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Estimated IGT Revenues and Creation of IGT Trust Account (DHFS -- Medical Assistance)

[LFB 2001-03 Budget Summary: Page 350, #3 (part)]

CURRENT LAW

The state reimburses county- and municipal-owned nursing homes, as well as other types of nursing homes, for services provided to medical assistance (MA) recipients under a per diem rate based on past costs. Although the per diem rate reflects costs at each individual nursing facility, the MA reimbursement formula contains maximum payment limits that are based on statewide median costs. Consequently, nursing homes may not be reimbursed for all of their costs of serving MA recipients.

Costs paid by local governments may be used as the state match for federal MA funds. Consequently, the unreimbursed expenses of county- and municipal owned nursing homes related to MA residents can serve as the state match for claiming federal MA funds. Wisconsin's use of unreimbursed expenses of county- and municipal-owned nursing homes to claim additional federal MA matching funds is referred to as the state's intergovernmental transfer (IGT) program.

Under 1999 Wisconsin Act 9, the amount of federal matching funds based on unreimbursed expenses of county- and municipally-owned nursing homes the state received under the IGT program was estimated to be $105.0 million in 1999-00 and $118.2 million in 2000-01. The IGT revenues projected in Act 9 were based on the assumption that the Department of Health and Family Services (DHFS) would continue to use the certified losses of county- and municipal-owned nursing homes as the state match for federal MA funds. It was not anticipated that the state would use electronic transfers of funds between the state and counties to secure these IGT funds.

GOVERNOR

Create a separate, nonlapsible trust account that would be designated as the medical assistance trust fund. Specify that all federal matching funds based on nursing home intergovernmental transfers would be placed into this trust fund, as well as any intergovernmental transfers received from local governments. Specify that the Investment Board would manage the trust fund and the fund would accumulate interest earnings. Create a segregated, continuing appropriation, funded from the trust fund, to support MA costs and administrative costs associated with augmenting the amount of federal moneys DHFS receives from nursing home intergovernmental transfers. Modify the current federal MA benefits appropriation to authorize transfers from that appropriation to the MA trust fund. Authorize DHFS to fund current MA-funded services from the new appropriation.

At the time the Governor's budget was introduced, the administration estimated that IGT revenues would exceed the base budgeted level of $118.2 million by $258.7 million in 2000-01, $189.6 million in 2002-03 and $155.7 million in 2002-03, based on a recent state MA plan amendment that would utilize electronic transfers to increase the amount of federal matching funds the state can claim based on intergovernmental transfers.

DISCUSSION POINTS

1. This paper provides an estimate of the amount of enhanced IGT claims that may be available for budgeting purposes in the 2001-03 biennium and compares these revenues with the Governor's proposed use of these funds. In addition, the paper discusses the merits of the Governor's proposal to create the segregated trust fund.

The attachment to the paper presents information on: (a) the history of the state's IGT claiming; (b) recent changes in federal law and proposed rules that are expected to reduce the amount of IGT revenue the state will receive in the 2001-03 biennium. The information in the attachment explains why the amount of additional IGT funds the state will receive in the 2001-03 biennium remains uncertain.

2. The following table identifies the current estimate of the amount of IGT revenue the state could expect to receive in the 2001-03 biennium for budgeting purposes. The table incorporates the IGT revenue the state received in 2000-01, using the electronic transfer method, with the projected revenues in the 2001-03 biennium, and the expenditures that would be supported by these funds under the Governor's 2001-03 budget bill.

IGT Claiming
Current Estimates and the Governor's Budgeted Expenditures
Fiscal Years 2000-01 through 2002-03
($ in Millions)

	2000-01	2001-02	2002-03
Opening Balance	$0.0	$278.2	$192.9
Revenue			
Enhanced IGT Claims	$254.5	$0.0	$0.0
Current Claims	118.2	75.0	75.0
Interest Earnings	0.0	12.2	6.9
Subtotal	$372.7	$87.2	$81.9
Total Available	$372.7	$365.4	$274.8
Expenditures			
Offset to State MA Costs	$78.1	$91.9	$102.3
Nursing Homes			
County and Municipal Supplement	$16.4	$31.8	$31.9
General Rate Increase	0.0	30.9	48.5
Subtotal	$16.4	$62.7	$80.4
Hospital Services	$0.0	$9.5	$10.1
Noninstitutional Services	0.0	8.4	18.2
Hearing Aid Services	0.0	0.0	0.1
Subtotal	$0.0	$17.9	$28.4
Total Expenditures	$94.5	$172.5	$211.1
Closing Balance	$278.2	$192.9	$63.7

3. The table shows that, at the end of the 2001-03 biennium, the projected balance of IGT funds would be approximately $63.7 million if the Committee approves all of the Governor's recommendations relating to MA provider rates, including nursing home rates, and continues to budget some of these funds to offset a portion of the state's MA benefits costs. As the discussion in the attachment indicates, the actual amount of IGT revenues the state will receive may differ significantly from the estimates shown in the table.

4. The state's IGT funds represent reimbursements for costs the state has already incurred. For this reason, these funds may be used for any purpose, including purposes unrelated to the state's MA program.

For example, the Committee could use a portion of this projected balance to fund the projected shortfall in the state-funded MA benefits appropriation, which is estimated to be $49.4 million ($31.7 million in 2001-02 and $17.7 million in 2002-03). If these surplus IGT funds are not used to address this shortfall, GPR funding will need to be added to the bill for this purpose.

Alternatively, the Committee could budget all of these surplus IGT funds for MA benefits in the 2001-03 biennium to: (a) address the projected MA benefits shortfall ($49.4 million); and (b) reduce GPR funding in the bill for MA benefits by $14.3 million in 2001-02. These GPR funds could then be used to address the projected general fund deficit.

5. The Governor's recommendations relating to the creation of a MA trust fund and reserving IGT revenues is based on an agreement made between the Department of Administration, DHFS, the Wisconsin Counties Association, the Wisconsin Association of Homes and Services for the Aging and the Wisconsin Health Care Association. The agreement specifies that all new IGT funds would be devoted to the MA program, and that IGT funds would be used for nursing home reimbursement. Further, the agreement calls for establishing an interest-bearing MA trust account that would receive all IGT funds. The agreement commits to providing new funding of $115.0 million (all funds) in 2001-02 and $157.2 million (all funds) in 2002-03 for nursing home reimbursement. In terms of IGT revenue, this would require $143.2 million in the 2001-03 biennium. The agreement would permit the state to continue to use $78.1 million of IGT funds annually to offset state GPR costs for MA base expenditures related to past nursing home rate increases.

7. In exchange for the additional funding for nursing homes, counties agreed to participate in a wire transfer to obtain these additional IGT funds. Under the agreement, Sheboygan, Walworth, Rock, Outagamie and Manitowoc Counties will continue to pursue their plans to downsize their county-operated nursing homes.

8. The agreement was based on the assumption that Wisconsin would receive additional IGT funds of $260 million in 2000-01, $190 million in 2001-02 and $155 million in 2002-03 above the current budgeted level of $118.2 million. The agreement stated that the parties would renegotiate a revised funding agreement if actual IGT revenues were significantly different from the assumed levels.

9. Although the state needs the counties to participate in the IGT electronic transfers, the counties have a significant interest in continuing to participate with the state in securing these IGT funds. The Governor's budget would provide substantial rate increases to nursing homes, based on the expectation that the state would continue to receive enhanced IGT funds in the 2001-03 biennium. While it would still be possible to fund the nursing home rate increases recommended by the Governor based on the current estimates, the Governor's proposed rate increases could be reconsidered in light of the current projections, as referenced in the agreement.

10. The Committee may wish to adopt the Governor's recommendations relating to the creation of the trust fund because depositing these revenues in the trust fund, rather than using them to fund costs in this biennium, would make these revenues available to substitute for base IGT funds currently budgeted for the MA program in future years if, as expected, these IGT revenues are no longer available. In this way, reserving these funds at this time would reduce the need for the state to commit additional GPR funds to support MA base costs if the state's ability to claim IGT funds is reduced or eliminated in the future.

11. The Committee could also address both the need for the state to use the IGT funds now and to reserve future IGT claims for the trust fund by: (a) retaining the Governor's recommendations to create a segregated trust fund; and (b) specifying that $63.7 million of the IGT funds the state has already received be lapsed to the general fund.

ALTERNATIVES TO BASE

1. Adopt the Governor's recommendations relating to establishing a MA trust fund.

2 Adopt the Governor's recommendations relating to establishing a MA trust fund. However, require DOA to lapse $63,700,000 of IGT revenue to the general fund on June 30, 2003.

Alternative 2	**GPR-Lapse**
2001-03 REVENUE (Change to Base)	$63,700,000

3. Delete the Governor's recommendations relating to establishing a MA trust fund. In addition, require DOA to lapse $63,700,000 of IGT revenue to the general fund on June 30, 2003.

Alternative 3	**GPR-Lapse**
2001-03 REVENUE (Change to Base)	$63,700,000

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ATTACHMENT

History of IGT Claiming

Wisconsin first began claiming additional federal MA funds in 1985-86. Initially, the state claimed an amount that was less than the federal share of the accumulated deficits of county- and municipal-owned nursing homes. This limited type of claiming continued until 1992-93, when the state claimed $18.6 million in additional federal MA funds based on $47.2 million of certified losses. The $18.6 million claimed was equal to 39% of the accumulated deficits, while the federal matching share in that year was 60%. During this period, all of the additional federal matching funds were distributed to county- and municipal-owned nursing homes as supplemental payments under the state's federal financial participation (FFP) program.

Beginning in 1993-94, the basis for claiming and the use of IGT funds changed significantly. First, the amount of additional federal matching funds claimed by the state began to exceed 60% of the total deficits incurred by county- and municipal-owned facilities. This increased claiming was based on the relationship between the state and federal matching funds rate (approximately 41% GPR/59% FED). Specifically, it was determined that a dollar of state matching funds could be used to claim $1.44 of federal matching funds (0.59/0.41 = 1.44). Since unreimbursed expenses of county- and municipal owned nursing homes could serve as the state match, $1.00 in unreimbursed county costs could be used to claim $1.44 of federal matching funds. This method of claiming was used through the 1999-00 fiscal year, when the state used $73.2 million of certified losses to claim $108.7 million of IGT funds.

In addition to changing the method used to claim federal matching funds, beginning in 1993-94 the state began using part of the IGT funds for supporting the state GPR costs of general nursing home rate increases. Of the $108.7 million in IGT funds in 1999-00, county- and municipal-owned nursing homes received $39.7 million in supplemental payments, while the remaining $69.0 million was used by the state to pay for the state's share of MA costs of general nursing home payments.

Although federal regulations allow states significant discretion in setting reimbursement levels for MA nursing home services, federal rules limit total MA payments to the amount that the state estimates would have been paid under Medicare payment principles. This limit is commonly referred to as the Medicare upper limit (MUL). Currently, the MUL test is applied in aggregate to each group of nursing homes so that the MUL is applied to privately owned (profit and nonprofit) nursing homes and county- and municipal-owned nursing homes as a group. Thus, if MA payments to private nursing homes are less than what would be paid under Medicare principles, county- and municipal-owned nursing homes can be paid more because the aggregate payment to both types of facilities is compared with the Medicare upper limit. There has always been a separate Medicare upper limit test for state-owned nursing facilities to limit the state's reimbursement of its own facilities.

New Federal Regulations

On January 12, 2001, the U.S. Department of Health and Human Services, Health Care Financing Administration (HCFA) published a final rule to modify the MUL for nursing homes. This change establishes an additional MUL test that will be applied separately to non-state, public nursing facilities. This change will prevent the use of any difference between the federal upper limit and the actual MA payments to private facilities from supporting higher payments to county- and municipal-owned nursing homes.

The new federal rule includes transitional provisions that allow states to retain the current level of claiming at least to September 30, 2002, and provides for certain states to gradually comply with the new requirements over a longer transition period. The length of the transition period varies by the date when the state first had an approved MA state plan amendment that is not compliant with the new regulations. For states with approved plan provisions that were effective on or before October 1, 1992, current excess payments will first be reduced in each state's 2003-04 fiscal year, reducing the excess payments by increments of 15% each year, which would completely phase out the excessive payments by each state's 2009-10 fiscal year. For states with approved plan provisions that are effective after October 1, 1992, and before October 1, 1999, current excess payments will first be reduced in each state's 2002-03 fiscal year, reducing the excess payments by 25% each year, which would completely phase out the excess payments by each state's 2005-06 fiscal year.

Under the January, 2001, rule, it was not clear which transition period would apply to Wisconsin, because: (a) recent MA deferral letters from HCFA suggested that Wisconsin did not, in fact, have any approved plan provision; and (b) the federal regulation did not clearly define what is meant by an approved plan and whether significant modifications to an existing plan would be considered approved based on the original plan date or the date the modification was approved. Wisconsin had an approved plan for using county losses to claim federal IGT funds before 1992, but significantly changed the basis for the state's claiming in 1993-94.

The federal 2000-01 budget act (Public Law 106-554) included a provision that requires the eight-year transition period to apply to states with a state MA plan provision or methodology which: (a) was approved, deemed to have been approved, or was in effect on or before October 1, 1992 (including any subsequent amendments or successor provisions or methodologies and whether or not a state plan amendment was made to carry out such provision or methodology after such date) or under which claims for federal financial participation were filed and paid on or before such date; and (b) provides for payments that are in excess of the upper payment limit test established under the final regulation required under (a) or which would be noncompliant with such final regulation if the actual dollar payment levels made under the payment provision or methodology in the state fiscal year which begins during 1999 were continued.

One of the states that is intended to be covered by this provision is Wisconsin. However, HCFA's challenge to Wisconsin's current IGT claims, which is described in the next section, makes this uncertain.

Federal Deferrals of Wisconsin 's Past IGT Claim

HCFA has deferred a portion of the state's IGT claims for 1999-00 on the basis that the state did not have sufficient MA payments to support all of the additional federal funds. Although county losses can serve as the state-match for the federal claims, HCFA has indicated that the state must actually make MA payments to support those claims. HCFA allowed the $44.8 million of the IGT claim, which is equal to 59% of the certified losses, since the certified losses represent expenditures on nursing services to MA recipients. However, the remaining IGT claims of $64.9 million were deferred, since HCFA found that there were no other payments to the counties (no electronic transfer or other types of payments to support the claim).

The IGT deferrals for 1999-00 have not affected the state's cash receipts. Wisconsin has received these funds. However, if the deferrals are sustained and Wisconsin's claims are disallowed, Wisconsin will have to return those federal funds. HCFA has not made a final decision, and there is no date by which HCFA must make the decision.

The deferral issue for 1999-00 has a much broader effect than the loss of $64.9 million in 1999-00. If Wisconsin's IGT claims for 1999-00 were allowed, Wisconsin would qualify for one of the longer transition periods and would be able to sustain IGT claims for a longer period.

Electronic Transfer Method

There are numerous states that receive additional federal funding using county-owned nursing homes, but those states use a different method than Wisconsin. These other states use the following procedure: (a) a determination is made of the gap between what would be paid under Medicare principals and the actual MA payments to nursing facilities: (b) counties that own and operate a nursing home electronically transfer an amount equal to the gap to the state; (c) on the same day, the state returns that same amount to the counties, which is considered an MA payment to their nursing facilities; and (d) the state claims MA federal matching funds equal to the state federal share times the amount of the electronic transfer. The federal matching funds based on the electronic transfer are available for any use by the state, since the MA payment to the counties has already been made and financed by the transfer to the state.

On February 13, 2001, DHFS filed a modification to its state plan amendment for 2000-01 nursing home reimbursement that included a change to its IGT claiming methods. This modification serves two purposes. First, it responds to the concerns raised by HCFA that lead to the 1999-00 IGT deferrals. Second, the modification allows Wisconsin to expand the amount of its IGT claims to the full amount allowed under the Medicare upper limit. The modification indicated that Wisconsin would adopt the method of using electronic transfers that between the state and counties to maximize the amount of allowed MA nursing home payments.

Three counties agreed to participate in the electronic transfer, and in early March, a total transfer of $637 million was made, which would support a total IGT claim of up to $376.9 million in additional federal matching funds.

On May 9, 2001, Wisconsin's plan amendment was approved by HCFA. Due to adjustments in the calculation of the Medicare upper limit, Wisconsin will receive additional IGT revenues totaling $254,520,600, rather than $258,700,000, as projected under the Governor's budget.

HCFA's Proposed Fourth Transition Category

On April 3, 2001, HCFA proposed a rule to modify the transition periods specified in the January, 2001, final rule. HCFA received comments on the proposed rule through May 3, 2001. To date, HCFA has not published the final rule.

The proposed rule would establish a new transition period for states, including Wisconsin, that submitted MA state plan amendments before March 13, 2001, that do not comply with the new upper payment limits that were effective on that date and were approved on or after January 22, 2001. For these states, a one-year transition period that would end on the later of March 13, 2001, or one year after the approved effective date of each state plan amendment, would apply.

HCFA has indicated that this proposed rule would affect the following states: Florida, Georgia, Illinois, Kentucky, Michigan, Missouri, New Jersey, North Carolina, Pennsylvania and Wisconsin. Thus, it is HCFA's view that Wisconsin would only be able to claim additional IGT funds under the new mechanism for one year.

In describing the proposed rule, HCFA stated that the intention of the new rule is to apply the shorter one-year transition period only to the portion of spending that is above the amount that was previously approved. This suggests that Wisconsin's current level of IGT claims ($118 million) might be retained for several years as long as HCFA determines that Wisconsin had an approved plan for the prior mechanism. If HCFA disallows Wisconsin's 1999-00 IGT claim, it would be based on HCFA's determination that Wisconsin did not have an approved plan to claim more than 60% of the certified losses of county- and municipal-owned facilities.

HCFA could modify the proposed rule for a fourth transitional period, based on the comments the agency received through May 3 and reaction by members of Congress. In addition, it is possible that HCFA's proposed rule violates the provision in the P.L. 106-554 which DHFS indicates was intended to provide certain states, including Wisconsin, a longer transition period that would not begin until the state fiscal year that begins after September 30, 2002 (Wisconsin's 2003-04 state fiscal year).

IGT Revenues in 2003-04 and Beyond

Even if Wisconsin is provided an eight-year transition period, Wisconsin will receive limited IGT revenues in 2003-04 and future years. The federal rules, as well as P.L.106-554, limit the amount of payments above the new MUL requirement to 85% of the amount of claims that were above the new MUL in 1999-00. Wisconsin's IGT claims totaled $108.7 million in that year, but not all of this payment exceeded the new MUL requirement. Assuming that $65

million exceeded the new MUL and taking 85% of that amount, Wisconsin's ability to claim IGT above the new MUL would be limited to $55 million in 2003-04 under the most optimistic scenario. Each year after 2003-04, this amount would have to be reduced by another 15%.

It is unlikely that additional information will be available on the status of the state's IGT claiming before the 2001-03 biennial budget is passed. HCFA's view is that Wisconsin's new IGT claim is subject to the proposed one-year transition period, since it was authorized under a recently approved amendment. In addition, it appears that HCFA views the state's former method of claiming IGT funds as invalid, and thus, Wisconsin is not protected by any transitional provisions that would allow Wisconsin's old IGT level to be retained for a transitional period. There is possible that the IGT revenues in 2001-02 and subsequent years would be limited to the amount allowed under the new federal upper limit rule --the difference of what Medicare would pay county- and municipal-owned nursing homes and actual state MA payments to those facilities.

Wisconsin's ability to receive IGT revenue beyond what would be allowed under the new Medicare upper limit may rest on the argument that P.L. 106-554 requires that states with plan amendments adopted before 1992 (and including successor provisions) are required to be provided a transitional period that would first require payments to be restricted under the new rule beginning in 2003-04. If Wisconsin's new plan amendment for the electronic transfers can qualify as a successor provision to Wisconsin's original FFP program, then Wisconsin might be entitled to the enhanced IGT claims in both years of the 2001-03 biennium, as projected in the Governor's budget.

Wisconsin may be able to use the provision in P.L.106-554 to negotiate some transition arrangement with HCFA. One possibility might be an agreement to allow Wisconsin to continue its old level of IGT claims. HCFA has the 1999-00 deferral of $65 million that could be used in the negotiation, and HCFA could seek deferrals for the two previous years as well.

If Wisconsin were restricted to the new Medicare upper limit rule, the amount of IGT revenues the state would receive would be limited to 59% of the difference between what Medicare would pay to county- and municipal-owned nursing homes and actual MA payments (including supplemental payments) to those facilities. This gap will depend on future Medicare rates and future MA rates and supplemental payments, but it may be in the range of $50 to $100 million, per year.

Due to the IGT revenues the state claimed in 2000-01, Wisconsin will have at least $278.2 million of IGT funds available. The worst case scenario is that the 1999-00 deferral progresses to a disallowance, and Wisconsin is required to pay back the $65 million for 1999-00 and excess amounts for the two prior years, which in total would be approximately $175 million. If the state were required to pay back the $175 million, there would be a balance of $103.2 million of IGT revenues plus any new IGT revenues that could be generated under the new MUL regulation ($50 to $100 million a year).

Given the length of time that has transpired without any further action on the 1999-00 deferral, this might suggest that HCFA may not pursue this deferral any further and may be using the deferrals as method to ensure that Wisconsin complies with HCFA's desire to end claiming of additional federal funding. In the past, HCFA has used deferrals as a way to achieve future compliance rather than a method to collect overpayments. Also, other states had much larger claims for additional federal matching funds than Wisconsin, and will be able to continue claiming for several years under the transitional provisions. At this point, it may be reasonable to assume that the deferral for 1999-00 will not be pursued unless Wisconsin would be able to claim enhanced IGT funding in 2001-02 and 2002-03.

Although there is a possibility that there would be less IGT revenues available, it is reasonable to assume that Wisconsin would have $278.2 million of IGT revenues to begin the 2001-03 biennium. Also, under the new MUL rule, Wisconsin may be able to claim IGT revenues of $50 million to $100 million per year, depending on Medicare rates and MA reimbursement of county- and municipal-owned nursing homes. For the purpose of preparing this estimate, it was assumed that the state would be able to claim $75 million in IGT funds in each year of the 2001-03 biennium.