



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 6

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PUBLIC ASSISTANCE PROGRAM INTEGRITY

FROM: Pam Shannon and Anne Sappenfield, Senior Staff Attorneys, and Anna Henning, Staff Attorney

RE: Options for Committee Discussion

DATE: October 5, 2010

This Memo presents options for committee discussion relating to: fraud and overpayment prevention; sanctions; system integrity; and funding. These options have been raised in testimony to the committee or by committee members. Where more detail about a particular option has been provided to the committee, that information is included in the discussion of that option. This is not intended to be an exhaustive list of possible options for legislation, but rather a starting point for committee discussion.

FRAUD AND OVERPAYMENT PREVENTION

1. Improve front-end eligibility verification. [Johnson]
 - At the September 8, 2010 meeting, Department of Health Services' (DHS) staff described front-end verification as a fraud-prevention measure designed to identify error prone cases before benefits are provided.
 - DHS cited the Income Maintenance Quality Assurance (IMQA) System, in which 1% of the most error-prone cases are reviewed by a supervisor each month.
 - DHS also cited efforts to simplify and streamline policies and processes across programs that support accurate determinations.
 - DHS administrative rules and the Income Maintenance (IM) Manual emphasize front-end verification of participant eligibility as a key focus of fraud prevention. The IM Manual outlines characteristics of an "error prone profile," such as conflicting documentation or

- large increases in household composition, which prompt a special investigation by a front-end verification specialist. [s. 12.4.1, IM Manual.]
2. Educate providers on program requirements. [Johnson]
 - DHS gave examples of efforts to educate providers and recipients, including: (a) using electronic message boards in lobbies of IM offices; and (2) providing messages to clients when completing online applications, renewals, and changes to promote accuracy.
 3. Require case managers to respond quickly to alerts concerning changes in eligibility. [Johnson]
 4. Create additional mechanisms to prevent or reduce errors and overpayments. [Menendez]
 - Such mechanisms might include requiring a review of specified characteristics (such as education level, disability, earning history, and English proficiency) of recipients with errors or intentional program violations, and fraud charges.
 5. Review forms and instructions to see if they contribute to errors. [Menendez]
 - A regular review and revision of forms, written information, and instructions could be required, to eliminate confusion and the unintentional provision of incorrect or incomplete information.
 - Local IM agencies (and DHS, for Milwaukee County) could report periodically on the application items most frequently misunderstood or in error.

SANCTIONS

1. Create a statutory definition of “fraud” in ch. 49, Stats. [Menendez]
 - “Fraud” is not specifically defined in the statutes or administrative rules relating to public assistance programs. The IM Manual defines “fraud” as, “making false statements, suppressing facts, or giving information which misrepresents true circumstances in order to become eligible or remain eligible for benefits under Chapter 49, Wis. Stats.” [s. 11.1.1.5, IM Manual.] In addition, some of the general penalty provisions for ch. 49, Stats., contained in s. 49.95, Stats., specify that certain offenses are considered to be fraud. [See s. 49.95 (6), (9), and (10), Stats.]
2. Define “offense involving fraudulent activity” for purposes of criminal background checks for child care providers, employees, and household members. [Menendez]
 - Under current law, a person is permanently barred from receiving a license or certification to operate a child care center or family child care home if the person was convicted of an offense involving fraudulent activity as a participant in W-2, including as a recipient of a Wisconsin Shares child care subsidy, or as a recipient of Aid to Families with Dependent Children (AFDC), Medical Assistance (MA), FoodShare, Supplemental Security Income (SSI) payments, payments for the support of children of SSI, or health

- care benefits under the BadgerCare health care program. This provision also prohibits a person from being an employee of a child care provider or living in an in-home provider's household if the person has such a conviction. [s. 48.685 (5) (br) 5., Stats.]
3. Create a definition of "intentional program violation" that applies to programs other than W-2. Alternatively, the current definition could be used in additional programs. [Menendez]
 - Current law relating to Wisconsin Works (W-2), including Wisconsin Shares uses the phrase "intentional program violation" in the context of certain sanctions. For the W-2 Program, an intentional program violation means a circumstance under which an individual who is a member of a W-2 group intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts that resulted in an overpayment. [s. DCF 101.23 (1) (f), Wis. Adm. Code.]
 - An individual who is found to have committed an intentional program violation of the W-2 program is subject to specific provisions regarding collection of overpayments and the individual's benefits may be permanently denied if the individual intentionally violates provisions of current law or rules relating to W-2 on three separate occasions. [s. 49.151 (2), Stats., and s. DCF 101.21 (2), Wis. Adm. Code.]
 - For purposes of the FoodShare program, an "intentional program violation" is defined under federal law as one of the following:
 - Having intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts.
 - Intentionally committed any act that constitutes a violation of the Federal Food Stamp Act, the Food Stamp Program regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, or possessing authorization cards or reusable documents used as part of an automated benefit delivery system. [7 C.F.R. s. 273.16 (c).]
 - The consequences of an intentional violation of the FoodShare Program are governed by federal law. Under federal law, upon a finding in an administrative disqualification hearing that a participant committed an intentional program violation, a FoodShare participant may be disqualified from participation for 12 months after an initial violation, 24 months after a subsequent violation, and permanently after a third violation. Identical periods of disqualification are imposed in criminal proceedings upon a finding that a participant violated s. 49.795, Stats. Federal law similarly mandates that SNAP program participants be disqualified for one year, two years, or permanently upon a first, second, or third finding of fraud in a state or federal proceeding. [7 U.S.C. s. 2015.]
 4. Permit a W-2 agency to find that a person has committed an intentional program violation instead of requiring a finding in a court or administrative law hearing. [DCF]
 - Under current law, an intentional program violation may be determined based on an administrative hearing, a court finding, a signed waiver of an administrative hearing for

an alleged intentional program violation, or a consent agreement in lieu of prosecution based on the same facts or events as the intentional program violation. [s. 49.151 (2), Stats., and s. DCF 101.23 (1) (f), Wis. Adm. Code.]

5. Modify the conditions under which Wisconsin Shares payments to a provider may be withheld or create criteria that must be met in order to reasonably suspect that a person has violated any statutory or administrative rule provision under the Wisconsin Shares program. [Menendez, Johnson]
 - Under current law, DCF or a county department is required to refuse child care payments under the Wisconsin Shares child subsidy program under specified circumstances and may refuse payment under other circumstances. One circumstance under which DCF or a county department may refuse to pay a child care provider is if DCF or the county department reasonably suspects that the person has violated any statutory or rule provision under the Wisconsin Shares program. [ss. 49.133 (2m) (d) and 49.155 (7) (b) 4., Stats.]
6. Codify the waiver of overpayment recovery provisions. [Menendez]
 - Under current administrative rules, DCF or DHS may waive recovery of an overpayment if the agency has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts. [ss. DCF 101.23 (13) and DHS 2.05, Wis. Adm. Code.]
7. Create standards or criteria for the circumstances under which recovery of overpayments may be waived. [Menendez]

SYSTEM INTEGRITY

1. Expand the ability of agencies to exchange information. [DHS]
 - DHS staff suggested that statutory language be considered to permit additional sharing of automated information among agencies to ensure eligibility is determined accurately. DHS has been asked to provide more details on this proposal.
2. Provide better coordination among various benefit programs. [Menendez]
3. Treat child care providers receiving Wisconsin Shares payments as businesses or vendors, rather than as program beneficiaries. [DCF]
4. Modify administrative rules related to the FoodShare program. [Delagrave]
 - Federal regulations limit the state's flexibility with regard to FoodShare. For instance, current federal regulations restrict states' ability to require proof of a stable residence or to require proof of identification at the time of purchase. Examples of actions the state could take include requiring DHS to:
 - Establish an asset limit for FoodShare eligibility.

- Decline the federal waiver authorizing simplified reporting and increase the frequency for reporting changes affecting household eligibility.
 - Within state authority, create systems to enable the monitoring of benefit use.
 - Establish procedures to better monitor the issuance of replacement electronic benefits cards.
5. Create standards and goals for error and fraud rates. [Jauch]

FUNDING

1. Create incentives for county and tribal agencies to identify and prevent fraud. [County panel]
 - Under the MA program, counties and tribes may retain 15% of the benefits recovered due to the efforts of an employee or officer of the county or tribe. [s. 49.497 (2) (a), Stats.]
 - Under the FoodShare program, counties and tribes may “retain a portion” of the funding that federal law would otherwise allow the state to retain. [s. 49.793 (2), Stats.] The pertinent administrative rule does not provide for the retention of funds by local agencies. [s. DHS 2.04, Wis. Adm. Code.] However, the IM Manual states that local IM agencies may retain 15% of the portion that the state is authorized to retain under federal law. [s. 13.81, IM Manual.]
 - Under the W-2 and Wisconsin Shares program, counties and tribes may retain any amounts recovered and use that money for any purpose for which funding under the Temporary Assistance to Needy Families (TANF) block grant may be used under federal law. If the amount is recovered with respect to the Wisconsin Shares program by Milwaukee County due to the efforts of an employee of that county who is supervised by DCF or DHS, the amount recovered must be credited to the appropriation account for child care and temporary assistance overpayment recovery. All moneys in this appropriation may be used for costs related to recovering overpayments and incorrect or disallowed payments, for activities to reduce errors under W-2, and for any public assistance purpose listed in s. 49.175 (1), Stats., for which TANF and other economic support funds are allocated. [ss. 20.437 (2) (me) and 49.197 (2), Stats.]
2. Provide adequate funding to county and tribal agencies for fraud and error reduction activities and investigations. [County panel]
3. Provide a state match for funding that counties expend on fraud and error reduction activities. [County panel]

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