



## Legislative Fiscal Bureau

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May 2, 2007

Joint Committee on Finance

Paper #409

### **Automated Insurance Intercept Program (DHFS -- Medical Assistance -- Administration and FoodShare)**

#### *Bill Section*

[LFB 2007-09 Budget Summary: Page 298, #7]

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#### **CURRENT LAW**

*Child Support Enforcement Intercepts.* Under federal law, anyone entitled to a federal income tax refund who owes past due child support may have his or her refund check intercepted and applied to past-due support. Wisconsin law also provides for the interception of state income tax refunds, Wisconsin lottery winnings equal to or greater than \$1,000, court judgments and settlements, and lump sum retirement benefits to satisfy past-due support obligations. In addition, certain benefits received by the obligor, such as unemployment compensation and worker's compensation, may be intercepted and applied to past due support. These activities can be initiated by the Department of Workforce Development (DWD) once a child support order is entered.

If a person obligated to pay support fails to pay any court-ordered amount of support, that amount becomes a lien in favor of DWD upon all property of the person. The lien becomes effective when the information relating to the non-payment of support is entered into the statewide support lien docket. The child support lien docket contains the name, social security number, the amount of the lien, and the date the entry was made for obligors whose child support arrearages exceed a certain amount, currently \$500.

*Medical Assistance Recoveries.* Under the state's medical assistance (MA) program, the Department of Health and Family Services (DHFS) may recover, from MA recipients, incorrect payments the MA program made to health care providers if the MA program made the payments: (a) as a result of a misstatement or omission of fact by an applicant supplying information in the

application process; (b) from a failure of a person to report the receipt of income or assets in an amount that would have affected the individual's eligibility for benefits; or (c) from the failure of an individual recipient to report changes in their financial or nonfinancial status or eligibility characteristics that would have affected the individual's eligibility for benefits or cost-sharing requirements. DHFS may also recover MA payments from a third party when a third party is determined liable for the payments.

## **GOVERNOR**

Reduce funding for MA benefits by \$2,164,800 (-\$1,116,600 GPR, -\$1,533,500 FED, and \$485,300 PR) in 2007-08 and by \$4,459,400 (-\$2,266,200 GPR, -\$3,163,800 FED, and \$970,600 PR) in 2008-09 to reflect the administration's estimate of additional MA recoveries that would be realized by implementing an automated insurance claim payment intercept program. Under this item, DHFS would pay a contractor to implement a system under which insurers would submit claims information to a data exchange.

### **Funding**

*Benefits Savings.* Reduce funding for MA benefits by \$2,264,800 (-\$1,166,600 GPR, -\$1,533,500 FED and \$485,300 PR) in 2007-08 and \$4,529,400 (-\$2,301,200 GPR, -\$3,198,800 FED and \$970,600 PR) in 2008-09 to reflect the administration's estimates of savings to the MA program resulting from implementing the program.

*Administrative Cost.* Provide \$100,000 (\$50,000 GPR and \$50,000 FED) in 2007-08 and \$70,000 (\$35,000 GPR and \$35,000 FED) in 2008-09 to fund state implementation costs.

### **Statutory Changes**

Establish an insurance payment intercept program for individuals who have been placed on the child support lien docket and for whom an insurance claim of \$500 or more is to be paid.

Require insurers that are authorized to do business in the state, before paying an insurance claim of \$500 or more to any individual, to: (a) verify with DHFS, in a manner required by DHFS, whether the individual to whom the claim is to be paid has an MA liability; and (b) check the statewide support lien docket to determine whether the individual to whom the claim is to be paid has a support liability.

Provide that, if the individual to whom a claim of \$500 or more is to be paid has a support liability or an MA liability, or both, the insurer must distribute the claim proceeds as follows:

- First, if there is support liability, to DWD to pay the support liability, up to the amount of the support liability or the amount of the claim, whichever is less;

- Next, if there is an MA liability, to DHFS to pay the MA liability, up to the amount of the MA liability or the amount of the claim proceeds remaining, whichever is less.
- Last, to the individual, the remainder of the claim proceeds, if any.

Require DHFS to promulgate rules relating to the program, including procedures for insurers to follow and any notice and hearing requirements. Permit DHFS to promulgate the rules as emergency rules without a finding of emergency.

Define "medical assistance liability" as the amount that DHFS may recover for incorrect overpayments, recovery of incorrect payments by public assistance programs, and third party liability for services provided to MA recipients. Define "support liability" as an amount that is entered in the statewide support lien docket.

Specify that, if any insurance policy that is in effect on the bill's general effective date contains a provision that is inconsistent with these provisions, the provisions would first apply to that policy on the date on which it is renewed.

## **DISCUSSION POINTS**

1. The Department of Administration (DOA) has indicated that the statutory provisions in the bill relating to this item should be revised to better reflect the Governor's intent.

Under the Governor's revised proposal, only the following types of non-recurring insurance payments would be subject to the intercept program: (a) auto insurance payments; (b) casualty insurance payments; (c) liability insurance payments; (d) malpractice insurance payments; and (e) workers compensation insurance payments. The following payments would not be subject to the intercept requirement: (a) life insurance payments; (b) property insurance/homeowners insurance payments; (c) long-term care insurance payments; and (d) health insurance payments. Consequently, the Committee could amend the bill to reflect the changes requested by the administration.

2. The administration's estimate of the additional recoveries that would occur from MA recipients due to the creation of the intercept program is based on the Governor's revised recommendation, which would limit the applicability of the intercept program to certain types of non-recurring insurance payments. Consequently, the administration's estimate of savings reflects the revised proposal, not the provisions in the bill, as introduced.

While the Governor's provisions are intended to increase child support collections, increasing these collections does not significantly affect state revenue or spending because most child support is sent directly to the individual to whom the support is owed. The administration has not estimated the effect of these provisions on child support collections.

3. The administration estimates that MA recoveries will be increased by \$2,750,000

(\$1,666,600 GPR and \$1,583,400 FED) in 2007-08 and \$5,500,000 (\$2,301,200 GPR and \$3,198,800 FED) in 2008-09. Of this funding, \$485,300 PR in 2007-08 and \$970,600 PR would be used to pay the vendor contingency fee, and \$100,000 (\$50,000 GPR and \$50,000 FED) in 2007-08 and \$70,000 (\$35,000 GPR and \$35,000 FED) in 2008-09 would be used for administrative costs associated with implementing the Public Consulting Group (PCG) payment intercept system. Once the contingency fee and administrative costs are accounted for, MA benefits would be reduced by \$2,164,800 (-\$1,116,600 GPR, -\$1,533,500 FED, and \$485,300 PR) in 2007-08 and by \$4,459,400 (-\$2,266,200 GPR, -\$3,163,800 FED, and \$970,600 PR) in 2008-09.

4. The administration argues that, while the MA program and the child support program currently have mechanisms to capture some payments, the creation of the intercept program would increase collections because it would establish a system that prevents certain types of insurance payments from being made to MA recipients and individuals in arrears for the direct benefit of the state (for MA payments) or individuals to whom child support is owed.

5. As previously indicated, current law provides for the interception of federal and state income tax refunds, Wisconsin lottery winnings equal to or greater than \$1,000, court judgments and settlements, and lump sum retirement benefits to satisfy past-due support obligations. In addition, certain benefits received by the obligor, such as unemployment compensation and worker's compensation, may be intercepted and applied to past due support. Current law does not authorize the MA program to use an intercept mechanism for recovering incorrect MA payments. Currently DHFS may recover incorrect payments from a third party when a third party is liable for the payments, but does not allow DHFS to intercept certain benefits, such as unemployment compensation or worker's compensation, that are currently paid to the recipient.

6. MA third party recovery activities are directed by the Bureau of Health Care System Operations. In general, third party liability (TPL) activities are performed by state staff, the MA fiscal agent (Electronic Data Systems), and county agencies. DHFS recovered approximately \$2.5 million and \$2.4 million in casualty insurance payments in 2004-05 and 2005-06, respectively.

The benefits of recovering improper MA payments accrue both to the state and the federal government based on the division of program benefit costs. For example, if the state recovers \$1,000 due to an improper MA payment, approximately 42% of the recovered amount offsets state (GPR) costs of the program, while approximately 58% of the recovered amount offsets federal costs of the program.

7. Currently, DHFS is informed about potential casualty insurance payments recoveries through various monitoring and notification activities. DHFS is informed about MA recipients who were in accidents and who are pursuing monetary awards by liable third parties who injured them and their insurance companies. For example, sometimes an insurance company will notify DHFS that it intends to make a settlement payment to an MA recipient. DHFS is a subrogated party in these lawsuits to recover MA costs related to accident or injury. DHFS receives payment from the portion of the settlement related to medical costs associated with the accident or injury.

8. Under current law and under the bill, DHFS may only receive payment from the portion of the settlement representing payment for medical expenses. On May 1, 2006, the United States Supreme Court ruled, in *Arkansas Dept. of Health and Human Services v. Ahlborn*, that a state's MA agency may only be reimbursed from that portion of a judgment or settlement that represents payment for medical expenses. States are prohibited from seeking reimbursement for MA costs from settlement proceeds that were intended to cover items other than medical expenses, such as pain and suffering and loss of wages. This decision applies to out-of-court settlements, such as automobile insurance payments, as well as court judgments and settlements. This decision does have a significant effect on the monetary benefit that MA programs can receive. In the absence of this decision, the MA benefits savings expected from the insurance intercept program would likely have been significantly higher.

However, because the *Ahlborn* decision only applies to MA programs, and not child support arrearages, child support programs may take arrearages out of all parts of a judgment or settlement to capture past due child support.

9. DHFS currently contracts with two vendors, Public Consulting Group (PCG) and MAXIMUS, to conduct revenue maximization projects. The two authorized vendors were provided the opportunity to respond to a request for proposal for an insurance intercept program and PCG submitted a proposal, while MAXIMUS declined.

DHFS has begun working with PCG to implement a Wisconsin insurance intercept program. DHFS chose PCG as the project vendor and drafted a management letter with PCG to implement the project. PCG has an insurance intercept program fully operational in Massachusetts that works with both MA and child support, and has intercept programs for non-MA components in Alaska, Arizona, Georgia, Kentucky, Idaho, North Carolina, Texas, and West Virginia.

10. Under the PCG intercept program, all insurance companies would have to register into the online computer system. Ten days prior to making an insurance payment greater than \$500, all insurance companies in the state would be required to check the payment intercept program. Companies would access the intercept program through a secure website, and would be required to enter data or upload information identifying the client. This information would be matched by the system against state MA eligibility and child support arrears files. If there is no match, a message would be sent to the insurance company to proceed with disbursing the check to the client. If there were a match, a message would be sent to the insurance company requesting that the company provide additional information.

Using the information provided by PCG, the state would create an account for the individual and the appropriate portion of the insurance check would be sent to the state. The state would first pay any outstanding child support to the party due the support, and only once all child support arrearages were satisfied would the state then reimburse the MA program for any outstanding MA benefits liability that the individual had incurred.

11. PCG would provide outreach and training to all participating Wisconsin county child

support and income maintenance agencies, the legal community, and the insurance industry. PCG would also monitor the participation of insurance companies and contact companies that do not appear to be fully complying with the statutory participation requirement

12. As described in the example used previously regarding PCG's procedures, the bill reflects the Governor's intent to give priority to child support arrearages over MA liabilities. For example, if a person owes both child support and has an MA liability, and the amount they would receive from an insurance settlement payment is less than the child support owed, all the collected intercept funds would be used to pay for the child support owed, and none would go to the MA liability.

13. The funding changes in the bill assume that PCG would be paid 15% of all MA recoveries. PCG has agreed that the contingency fee payment they receive would be based only on MA intercept payments, not child support collections that result from the insurance intercept. Under this payment option, PCG would be in charge of process development and operational implementation costs including providing accounts receivable operations. This option would permit the state to benefit from the collections of the intercept program without exceptional start-up costs. The bill would provide \$100,000 (\$50,000 GPR and \$50,000 FED) in 2007-08 and \$70,000 (\$35,000 GPR and \$35,000 FED) in 2008-09 for administrative costs that DHFS would incur to implement the intercept program.

14. This office contacted the Associate Director for Special Programs at the University of Massachusetts Medical School, who oversees the Massachusetts' payment intercept program operated by PCG. The Associate Director reported that she was pleased with the work of PCG, and that, while the intercept program has not increased overall collections substantially (largely due to the *Ahlborn* decision), referrals increased by 100%. Further, the program has permitted the state to know that it is recovering all possible funds. She stated that state's administrative costs of recovering payments from MA recipients have decreased due to the implementation of the program.

15. The administration's estimate of the savings associated with the insurance intercept program assumes that on an annual basis the MA program would realize a 100% increase in benefits recovered, compared to current policy. The state of Massachusetts did not see a substantial increase in funds collected through their insurance intercept program, but they did see a significant increase in the referrals. DHFS staff believes there are currently many cases that would fall under the guidelines for the insurance intercept program that currently are not reported by insurance companies or recipients. If that is the case, the program could result in a substantial increase in collections in Wisconsin.

16. It is difficult to assess potential savings, because there is no current requirement that insurance companies to report these cases to DHFS. As result, it is difficult to know whether the savings estimates in the bill would be realized. The administration's estimates are based on the vendors' indication of potential savings to the MA program, and are not based on actual experience in states where the vendor has implemented an intercept program.

17. Representatives of the Wisconsin insurance industry have expressed concern that the insurance intercept program could increase administrative costs for insurance companies, as they would be required to enter data for every client to whom they make a settlement payment into the computer system. In addition, the industry supports the Governor's requested statutory changes to the bill to limit the types of insurance payments that would be subject to the intercept program.

18. The bill is written such that if any insurance policy that is in effect on the bill's general effective date contains a provision that is inconsistent with the bill provisions, the provisions would first apply to that policy on the date upon which it is renewed. This also could result in administrative time and expense for insurance companies. For example, automobile insurance companies may currently have a contractual obligation to their automobile insurance policy holders that they will reimburse the expenses of a third party who is injured or whose property is damaged in an automobile accident where the policy holder was at fault. Under the bill, the policy holder would no longer be guaranteed that the insurance money would go directly to the injured third party if that third party had outstanding child support or MA liability. As a result, insurance companies would need to examine all their contracts to be sure they are in compliance with the bill's provisions. Representatives from the insurance industry have expressed concerns that this could be an administratively costly task. Further, this delayed initial applicability provision could reduce MA recoveries in the first year of the project (2007-08).

19. This intercept program could result in financial challenges for individuals that expect to receive insurance settlement payments but instead receive reduced payments or no payment at all. For example, because the intercept program would affect automobile insurance payments, a person could experience an automobile accident and expect to receive an insurance payment for a car that cannot be repaired, but not receive any of the funds due to outstanding child support arrearages. (Payment for automobile damages cannot be intercepted to pay for MA liabilities due to the *Ahlborn* decision) If the individual does not have access to public transportation, he or she could have difficulties maintaining employment if the individual cannot afford to purchase another vehicle or find other means of transportation to and from their place of employment.

20. While this policy could result in some hardship for individuals who expect to receive insurance settlement payments, the children of an individual in arrearages for child support would benefit to the extent that the proposal increases child support payments. Finally, the state has a direct fiscal interest in reducing MA costs by ensuring that improper payments are recovered.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommended funding and statutory changes.

<b>ALT 1</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	\$0	-\$3,382,800
FED	0	- 4,697,300
PR	<u>0</u>	<u>1,455,900</u>
Total	\$0	-\$6,624,200

2. Modify the bill, as requested by the administration, to incorporate the statutory changes described in Discussion Point 1.

<b>ALT 2</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	\$0	- \$3,382,800
FED	0	- 4,697,300
PR	<u>0</u>	<u>1,455,900</u>
Total	\$0	- \$6,624,200

3. Delete provision.

<b>ALT 3</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	\$3,382,800	\$0
FED	4,697,300	0
PR	<u>- 1,455,900</u>	<u>0</u>
Total	\$6,624,200	\$0

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