



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

September 8, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Justice: Section 13.10 Request for Permanent Position Authority for Medicaid Fraud Investigators -- Agenda Item I

REQUEST

On August 17, 2022, the Department of Justice (DOJ) submitted a request under s. 13.10 of the statutes for two additional investigators to the Medicaid Fraud Control Unit (MFCU) within the Division of Legal Services (DLS). Each position would be split funded, 0.25 GPR and 0.75 FED. In total, DOJ requests that 0.5 GPR position be created. [The remaining two 0.75 FED positions can be created by the Governor under provisions of s. 16.505(1)(c).] The new positions are assumed to start in January, 2023. The Department indicates that the requested 0.5 GPR position would be funded from existing resources. Therefore, no additional funding is requested.

BACKGROUND

Statutory Authorization. The MFCU investigates and prosecutes crimes committed against vulnerable adults in nursing homes and other facilities, as well as fraud perpetrated by providers against the Wisconsin Medicaid program. Under ss. 49.49 and 49.846 of the statutes, DOJ and the district attorneys are responsible for prosecution of criminal laws affecting the medical assistance program, including Medicaid fraud, as well as the health, safety and welfare of recipients of medical assistance. The unit also prosecutes civil enforcement actions affecting Medicaid.

Program Administration. The U.S. Department of Health and Human Services, Office of Inspector General (OIG) oversees the MFCU grant program by recertifying units, conducting reviews and inspections of units, providing technical assistance to units, and monitoring key statistical data about unit caseloads and outcomes. Annually, OIG reviews each unit's application for recertification; approval of this application is necessary for the unit to receive federal reimbursement. To recertify a unit, OIG performs a review to assess the unit's compliance with the federal requirements for MFCUs contained in statute, regulations, and OIG policy transmittals. The

OIG also examines the unit's adherence to 12 performance standards, such as those regarding staffing, maintaining adequate referrals, and cooperating with federal authorities.

The Wisconsin Department of Justice is the state agency responsible for conducting a statewide program for the investigation and prosecution of providers accused or suspected of defrauding the Wisconsin Medicaid program. The Wisconsin Medicaid Fraud Control Unit has been staffed by 13.0 full-time equivalent positions for the last decade. The unit is currently comprised of one Assistant Attorney General-Management, one Assistant Attorney General-Supervisor, two Assistant Attorneys General, five auditors, a paralegal, a legal associate and two special agent positions.

In 2021-22, the unit received 44 referrals, opened 41 investigations, closed 30 investigations, and obtained one criminal conviction for Medicaid fraud. Unit attorneys are also periodically appointed special prosecutors by district attorneys for Medicaid-related offenses. In addition to the Medicaid fraud workload, in 2021-22 the unit received 71 referrals, opened 11 cases, and closed five investigations related to elder abuse. Two criminal convictions related to elder abuse were obtained in 2021-22.

In Medicaid fraud cases, restitution recovered by the unit is used to reimburse the Wisconsin Medicaid program. In cases of elder abuse, recovered restitution is used to reimburse either the Medicaid program, identified victims, or both, depending on the court judgment. In both Medicaid fraud cases and cases of elder abuse, fines and forfeitures are deposited in the common school fund. According to the 2021 annual MFCU report issued by the U.S. Department of Health and Human Services OIG, the Wisconsin MFCU recovered \$8.28 million and had a budget of \$1.49 million (all funds), exceeding the national average for recoveries to budgeted funding (\$5.36 per dollar) with recoveries in Wisconsin of \$5.57 per dollar (all funds) spent.

ANALYSIS

According to DOJ, the MFCU has expanded to focus on more serious and large-scale fraud and abuse matters and needs additional resources to prepare those matters efficiently for prosecution. The additional staffing is intended to allow auditors and agents to collaborate to handle investigations more efficiently, improve data analysis turnaround times, and use the data gathered to help identify similar conduct by other providers. In support of increased staffing, DOJ indicates:

"Current staffing levels do not allow the assignment of multiple investigative staff to most cases, instead limiting the auditors and agents to working individually and partnering with each other only on specific tasks. Each investigator ends up juggling multiple tasks and working sequentially, which at times may slow the completion of investigations. The data analysis workload also has increased, resulting in longer turnaround times due to the higher operational tempo and participation in federal initiatives supporting the identification of fraud through data analysis, including federal data mining waivers [...] and participation in the Healthcare Fraud Prevention Partnership [...]."

Of the two requested investigator positions, DOJ wants one investigator position to have expertise in nursing to consult on long-term care investigations and to help assess the harm caused

to patients and residents, especially in imminent harm situations requiring immediate action.

While DOJ indicates it will fund the two 0.25 GPR positions for the remainder of 2022-23, entry level annualized funding for this 0.5 position would be \$50,000 GPR with an additional 1.5 FED positions and \$150,000 FED for salary and fringe benefits for a total of 2.0 positions (all funds). The new positions are assumed to start in January, 2023. Continued funding for this 0.5 position could be added through standard budget adjustments for the 2023-25 budget.

As of August 1, 2022, there are no GPR positions that have been vacant for over six months in DLS. For positions vacant less than six months, DOJ indicates that "all vacant positions in DLS are currently in recruitment and the vacancy rate is expected to fall significantly over the next two months."

If the Committee wishes, the Department's request for two 0.25 permanent GPR positions for the Medicaid Fraud Control Unit could be approved in order to provide increased investigative staffing support to the MFCU. [Alternative 1] Alternatively, given that the MFCU has had the same staffing levels for the last decade, the additional position authority could be requested during the upcoming biennial 2023-25 budget process. Creation of the new positions could then be considered in conjunction with other DOJ budget proposals. As such, the Committee could deny the request at this time. [Alternative 2]

ALTERNATIVES

1. Approve the request to create 0.5 permanent GPR positions in the Department of Justice's Legal Services General Program Operations appropriation (s. 20.455 (1)(a)) for the Medicaid Fraud Control Unit.
2. Deny the request.

Prepared by: Sarah Wynn