



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #442

Insurance Payment Intercept (DHS -- Medical Assistance and FoodShare -- Administration)

[LFB 2009-11 Budget Summary: Page 370, #3]

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 Children and Families (DCF) once a child support order is granted.

If a person obligated to pay support fails to pay any court-ordered amount of support, that unpaid amount becomes a lien in favor of DCF upon all of the person's property. The lien becomes effective when the information relating to the non-payment of support is entered into the statewide lien docket and the docket is delivered to the register of deeds. 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 Services (DHS) is authorized to recover the following amounts: (a) payments incorrectly made to or on behalf of recipients of the MA, BadgerCare Plus, or certain other public assistance programs arising from misstatements or omissions by such recipients; (b) penalties against employers for failing to provide health insurance information relating to their employees as requested by DHS; and (c) third-party liability for medical services provided to MA recipients.

GOVERNOR

Reduce funding by \$2,164,800 (-\$1,116,600 GPR, -\$1,533,500 FED, and \$485,300 PR) in 2009-10 and by \$4,459,400 (-\$2,266,200 GPR, -\$3,163,800 FED, and \$970,600 PR) in 2010-11 to reflect the administration's estimate of the net fiscal effect of implementing a mandatory insurance payment intercept program.

The aggregate funding changes recommended in the bill include changes both to MA benefits funding and to MA administrative costs. Specifically, the bill would reduce funding for MA benefits by \$2,750,100 (-\$1,166,600 GPR and -\$1,583,500 FED) in 2009-10 and by \$5,500,000 (-\$2,301,200 GPR and -\$3,198,800 FED) in 2010-11 to reflect the administration's estimate of net savings to the MA program resulting from the insurance payment intercept program. The bill would increase funding for administrative costs by \$585,300 (\$50,000 GPR, \$50,000 FED, and \$485,300 PR) in 2009-10 and by \$1,040,600 (\$35,000 GPR, \$35,000 FED, and \$970,600 PR) in 2010-11 to fund costs associated with implementing the intercept program (GPR and FED) and to pay a contracted entity in the form of a percentage of total recoveries to the MA program (PR).

The bill would require insurers authorized to do business in Wisconsin, before paying an insurance claim of \$500 or more to an individual, to verify with DHS whether the individual has a medical assistance liability and to check the statewide support lien docket to determine whether the individual has a support liability. If the individual has either such liability, the insurer would be required to distribute the insurance claim as follows: (a) first, if there is a support liability, to DCF to pay the support liability, up to the amount of the support liability or the amount of the claim, whichever is less; (b) next, if there is a medical assistance liability, to DHS to pay the medical assistance liability, up to the amount of the medical assistance liability or the amount of the claim, whichever is less; and (c) last, to the individual, the remainder of the claim proceeds, if any.

For these purposes, the bill would define "medical assistance liability" to mean any of the following amounts DHS is currently authorized to recover: (a) payments for MA benefits incorrectly made to or on behalf of a person as a result of a misstatement or omission of fact in the person's application for program benefits, the person's failure to report the receipt of income or assets that would have affected their program eligibility, or the person's failure to report a change in their financial or nonfinancial situation that would have affected their program eligibility; (b) penalties against employers for failing to provide health insurance information about their employees as requested by DHS; and (c) third-party liability for medical services provided to MA recipients. Furthermore, the bill would define "support liability" to mean an amount entered in the statewide support lien docket pertaining to unpaid child or family support.

The bill would authorize DHS to promulgate emergency rules, without a finding of emergency, for the administration of the insurance payment intercept program, including procedures for insurers to follow, and any notice and hearing requirements.

Finally, the bill would provide that if any insurance policy in effect on the effective date of the bill contains a provision that is inconsistent with the aforementioned statutory changes, those changes would first apply to that policy on the date on which that policy is renewed.

DISCUSSION POINTS

1. The administration 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 payments. The following payments would not be subject to the intercept program: (a) life insurance payments; (b) property insurance/homeowners insurance payments; (c) long-term care insurance payments; and (d) health insurance payments.

2. The administration has also indicated that the insurance payment intercept mechanism that would be created under the bill should not apply to penalties against employers for failing to provide health insurance information about their employees as requested by DHS.

3. Federal law requires states to take all reasonable measures to ascertain the extent to which third parties are legally liable for medical assistance provided to an MA recipient, and to seek reimbursement from those third parties for the medical assistance that was provided. Federal law also requires states to have in place laws under which the state is considered to have acquired the rights of the MA recipient in any case where a third party has a legal liability to make payment for medical assistance for health care items or services furnished to the recipient under the state's MA program.

4. Consistent with these and other requirements, the Bureau of Health Care Program Integrity within DHS engages in activities designed to ensure that the state's MA program recovers MA payments that were incorrectly made, and recovers (or avoids paying in the first place) medical assistance benefits for which third parties are legally liable. A primary source of third-party liability is the other health insurance coverage, both public and private, that MA recipients possess. Through MA recipients' self-disclosures, and coverage data obtained from commercial health insurers and employers, the state seeks to identify all of these other forms of health insurance coverage. As the payer of last resort, the state's MA program only pays for covered benefits not paid by the recipient's other health insurance.

5. Other forms of third-party liability can exist when the MA recipient recovers or becomes entitled to recover payments from third parties (for instance, under other forms of insurance, legal judgments, or legal settlements) that relate to medical services provided to the recipient under the MA program. Under federal law, the MA program's right to recovery in such instances is limited to that portion of the insurance payment, judgment, or settlement intended to cover the MA recipient's medical expenses (as opposed to recoveries designed to compensate the MA recipient for losses such as property damage, pain and suffering, or lost earnings). That federal law limitation does not apply to the state's efforts to collect child support arrearages.

6. As part of the current application process for benefits under Wisconsin's MA program, applicants agree to cooperate with the state in identifying and providing information that will assist the state to pursue third parties who may be liable to pay for medical care and services. In addition, MA applicants agree to assign to the state their right to such payments from third parties. The state also obtains subrogation rights in litigation where the potential for third-party

liability exists, and in such cases the MA recipient is required to advise the state of their claim before they settle.

7. While these and other mechanisms are designed to notify the state of potential third-party liability circumstances, and thereby to avoid making and/or to recover medical assistance payments where such third-party liability exists (or where benefits are incorrectly paid) the state is not currently authorized to directly intercept insurance payments to MA recipients.

8. DHS has begun working with the Public Consulting Group (PCG) to implement a Wisconsin insurance payment intercept program. Under the PCG intercept program, it is envisioned that all insurance companies would have to register into an online computer system. Ten days prior to making an insurance payment greater than \$500, the insurer would be required to check the payment intercept program. They would access the program through a secure website and they would be required to enter data or upload information identifying the client. The system would then match that information against state MA and child support arrearage files. If there is no match, the system will send a message to the insurer to that effect. If there is a match, the system will ask the insurer to provide additional information. PCG will then provide that information to the state, which will create an account for the individual, and an appropriate amount of the insurance proceeds will be sent to the state. As indicated, the priority of payments in such instances will be first to satisfy outstanding support obligations, second to satisfy outstanding medical assistance liabilities, with any remaining balance to the individual.

9. Because child support payments are eventually paid to the person to whom the obligation is owed, any outstanding child support obligations recovered under the insurance intercept proposal would not directly impact state revenues or expenditures.

10. With respect to medical assistance liabilities, the administration estimates that the PCG insurance payment intercept program will generate additional recoveries to the state's MA program of approximately \$3,235,300 in 2009-10 and \$6,470,700 in 2010-11. As noted, these estimates do not include additional child support recoveries, which are paid directly to the person to whom that support is owed. Instead, these figures reflect the administration's estimate of the additional medical assistance liabilities that will be recovered under the insurance payment intercept program. From those recoveries, the bill has budgeted payments to PCG of \$485,300 in 2009-10 and \$970,600 in 2010-11.

11. DHS has provided this office with the results of a PCG-conducted survey of the "casualty recoveries" realized in 18 other states. In 10 of those states, PCG had implemented an insurance payment recovery program. Information was not provided as to whether the other eight states surveyed utilized a comparable program. The average recovery for all 18 states (as measured by total recoveries divided by total MA enrollment) was \$8.25 per MA enrollee. The recoveries realized in the 10 PCG states were essentially identical to that 18-state average. In comparison, casualty recoveries in Wisconsin during state fiscal years 2004-05 and 2005-06 were, according to DHS, approximately \$3 per MA enrollee.

12. It is difficult to predict with certainty the additional MA recoveries Wisconsin would obtain if it instituted the insurance payment intercept program recommended in the bill. The information provided by PCG suggests that Wisconsin's current recovery mechanisms lag behind

the results being obtained in other states. If one assumed that through an insurance intercept program, Wisconsin was able to increase MA recoveries to the average recovery level cited in the PCG survey (\$8.25 per MA enrollee per year), the total additional MA recoveries would be approximately \$2,470,700 in 2009-10 and \$5,055,500 in 2010-11. That same PCG-provided survey data, however, does not clearly establish that PCG-type insurance payment intercept programs are responsible for the higher recoveries apparently being achieved in these other states.

13. Under the administration's proposal, PCG's compensation would be based solely on additional MA recoveries (not child support recoveries). In 2009-10, PCG would be paid 15% of the additional MA recoveries it generates, and in 2010-11 that percentage would decline to 12.5%. Assuming additional MA recoveries equal to the amounts calculated in discussion point 12, PCG's fees would be approximately \$370,600 in 2009-10 and approximately \$631,900 in 2010-11.

14. Any net MA recoveries obtained are ultimately allocated between the federal government and the state. For example, MA-eligible expenditures paid in 2009-10 are funded approximately 60% by federal MA matching funds (based on Wisconsin's federal medical assistance percentage, or FMAP, prior to any temporary adjustment associated with the American Recovery and Reinvestment Act of 2009 (ARRA), and 40% funded by GPR. Any recovery of MA benefit expenditures under an insurance payment intercept program would be used to offset those federal and state contributions proportionately.

15. The Wisconsin Insurance Alliance has communicated several concerns regarding the Governor's insurance payment intercept proposal. Those concerns include the payment delays it suggests claimants might experience if insurers are required to input claims-related information into the PCG system each time they pay an insurance claim. The Alliance also asserts that insurers will incur additional costs to implement the proposal, both to input data into the PCG system and to amend their policy forms to conform to the new statutory requirements.

16. The Committee could approve the Governor's recommended statutory changes, with the revisions noted in discussion points 1 and 2, and accept the savings projections included in the bill. Regarding the latter, the administration has reiterated its position that based on its communications with PCG, the recoveries projections in the bill are achievable.

17. Alternatively, the Committee could approve the Governor's statutory recommendations, as revised in discussion points 1 and 2, but assume the somewhat more conservative recovery projections described in discussion point 12. The Committee could decide these lower savings projections are prudent for several reasons. First, the lower recovery projections in discussion point 12 are consistent with the recoveries as reported by PCG in 18 other states, including the 10 states PCG has already implemented an insurance payment intercept program. Second, these more conservative estimates may be appropriate given that the 2009-11 biennium would be the program's initial years of operation in Wisconsin, and some delays are to be expected as the program is implemented and insurers adjust policy language to reflect the new statutory requirements. Third, the lower recovery projections may be warranted given that the PCG-provided survey does not clearly establish that insurance payment intercept programs are responsible for the higher recoveries apparently being achieved in other states.

18. Finally, the Committee could delete the proposal based on the concerns expressed by

the insurance industry, and concerns about the achievability of savings under the program.

ALTERNATIVES

1. Approved the Governor's recommended funding changes, and the statutory changes as modified in discussion points 1 and 2.

2. Approve the Governor's statutory changes, as modified in discussion points 1 and 2, but reduce the estimated savings associated with the insurance payment intercept program as described in discussion point 12. Increase funding in the bill by \$535,200 (\$192,000 GPR, \$457,900 FED and -\$114,700 PR) in 2009-10 and by \$737,800 (\$369,900 GPR, \$706,600 FED and -\$338,700 PR) in 2010-11.

ALT 2	Change to Bill Funding
GPR	\$561,900
FED	1,164,500
PR	<u>- 453,400</u>
Total	\$1,273,000*

3. Delete the provision. Increase funding in the bill by \$2,164,800 (\$762,700 GPR, \$1,887,400 FED and -\$485,300 PR) in 2009-10 and by \$4,459,400 (\$1,854,800 GPR, \$3,575,200 FED, and -\$970,600 PR) in 2010-11.

ALT 3	Change to Bill Funding
GPR	\$2,617,500
FED	5,462,600
PR	<u>- 1,455,900</u>
Total	\$6,624,200*

* Funding levels associated with modifications or other changes to the Governor's original funding amounts reflect the temporary FMAP increases under the American Recovery and Reinvestment Act of 2009.

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