



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #440

Milwaukee County Income Maintenance (DHS -- Medical Assistance and FoodShare -- Administration)

[LFB 2009-11 Budget Summary: Page 368, #1]

CURRENT LAW

The term "income maintenance" or "IM" refers to the eligibility determinations and related administrative activities for several federal and state programs, including medical assistance (MA), BadgerCare Plus, FoodShare, the state supplementary security income (SSI) programs (including the SSI caretaker supplement), and the cemetery, funeral, and burial expenses program. Under current law, the Department of Health Services (DHS) enters into annual contracts with county social service departments to perform these IM activities. The state provides funding to counties through base IM administrative allocations and supplemental allocations. Counties are not required to provide local funding for IM activities, but in calendar year 2007, 70 of Wisconsin's 72 counties contributed to those costs through what are called "local non-reimbursable expenditures."

In calendar year 2007, the state provided approximately \$8.55 million GPR to Milwaukee County for IM activities, and the county contributed approximately \$3.55 million in local non-reimbursable expenditures. Both the state-provided funding and the local non-reimbursable expenditures are eligible for a 50% federal match, bringing the calendar year 2007 all funds IM funding for Milwaukee County to approximately \$24.2 million.

GOVERNOR

Provide \$14,005,600 (\$7,002,800 GPR and \$7,002,800 FED) in 2009-10 only, and 16.0 positions (8.0 GPR positions and 8.0 FED positions), beginning in 2009-10, to support the state takeover of the Milwaukee County IM programs.

DISCUSSION POINTS

1. On October 31, 2008, a number of Milwaukee County residents filed an amended complaint in United States District Court for the Eastern District of Wisconsin, alleging they had been wrongfully delayed or denied benefits under the MA, BadgerCare Plus, and FoodShare programs (*West v. Timberlake*). The named defendants in that lawsuit include DHS Secretary Karen Timberlake and State Medicaid Director Jason Helgerson ("state defendants"), as well as several Milwaukee County officials. The plaintiffs' amended complaint seeks declaratory and injunctive relief under state and federal law.

2. In a letter dated February 3, 2009, DHS Secretary Timberlake notified Milwaukee County of the state's decision to begin phasing out the county's involvement in IM program administration beginning May 1, 2009, and to assume full operation of all IM functions in Milwaukee County by January 1, 2010. In her letter, Secretary Timberlake identified several indicators she claimed evinced the county's unacceptable performance of its IM responsibilities, including the following:

a. Less than 5% of phone calls to the Milwaukee County call center are answered. As a result, the state's MA call center received 250 to 300 calls each day from Milwaukee County residents;

b. Only 70% of benefit applications are handled within the time periods required by state and federal law, compared to 85% in the rest of the state;

c. Over 60% of case closures in Milwaukee County are certified as eligible for benefits within two months of closure;

d. The negative error rate for the FoodShare program in Milwaukee County in 2008 was 19.54%, meaning nearly one out of every five FoodShare recipients was incorrectly dropped from the program;

e. Milwaukee County has substantial backlogs in its Walk-In and Mail-In verification centers ranging from two to 12 weeks, resulting in a loss of access to health care and nutrition benefits to eligible county residents; and

f. Milwaukee County's failure to timely process orders resulting from fair hearing decisions led to the assessment of \$74,500 in fines against the county between December 2007 and March 2008, and the state has been notified that Milwaukee County is out of compliance with these fair hearing requirements for the months of August, September, October, and November of 2008.

3. Secretary Timberlake's letter also asserted that these problems existed despite the additional support the state has provided to the county. For example, the Secretary indicated that the state and federal allocation to Milwaukee County for IM activities was funded at 62% of the state's "workload model" compared to 57% for the rest of the state, and 48% for the state's other five largest county IM agencies (Dane, Rock, Brown, Kenosha, and Racine). The Secretary also cited a series of state and federally funded initiatives during the past decade that were intended to address

specific problems with Milwaukee County's IM activities.

4. The Governor's biennial budget bill (AB 75) would provide one-time funding of \$14,005,600 (\$7,002,800 GPR and \$7,002,800 FED) in 2009-10 to transfer operational control of the Milwaukee County IM activities from the county to the state. AB 75 would also create sixteen new positions within DHS beginning in 2009-10 (half funded by GPR and half funded by federal matching funds) for this purpose.

Senate Bill 161

5. AB 75 is silent as to the manner in which the state would assume control of the Milwaukee County IM activities. Many of those details are addressed in separate legislation, 2009 Senate Bill 161, which the Wisconsin Legislature passed on April 28, 2009.

6. SB 161 directs DHS to establish a Milwaukee County enrollment services unit ("unit") to administer the income maintenance programs in Milwaukee County. As currently envisioned by DHS, that unit would be staffed with 334 positions. Fifty-five of those positions (including the 16.0 new positions created under AB 75 and 39.0 currently vacant positions within DHS that would be transferred to the unit) would be state employees. The other 279 positions would be Milwaukee County employees. Under SB 161, all supervisory personnel in the unit will be state employees.

7. DHS anticipates that some of the 55.0 state positions in the unit would be filled by current Milwaukee County employees. SB 161 clarifies the employment rights of these former Milwaukee County employees once they enter state service. For instance, SB 161 provides that for purposes of calculating seniority and annual leave, the employee's service with the county will be counted as state service. SB 161 also allows these former Milwaukee County employees, upon beginning state employment with the unit, to obtain health insurance coverage under the state employee health plan without having to wait three months, as is typically the case for new state employees.

8. Regarding retirement benefits, SB 161 gives these former Milwaukee County employees 10 days upon entering state service to decide whether to participate in the state retirement system, or continue participating in Milwaukee County's retirement system. That decision will be irrevocable while the individual holds a state employee position in the unit. For those former Milwaukee County employees that opt to stay in the Milwaukee County retirement system, SB 161 obligates the state to pay the required employer contributions.

9. SB 161 requires Milwaukee County to maintain no fewer represented authorized full-time employee positions than were authorized on February 1, 2009, to perform income maintenance functions. The County is also required to perform all administrative tasks related to payroll and benefits for those employees. The bill does, however, authorize DHS to supervise, and to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, and discipline the Milwaukee County employees in the unit.

10. SB 161 also requires Milwaukee County to contribute at least \$2,700,000 in

calendar year 2009 for the operation of the income maintenance programs. In each year thereafter, the County's contribution would increase by the percentage increase in the annual wage and benefit costs paid to the county employees in the unit. Under SB 161, DHS can also contract with Milwaukee County for the latter to provide any of the IM administrative functions, in which case DHS will reimburse the county for all approved, allowable costs that exceed \$2,700,000 (subject to the adjustment noted above) that the county incurred under such a contract.

11. Finally, SB 161 provides that within six months after the West v. Timberlake lawsuit is dismissed, DHS and the county must identify the standards required for the county's operation of the IM programs and initiate discussions regarding who will operate those IM programs in the future.

April 16, 2009 Settlement Agreement in West v. Timberlake

12. On April 16, 2009, the plaintiffs and the state defendants in West v. Timberlake executed a settlement agreement. Under that agreement, those parties agreed to request a court order staying the litigation "to provide time for the transition of responsibility for the administration of Milwaukee County income maintenance programs from Milwaukee County to the Department." Assuming the court grants the requested stay, the agreement establishes performance standards that if achieved within the indicated timeframes will lead to the dismissal of the action as to the state defendants.

13. The settlement agreement is premised on the expectation that the state will take over the Milwaukee County IM programs. Under a section entitled "State of Wisconsin Assumption of Responsibility for Programs" the agreement states that "The Department [DHS] has executed a transition plan, with the goal that the Department will assume direct responsibility for the administration of the Milwaukee County income maintenance programs no later than January 1, 2010."

14. As part of its obligations under the settlement agreement, DHS will, beginning in calendar year 2010 and continuing through dismissal of the action as to the state defendants, provide plaintiffs' counsel monthly Milwaukee County Enrollment Services reports. Those reports will require DHS to document its management of the Milwaukee County income maintenance programs, focusing largely on the timeliness with which DHS processes applications and reviews for those programs. If the January 2011 report indicates that DHS has met the requisite performance standards, plaintiffs' counsel will sign a release and request that the court dismiss the action as to the state defendants.

DHS Transition Plan

15. Under the plan developed by DHS, the transition to state control over the Milwaukee County IM programs will proceed in the following stages. First, on May 1, 2009, the state will begin making eligibility determinations for individuals in Milwaukee County who apply for program benefits using the Department's online ACCESS system (currently those determinations are made by county IM workers). DHS estimates that the 2008-09 costs associated with this first phase of the transition plan (approximately \$721,000) will be funded through available funding in

the Department's administrative contracts appropriation, and an associated 50% federal match.

16. Second, on July 1, 2009, the state will begin operating a new call center for Milwaukee County. The Department's plan is to significantly upgrade and expand the call center's capabilities, relative to those of the center currently operated by Milwaukee County. For example, the Department plans to staff the new call center with 64 employees. By comparison, DHS indicates that the County's current call center has approximately 20 authorized positions, and has often had numerous vacancies within those authorized positions. DHS believes this multifold upgrade to the call center is essential to improve the quality and timeliness of services provided to county residents, and to relieve the backlogs that currently exist throughout the rest of the system.

17. Third, by January 1, 2010, the state will assume full responsibility of the Milwaukee County IM activities. The following table shows the budget DHS has prepared with respect to the state's proposed takeover of those activities. The funding amount provided in AB 75, as reflected in the table, assumed Milwaukee County would contribute \$3.6 million annually towards ongoing IM costs. However, as passed by the Legislature, SB 161 would require Milwaukee County to contribute \$2.7 million per year, rather than \$3.6 million. This is discussed further in discussion point 23.

DHS Proposed Budget for State Takeover of Milwaukee County IM Programs

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Expenses (All funds)			
State Personnel (including salary, fringe, supplies and services)	\$514,400	\$5,077,800	\$3,165,600
Contracts	0	13,163,400	18,729,200
Space	45,400	1,690,700	600,800
Printing and Postage	18,700	86,700	83,400
Drop-in Day Care	0	46,900	93,800
Supplies, Equipment, other Costs	142,400	3,000,200	3,082,400
Security	<u>0</u>	<u>108,500</u>	<u>217,000</u>
Total	\$720,900	\$23,174,200	\$25,972,200
Funding (all funds)			
Available IM Contract Funding	\$0	\$3,077,800	\$14,918,400
AB 75	0	14,005,600	0
Milwaukee County Contribution (all funds)	0	3,600,000*	7,200,000
Hospital Assessment Revenue	796,000	0	0
FoodShare Stimulus Funding	0	0	400,000
DCF Contribution for Wisconsin Shares (all funds)	<u>0</u>	<u>2,500,000</u>	<u>3,500,000</u>
Total	\$796,000	\$23,183,400	\$26,018,400

*Reflects one-half of the amount DHS initially assumed Milwaukee County would contribute in calendar year 2010, with a 50% federal match.

18. The projected expenses shown in the table for "State Personnel" beginning in 2009-10 relate to the 55.0 state employees DHS anticipates hiring for the unit. The budget assumes those personnel costs will decline somewhat in 2010-11 as the transition is completed and as the state achieves efficiencies through improvements in the call center, greater use of online resources such as ACCESS, and dedicated caseloads, among other initiatives. As noted, DHS anticipates that some of these 55.0 positions will be filled by former Milwaukee County employees. SB 161 allows those employees to choose to participate in the state employee retirement system or remain in the Milwaukee County retirement system. In either case, the state will make the required employer contribution on behalf of the employee. In 2009, the employer contribution for employees in the state employee retirement system is 10.4% of salary. In the Milwaukee County retirement system, the employer's projected contribution for 2009 is 20.6% of salary.

19. The projected expenditures in the table for "Contracts" reflect primarily the personnel costs for the 279 Milwaukee County employees that will be performing services for the unit. For the first six months of calendar year 2010, DHS estimates those personnel costs will be \$9,663,400. Those total personnel costs include an estimated fringe rate of approximately 77%, based on the current Milwaukee County fringe benefit rate. The 2009-10 "Contracts" amount also includes approximately \$3.5 million for system changes needed for the transition. The "Contracts" amount for 2010-11 reflects full-year personnel costs for the unit's Milwaukee County employees, with slight adjustments for vacancies.

20. The table also shows the funding sources DHS has budgeted for the project. In 2009-10, the largest source of funding is the \$14,005,600 (50/50 GPR and FED) that would be provided in AB 75. In 2010-11, that one-time funding would be replaced by ongoing funding for Milwaukee County IM activities (\$14,918,400), the county's required contribution of \$7,200,000 (all funds), and \$400,000 of federal funding available under the federal stimulus bill.

21. Funding in the table also includes \$2,500,000 and \$3,500,000 (all funds) in 2009-10 and 2010-11, respectively, from DCF for Wisconsin Shares. These amounts represent the contracted amount DCF would pay DHS to perform the eligibility determinations and authorizations for the child care subsidy program in Milwaukee County. DCF would contract with another entity to perform other activities related to Wisconsin Shares. Under current law, Wisconsin Works (W-2) agencies are required to determine eligibility for child care subsidies and to refer individuals who have been determined eligible to a county department of human/social services for child care assistance. County departments administer the child care subsidy program and do all of the following: (a) determine a parent's copayment; (b) provide a voucher to individuals for the payment of child care services or otherwise reimburse child care providers; (c) set maximum reimbursement rates for day care providers; (d) certify day care providers that are not licensed by the state; and (e) assist eligible individuals to identify and select appropriate child care. Need for service and eligibility must be re-determined at least every six months.

The contracted arrangement with DHS assumed in the table conflicts with another provision of AB 75 that would require DCF to contract with a single entity to determine eligibility for, and administer Wisconsin Shares. DCF indicates that it has not yet determined whether it will contract with DHS for those services. If it does contract with DHS, DCF indicates that it will seek to remedy

the conflict, either with changes to AB 75 or in separate legislation.

22. With the exception of the County's required contribution, the cost and funding estimates reflected in the table appear to be consistent with the transition of authority envisioned under the West v. Timberlake settlement agreement, and the legal framework adopted by the Legislature with passage of SB 161.

23. As noted, the budget DHS originally prepared for its takeover of the Milwaukee County IM programs was based in part on the assumption that Milwaukee County would contribute \$3.6 million per year towards those costs. DHS based that assumption on the amount Milwaukee County contributed towards IM costs in calendar year 2007. SB 161 requires Milwaukee County to contribute \$2.7 million annually, a figure that corresponds to the funds Milwaukee County contributed towards IM costs in calendar year 2008. If the Committee decided to provide additional funds to compensate for the reduced Milwaukee County contribution in SB 161 (reduced relative to the original DHS budget assumptions), it would increase funding in the bill by \$430,000 GPR in 2009-10 and by \$860,000 GPR in 2010-11 (Alternative A2).

24. Alternatively, the Committee could decide to fund the proposed state takeover at the funding levels included in AB 75. This alternative would require DHS to manage the transition within the budget it originally requested, or, if necessary, request additional funds under s. 13.10 of the statutes (Alternative A1).

25. LFB Issue Paper #444 addresses funding for statewide IM costs. As described in that paper, AB 75 would reduce state funding used to support IM activities. The funding that would be provided in AB 75 for the Milwaukee County IM programs, as reflected in the table on page 5 of this paper, assumes that the IM funding reductions in AB 75 will occur. If the Committee decides to restore some or all of the proposed reductions discussed in LFB Paper #444, it could also decide to reduce the funding requested for the state takeover of the Milwaukee County IM programs. In calendar year 2007, it appears that approximately 30% of total state funding for statewide IM costs related to Milwaukee County. If the Committee decides to increase funding for statewide IM costs under the options presented in LFB Paper #444, it could reduce funding for the Milwaukee County IM takeover in an amount equal to 30% of the IM funding restored pursuant to its disposition of LFB Paper #444 (Alternative A3).

26. Finally, regardless of which of the funding options it adopts, the Committee may want to require DHS to provide the Committee copies of all reports it provides to the West plaintiffs under the April 16, 2009, settlement agreement, including all monthly Milwaukee County Enrollment Services reports.

ALTERNATIVES

A. Funding

1. Adopt the Governor's funding recommendations with respect to the state takeover of

the Milwaukee County IM programs.

2. Modify the bill to provide an additional \$430,000 GPR in 2009-10 and \$860,000 GPR in 2010-11 to reflect the lower annual contribution by Milwaukee County required by SB 161.

ALT A2	Change to Bill
	Funding
GPR	\$1,290,000

3. In addition to either Alternative A1 or Alternative A2, decrease GPR funding in the bill for the state takeover of the Milwaukee County IM programs in an amount equal to 30% of any GPR amount the Committee restores for IM activities in LFB Paper #444.

B. Reports

1. Require DHS to provide the Committee with copies of all reports the Department provides to the West plaintiffs under the April 16, 2009 settlement agreement, including all monthly Milwaukee County Enrollment Services reports.
2. Take no action on this item.

Prepared by: Eric Peck