



WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

Memo No. 7

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

FROM: Anne Sappenfield, Senior Staff Attorney, and Anna Henning, Staff Attorney

RE: Options for Legislation

DATE: November 10, 2010

This memorandum sets forth options for legislation for discussion at the November 16, 2010 meeting of the Special Committee on Public Assistance Program Integrity.

CREATE A PILOT PROGRAM TO FORM REGIONAL CONSORTIA

Background

Under current law, Wisconsin counties typically handle program integrity efforts independently of other counties. It has been suggested that collaboration among counties may, in some cases, increase the efficiency of fraud investigation, overpayment reduction, and related activities in public assistance programs.

A pilot project operated by the Department of Health Services (DHS) in 2007-2009 was mentioned during the committee's discussion as a potential model for the creation of a new program. Before the pilot program ended in 2009, there were five participating "project areas." One project area consisted of just one county. The other four areas were consortia consisting of between four and seven counties. Funding was allocated to the various project areas based on the size of their caseloads. The department has identified several benefits of the consortia model, including access to an investigator by counties that might not have otherwise had access and increased revenue from benefit recovery efforts.

Options

To facilitate collaboration among counties, the committee could recommend the creation of a pilot project to fund multi-county consortia. The committee's proposal could direct the Department of

Children and Families (DCF) or DHS to develop a request for proposals and establish benchmarks that would serve as outcome measures for the consortia. The committee could require that applications submitted include various specific elements, such as proposed processes for front-end verification, the intended approach for referring cases for prosecution, and expected efficiency gains resulting from the consortia model.

The committee may wish to consider the following questions in relation to this option:

- Which agency would administer the pilot project?
- What amount of funding should be appropriated?
- Would the legislation specify any particular standards or best practices that should be incorporated?
- Should a final product be included as an outcome for the pilot project?
- What is the appropriate duration for the pilot project?
- What is a reasonable length of time for consortia to become self-sustaining?

ESTABLISH A STATE-LEVEL OFFICE TO PROSECUTE PUBLIC ASSISTANCE FRAUD

Background

Under current law, the responsibility to investigate fraud in public assistance programs generally rests with county-level income maintenance agencies, which, in turn, may refer some cases to a local district attorney's office for prosecution. However, the Medicaid Fraud and Elder Abuse Control Unit, housed within the Department of Justice (DOJ), handles investigations and prosecutions of large-scale fraud committed by providers in the MA program. Similarly, in the 2008-2009 fiscal year, DCF created the Fraud Detection and Investigation Unit (FDIU), a unit within the department that has a particular focus on fraud in the Wisconsin Shares program. DCF also created Child Care Anti-Fraud Task Forces, through which the department partners with district attorneys' offices to investigate and prosecute fraud in Milwaukee, Kenosha, and Racine Counties.

Options

The committee has discussed recommending the creation of a state-level office to investigate and prosecute fraud in public assistance programs. The office might be analogous to the Medicaid Fraud and Elder Abuse Control Unit but would handle fraud in public assistance programs other than MA.

If the office were to conduct prosecutions, new statutory authority may need to be created. Under current law, DOJ is explicitly authorized to prosecute cases related to the MA program. [s. 49.495, Stats.] No analogous authority exists for other public assistance programs. Thus, under current law, DOJ's authority for prosecuting fraud in other programs is limited to prosecutions authorized by the department's general statutory authority to prosecute crimes that are statewide in nature or importance.

[s. 165.50, Stats.] Other state agencies lack general prosecutorial authority and would likely need to be specifically authorized to prosecute public assistance cases.

Questions the committee may consider with regard to this option include:

- What would be the scope of the unit's role? Would it handle prosecutions? If so, which types of fraud (and which programs) would be included?
- With regard to the Wisconsin Shares program, how would the new unit complement or replace activities currently undertaken by the FDIU and the Child Care Anti-Fraud Task Forces?
- Within which agency should the unit be housed?
- What resources would be devoted to the new unit?

SUSPENSION OF WISCONSIN SHARES PAYMENTS

Background

Current law relating to the Wisconsin Shares child care subsidy program contains provisions relating to refusing to pay child care providers, ineligibility for child care payments, and suspension of child care payments. Current law also has broader penalties for child care providers who commit a violation of the Wisconsin Shares program.

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 crime,¹ 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. For a pending criminal charge, 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.

¹ "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.

- The person is a caregiver or a nonclient resident and is the subject of a pending criminal charge that one of the following entities determines substantially relates to the care of children: DCF, the county department, an agency contracting with DCF to license child care providers, or a school board contracting with a child care provider.
- 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.]

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.

[s. 49.155 (7m), Stats.]

Finally, 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 the Wisconsin Shares law 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.]

Two issues have been raised in committee discussion regarding the provision of current law under which DCF or a county department may refuse to pay a child care provider if DCF or the county department reasonably suspects that the person has violated any statutory or rule provision under the Wisconsin Shares program:

- There is no requirement that DCF eventually make a more definite finding to justify ongoing suspension of payments.
- Current law does not define “reasonably suspects.”

Options

The committee could recommend amending current law relating to refusal to pay child care providers so that it permits DCF or a county department to temporarily suspend payments if there is reasonable suspicion that a child care provider has violated a provision of the Wisconsin Shares program. Alternatively, the committee may wish to review the provisions relating to refusing to pay

child care providers, suspending payments, and imposing other penalties to determine if they could be reorganized to address the concerns raised. If these changes are not proposed, the committee may wish to create a definition of “reasonably suspects.”

WAIVER OF OVERPAYMENT RECOVERY

Background

Under current administrative rules, DCF or DHS may waive recovery of an overpayment if the agency has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts. [ss. DCF 101.23 (13) and DHS 2.05, Wis. Adm. Code.]

Options

The committee could consider codifying current administrative rules relating to waiving overpayment recovery. Alternatively, the committee could propose a more specific provision regarding waiver of overpayment recovery. Based upon provisions of federal law permitting waiver of recovery for certain overpayments, factors to be considered could include any of the following:

- The overpayment resulted from agency or recipient error.
- Recovery of the overpayment is not cost effective or impedes efficient administration of the program.
- Recovery would cause an undue hardship to the person who owes the overpayment.
- Recovery is against equity and good conscience.
- The overpayment amount does not reach a threshold that would need to be established in statute or by rule or does not meet a threshold amount and has been outstanding for a given amount of time.

ADMINISTRATION OF OATH

Background

Under current Wisconsin law, an applicant for public assistance is not required to verify the information on his or her application by oath or affirmation. Current law does contain penalties for knowingly making or causing to be made any false statement or representation of a material fact in any application for a benefit or payment or regarding a fact affecting continued eligibility for a benefit or payment. The penalties for these offenses range from a forfeiture to a Class G felony depending upon the facts of the individual violation. [See ss. 49.141 (6), 49.49 (1), and 49.95 (1), Stats.] In Wisconsin, the penalty for false swearing is a Class H felony. [See ss. 946.31 and 946.32, Stats.] In addition, under current law, any person who makes any statement in a written application for aid under ch. 49 is considered to have made an admission as to the existence, correctness, or validity of any fact stated which can be used in an enforcement action. [s. 49.95 (8), Stats.]

Several states' statutes require an oath or affirmation when a person applies to receive public assistance. Some examples are:

- In Arizona, an application "shall be verified by oath of the applicant and bear the applicant's witnessed signature." [A.R.S. s. 46-201.]
- In Delaware, "The information supplied by the applicant in an application for assistance shall be sworn to as being true and correct to the best of the applicant's knowledge, and any employee of the Department accepting such application is hereby given the authority to administer an oath to the applicant ... that the information given is true and correct to the best of the knowledge of the applicant." [31 Del. C. s. 508.]
- In New Mexico, an application for cash assistance under the New Mexico Works Act shall be made under oath. [N.M. Stat. Ann. S. 27.2B-4.]
- In California, "Each applicant shall be required before approval of assistance or services to file an affirmation setting forth his belief that he meets the specific conditions of eligibility. Such statements ... shall contain a written declaration that the affirmation is made under penalty of perjury. Any person signing a statement containing such declaration, who willfully and knowingly with intent to deceive states as true any material matter which he knows to be false, is subject to the penalty prescribed for perjury in the Penal Code." [Cal. Wel & Inst Code s. 11054.]

Options

The committee could consider legislation requiring an applicant for a public assistance benefit to affirm that the information provided in the application is, to the best of the applicant's knowledge, true.

OPTIONS FOR RECOMMENDATIONS TO ADMINISTERING AGENCIES

Some options suggested to the committee may not require a statutory change but could be recommended to one or more state agencies in letters to the heads of those agencies requesting consideration of policy changes. Recommendations discussed by the committee include:

- Emphasize the front-end verification of participant eligibility (DHS, DCF).

Front-end verification is a fraud-prevention measure designed to identify error prone cases before benefits are provided. DHS' current administrative rules and Income Maintenance (IM) Manual identify front-end verification of participant eligibility as a key focus of fraud prevention. The IM Manual outlines characteristics of an "error prone profile," such as conflicting documentation or large increases in household composition, which prompt a special investigation by a front-end verification specialist. [s. 12.4.1, IM Manual.] The committee could encourage DHS and DCF to further emphasize front-end verification in general, or it could request specific verification practices.

- Increase the frequency with which recipients in the FoodShare program are required to report changes affecting their eligibility (DHS).

DHS currently operates under a federal waiver authorizing simplified reporting for participants in the FoodShare program. Under the waiver, FoodShare recipients must report changes in earnings that increase household income to a level above 130% of the federal poverty line as they occur. Otherwise, they update their information on a regularly recurring report every six months. Some states have reported that they adopted the simplified reporting waiver with the goal of increasing efficiency. According to a 2009 report, 45 states, including Wisconsin, had adopted simplified reporting. The remaining states require recipients to report changes on a monthly or quarterly basis.² The committee could recommend that DHS increase the frequency of reporting, perhaps to a monthly or quarterly interval.

- Provide education to local agency employees (DHS, DCF).

The committee could recommend that DHS and DCF provide new or additional education or training to employees responsible for identifying fraud and overpayments at the local level.

- Review forms to identify possible areas of applicant confusion (DHS, DCF).

The committee could recommend that DHS or DCF conduct a review of their program materials and forms to identify questions or formats most prone to applicant or participant errors.

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² U.S. Department of Agriculture, *State Options Report*,
http://www.fns.usda.gov/snap/rules/Memo/Support/State_Options/8-State_Options.pdf.