



Legislative Fiscal Bureau

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Joint Committee on Finance

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Temporary Assistance for Needy Families (TANF)

AFDC Overpayment Recoveries, the Child Support Demonstration Waiver, and the TANF High Performance Bonus (DWD -- Economic Support and Child Care)

INTRODUCTION

This paper is intended to notify the Joint Committee on Finance of several issues that were not included in AB 100. Two of these issues, a dispute related to aid to families with dependent children (AFDC) overpayment recoveries and the expiration of the child support demonstration waiver, involve potential liabilities to W-2 and other programs related to the temporary assistance for needy families (TANF) block grant. The third issue, the TANF high performance bonus, is discussed as another potential revenue source for W-2 and TANF-related programs.

CURRENT LAW

Overpayment Recoveries. Under current law, the Department of Workforce Development (DWD) is required to recover all overpayments of benefits paid for participation in Wisconsin Works (W-2) employment positions, child care subsidies, AFDC, and transportation assistance. Overpayment recoveries are retained by the state and must be used for W-2 or programs related to the TANF block grant. Under the former AFDC program, states were required to pay the federal government the federal share of overpayment recoveries, based on the federal financial participation rate.

Child Support Collections. Under federal law, child support collected on behalf of families who have never received public assistance must be distributed to the family. However, in the case of families receiving assistance from the state, the state must: (a) first pay to the

federal government the federal share of the support collected; and (b) retain, or distribute to the family, the remaining amount collected. The federal share is based on the federal financial participation rate for the Medicaid program in effect during the year in which the collections were made (currently about 58% in Wisconsin). However, the federal share in Wisconsin is offset against an accumulated balance of unclaimed waiver savings, under a child support demonstration waiver, which is scheduled to expire September 30, 2005.

Under state law for the W-2 program, an eligible individual must assign any right to child support to the state in order to receive cash assistance or a child care subsidy. However, any support money received by DWD must be paid to the W-2 participant in addition to their W-2 program benefits.

TANF High Performance Bonus. The high performance bonus is an annual, competitively awarded grant available to states that perform strongly on the objectives of the TANF program. A total of \$200 million is distributed to states based on their performance on the following measures: (a) job entry rate; (b) job retention and earning gains; (c) improvement from the prior fiscal year in the job entry rate; and (d) improvement from the prior fiscal year in job retention and earning gains. The bonus funding is not distributed to all states -- just those states that perform well on one or more of the measures.

GOVERNOR

No change to current law.

DISCUSSION POINTS

AFDC Overpayment Recoveries in Dispute

1. Under the former AFDC program, states were required to recover all overpayments of AFDC benefits. The states were required to pay the federal government the federal share of AFDC overpayment recoveries, based on the federal financial participation rate.

2. In 1996, the federal government enacted P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which replaced the AFDC program with the TANF block grant program. Under the TANF block grant program, states are still required to recover all overpayments of benefits. However, the state is allowed to retain the entire overpayment recovery amount to use for TANF-related program costs.

3. To resolve the issue of how to treat AFDC overpayment recoveries after the passage of PRWORA, the U.S. Department of Health and Human Services, through the Administration for Children and Families (ACF), issued a program instruction on March 9, 1999. The program instruction indicated that for AFDC overpayment recoveries for overpayments made on or before September 30, 1996, the states must pay the federal share of the recoveries. For AFDC

overpayment recoveries for overpayments made on or after October 1, 1996, the full amount of the recovered overpayments would be retained by the state to support TANF-related programs.

4. However, another program instruction, issued May 1, 2000, appeared to give states more flexibility with how AFDC overpayment recoveries should be treated. This program instruction did not specifically address what should be done with AFDC overpayment recoveries. Instead, the language simply required the recoveries to be credited against the grant in the fiscal year in which the overpayment was recovered. The program instruction then specified several options for the treatment of TANF overpayment recoveries. DWD interpreted this new program instruction to mean it could retain the entire AFDC overpayment recovery and credit it to the TANF block grant in the fiscal year in which that overpayment was recovered. DWD did not pay the federal share on these AFDC overpayment recoveries.

5. On September 1, 2000, the ACF issued another program instruction, which rescinded the previous two program instructions to replace the overpayment recovery policy. In this program instruction, the ACF clarified that for any overpayments made after October 1, 1996, the state could retain the whole amount and credit it to the TANF block grant. For overpayments made before October 1, 1996, the state was required to pay the federal government its share of the recovered overpayments.

6. As a result of the policy clarified in the program instruction issued on September 1, 2000, the ACF indicates that the state owes the federal government \$10.7 million for the federal share of AFDC overpayment recoveries. The state has disputed this conclusion based on the language in the May 1, 2000, program instruction. If the state were to lose this dispute, the state would be required to pay \$10.7 million for the federal share of AFDC overpayment recoveries.

7. DWD indicates that the issues still in dispute include: (a) the dates applicable to Wisconsin during the transition from AFDC to TANF; (b) the practicality of differentiating the overpayment recovery amounts between AFDC and TANF; (c) whether crediting the federal share of AFDC overpayment recoveries to the TANF block grant constituted sufficient repayment, notwithstanding that it did not reduce the TANF award; and (d) whether the state must repay only amounts for federal fiscal year 2001, after the third program instruction was issued, and, if so, what the form of repayment would be.

8. The last contact with ACF regarding this dispute occurred during March, 2005. ACF asked for copies of the last letters DWD sent in 2002 and whether DWD had any additional information to be considered. There are no further details. DWD does not know when a decision regarding the dispute will be made.

9. However, DWD indicates that it is likely that the AFDC overpayment recovery dispute would not be resolved in this biennium. Even if the ACF determined during this biennium that the state owed \$10.7 million, DWD indicated it would appeal that decision, which would push the final resolution date beyond this biennium. Therefore, if the final resolution required the state to pay the federal government, the state would not be required to pay the federal government during

the 2005-07 biennium.

10. If ACF determined that the state owes \$10.7 million, either reductions could be made to W-2 and TANF-related programs in this amount, or other state revenue in this amount would be needed.

Child Support Demonstration Waiver

11. Prior to PRWORA, the state implemented several projects under the AFDC program that required a waiver from federal law. Over the years, these projects were estimated to generate significant savings to the federal government, which have been made available to the state for various purposes. As of December 31, 2004, the balance in the unused waiver savings was approximately \$59.6 million. According to federal officials, states generally may not access accumulated waiver savings because funding in excess of a state's TANF allotment may not be approved. However, DWD negotiated with the federal government for access to these monies under a child support demonstration project, which was approved on February 28, 1997.

12. The demonstration project noted the effects on W-2 participants of passing through child support payments (both the federal share and the state share) to the families. As a result of the project, a report done by the University of Wisconsin's Institute for Research on Poverty found that: (a) the state's pass-through policy increased the amount of child support that mothers received; (b) children were more likely to have paternity established; and (c) there were no significant differences in the overall government costs for the pass-through. However, the report also indicated that there were no consistent effects on the payment of child support by noncustodial fathers and there was no conclusive effect on the likelihood of receiving W-2 benefits.

13. As noted above, approximately 58% of child support collections assigned to the state must be paid to the federal government. However, the waiver in effect allows the state to offset these payments against the accumulated waiver savings. This waiver will expire September 30, 2005.

14. DWD has requested an extension of the child support waiver and inquired as to whether any options were available to extend the waiver. However, DWD states that it has become more difficult to meet the conditions of the waiver because it is more difficult to research its effectiveness as the public assistance caseload drops. Therefore, the Department has concentrated its efforts on making the pass-through part of the TANF reauthorization process.

15. Under federal law, authorization for the TANF program expired on September 30, 2002. Congress has passed continuing resolutions extending the program through June 30, 2005. At that time, legislation will be needed to either continue or reauthorize the program. Bills have been introduced in both the Senate and the House of Representatives to reauthorize TANF. The bills are not the same in both houses. Both include a variety of changes, including work requirements, child care funding, and program requirements, such as fatherhood programs. The Senate version includes a pass-through program that would allow states to pass child support

assigned to the state through to recipients of the TANF work programs without having to pay the federal share under current law. The bill introduced in the House of Representatives does not have this provision.

16. Under current state law, although public assistance recipients must assign their right to child support to the state, the state must pass through all child support received to W-2 recipients and caretaker supplement recipients. Therefore, if the child support demonstration waiver expires without further authorization or approval, the state would be required to pay the federal share of assigned child support collections in addition to the full amount passed through to the W-2 and caretaker supplement recipients, unless current law is changed. Essentially, the state would have to pay approximately \$1.58 for each dollar received: \$1.00 to the family and \$0.58 to the federal government. The estimated amounts of the federal share of assigned child support collections would total \$8.7 million in 2005-06 (\$6.5 million after the demonstration waiver expires) and \$8.9 million in 2006-07. AB 100 does not provide funding to pay the federal share of assigned child support.

17. The Committee could modify current law in the event that the waiver expires and that the TANF reauthorization does not include a provision allowing states to pass through assigned child support without paying the federal share of assigned child support. The Committee could specify in the statutes that in the event the waiver expires and no other provision in federal law is made for the pass-through of assigned child support without having to pay the federal share, the amount passed through to W-2 and caretaker supplement recipients would be reduced by the amount owed to the federal government for the federal share of assigned child support collections. As a result, only the state's share (approximately 42%) of assigned child support collections would be passed through to W-2 and caretaker supplement recipients. This option would not require a change in funding to AB 100.

18. Under prior federal law, as a condition of eligibility for AFDC, an applicant was required to assign all rights to court-ordered child support and maintenance to the state. The assignment included all unpaid support and maintenance obligations for as long as the family received AFDC. If the child support collected was insufficient to disqualify the family from receiving AFDC payments, up to \$50 each month collected from an absent parent was provided to the family without affecting the family's AFDC grant. The Committee could specify in the statutes that in the event the waiver expires, the first \$50 of a child support payment would be passed through to the W-2 or caretaker supplement recipient. The state would retain the amount remaining after the federal share was paid to support W-2 and TANF-related programs. DWD indicates that during the first six months of 2004-05, the average monthly amount of child support passed through was \$211.

19. Also, during the first six months of 2004-05, the average monthly number of W-2 recipients receiving child support was 2,995. The average monthly number of caretaker supplement recipients during this same time period was 6,257. Therefore, assuming a total monthly caseload of 9,252 during the 2005-07 biennium, a total of \$4,163,400 would be passed through to W-2 and caretaker supplement recipients in 2005-06 and \$5,551,200 would be passed through in 2006-07.

The \$50 pass-through would begin October 1, 2005. As a result, compared to current law and AB 100, the state would retain \$561,600 in 2005-06 and \$893,600 in 2006-07.

20. Finally, the Committee could specify in statute that in the event the child support demonstration waiver expires and no other federal provision allows states to pass-through assigned child support without paying the federal share, child support payments would no longer be passed through to W-2 or caretaker supplement recipients. Instead, the assigned child support collections would be distributed to the federal government to pay the federal share of assigned child support collections and to the state to support W-2 and TANF-related programs. This would increase funding for W-2 and TANF-related programs by \$4,725,000 in 2005-06 and \$6,444,800 in 2006-07.

21. However, the pass-through of child support to W-2 and caretaker supplement recipients began with the implementation of W-2 in 1997. Changing the statutory requirement to pass through child support would change an aspect of the W-2 program that was developed as part of the overall W-2 program when W-2 was established. In addition, based on the evaluation of the pass-through program, custodial parents would receive less income and paternity establishment rates could decline.

22. On the other hand, without statutory changes, either reductions in the amount of \$6.5 million in 2005-06 and \$8.1 million in 2006-07 to W-2 and TANF-related programs could be made, or other state revenue in these amounts would be needed.

TANF High Performance Bonus

23. The TANF high performance bonus could be another source of funding that could be used to partially offset potential liabilities from the AFDC overpayment recovery dispute and the expiration of the child support demonstration waiver, or could be used to replace other revenue sources or increase or restore funding for TANF-related programs.

24. Historically, Wisconsin has done well with the TANF high performance bonus. The table below shows the amount of Wisconsin's TANF high performance bonus over the last five fiscal years.

TANF High Performance Bonus Fiscal Years 2000-01 through 2004-05

<u>Fiscal Year</u>	<u>Amount (Millions)</u>
2000-01	\$15.9
2001-02	0.0
2002-03	14.3
2003-04	10.3
2004-05	10.9

25. Based on this information, it could be assumed that the state would continue to

receive the TANF high performance bonus. However, there are indications that as part of the TANF reauthorization, the overall amount of funding for the bonus (\$200 million) would be cut to support other initiatives, such as fatherhood programs. In addition, the high performance bonus may be replaced with another bonus, such as an employment achievement bonus. It is unknown what the criteria for this bonus would be and how the state would rate under the criteria. Information provided by the National Conference of State Legislatures indicates that the overall funding level for any bonus could be cut in half. The state might potentially assume the receipt of a bonus in the amount of \$5 million annually.

26. If received, the bonus funds could be used to partially offset potential liabilities discussed in this paper or be used as another revenue source for W-2 and TANF-related programs. Any bonus funds received would require approval by the Joint Committee on Finance before they are expended through the process under s. 16.515/16.54 of the statutes. The Committee could also provide revenue and/or reduce expenditures for W-2 and TANF-related programs so that there would be a positive TANF balance during the 2005-07 biennium that could be used to partially offset the potential liabilities detailed in this paper.

ALTERNATIVES

Child Support Waiver Demonstration

Make one of the following statutory changes:

1. Specify that in the event the child support demonstration waiver expires and no other federal provision allows states to pass-through assigned child support without paying the federal share, assigned child support collections would be distributed as follows: (a) the federal government receives its share of assigned child support collections based on the federal financial participation rate; and (b) the remainder is passed through to W-2 recipients. As a result, if the demonstration waiver expires, only the state's share of assigned child support collections would be passed through to W-2 recipients. If the waiver is extended or approved in the TANF reauthorization, there would be no impact to the state.

2. Specify that in the event the child support demonstration waiver expires and no other federal provision allows states to pass-through assigned child support without paying the federal share, assigned child support collections would be distributed as follows: (a) the federal government receives its share of assigned child support collections based on the federal financial participation rate; (b) the first \$50 of a child support payment is passed through to the W-2 recipient; and (c) the remainder is retained by the state to for W-2 and TANF-related programs. If the demonstration waiver expires, the state would retain \$561,600 in 2005-06 and \$893,600 in 2006-07. If the waiver is extended or approved in the TANF reauthorization, there would be no impact to the state.

3. Specify that in the event the child support demonstration waiver expires and no other

federal provision allows states to pass-through assigned child support without paying the federal share, assigned child support collections would be distributed as follows: (a) the federal government receives its share of assigned child support collections based on the federal financial participation rate; and (b) the remainder is retained by the state to partially fund W-2 and TANF-related programs. If the demonstration waiver expires, the state's share would total \$4,725,000 in 2005-06 and \$6,444,800 in 2006-07. If the waiver is extended or approved in the TANF reauthorization, there would be no impact to the state.

4. Take no action.

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