provider is paid for the full number of hours authorized, even if the child attends is occasionally absent. Thus, the provider is not getting a payment she would not otherwise receive under program rules if an enrollment authorized child misses hours. Because the number of hours an enrollment-based the child attends does not affect the payment, some providers may neglect to record and report the hours the child is absent. Under a recently adopted emergency rule, part of the payment which the provider is otherwise authorized to receive for enrollment based child care is treated as an overpayment if the provider fails report that the child did not attend for all the authorized hours.

Examine bars to participation by providers and others based on conviction of a crime.

Recently enacted legislation creates both durational and permanent bars to being licensed, certified, or contracted with to provide child care; to being employed or contracted as a caregiver of a child care provider; and to being a non-client resident of a premises where child care is provided, based on a conviction of any of an extensive list of crimes. Now that these provisions have been in effect and employed for some time, it may be instructive to review the manner in which they have been applied and consider the nature of the crimes resulting in bars, the relationship of the crimes to the administration of public benefits program and the well-being of children, and review the duration of the exclusions and standards for showing rehabilitation or otherwise re-qualifying to be licensed, certified or contracted, employed, or to be a non-client resident. The committee should consider the alternatives included in 2009 Assembly Bill 887, which passed the Assembly Committee on Children and families by a bipartisan 6-0 vote, but which failed to pass the full legislature as time ran out on the session.

Preventing and reducing errors and overpayments.

As noted above, many overpayments result from recipient, provider or agency error. The committee should consider whether there are cost-effective steps that can be taken to reduce the occurrence of such unintentional errors. In the case of child care, where many providers have little or no previous business experience, should there be additional training and technical assistance focused on record-keeping and business operations? The recently published child care rules have now re-defined overpayments to providers and revised the concept or overpayments to include instances where the provider has not realized a gain as the result of an error. Should DCF offer training and orientation to the new rule for providers before implementing it?

What kind of information or support can be provided to recipients to improve their understanding of benefit program reporting requirements?

Administrative process for imposing sanctions.

Section 49.151(2) of the statues provides authority for barring individuals from receiving W-2 benefits or child care assistance for committing intentional program violations. DCF should adopt a clear set of rules establishing standards and administrative procedures for making IPV determinations, as well as appeals procedures for each IPV determination under this provision.

Suspension of payments to child care providers based on reasonable suspicion of violation of statute or rule.

Section 49.155(7)(b)4. Authorizes the suspension of payments to child care providers based on "reasonable suspicion" that there has been a violation of 49.155 or rules adopted under 49.155. As discussed above, not all violations of the child care statute or rules are intentional. Any provision for suspension of payments should take into consideration the nature of the violation, the reason for the violation and the significance of the violation. In addition, DCF should be required to adopt rules defining reasonable suspicion for purposes of imposing a suspension. Other matters that should be considered and addressed in a rule are: How long may payments be suspended based on reasonable suspicion? Should there be a showing of an actual violation to ultimately sustain the suspension? Should a suspension apply only to payments earned or accrued while the provider was in violation and lifted once the violation is corrected? Or, may a suspension for a past violation that has been corrected also be prospective?

Thank you for offering me the opportunity to submit this letter. Please contact me if you have any questions about any of the matters addressed in this letter. I am unable to attend the meeting that has been re-scheduled from September 14 to September 9 due to previously scheduled travel. I expect to attend the October 12 meeting.

Sincerely,

Hal Menéndez
Staff Attorney
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