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Testimony in Support of Assembly Bill 942

Assembly Committee on Public Benefit Reform

Tuesday, February 8

Thank you Chair Krug and members of the Assembly Committee on Public Benefit Reform for the opportunity to testify in favor of Assembly Bill 942. I appreciate your time and consideration of this legislation.

Government public assistance programs have grown in both enrollment and generosity since the pandemic began. In order to get a better understanding of public assistance in Wisconsin, this legislation contains two important provisions that promote transparency and accountability in these programs.

To provide a little background on the growth of our government public assistance programs in the past two years, the number of childless adults on Badger Care has jumped over 100,000 since March 2020, and individuals are currently prohibited from being removed from the program even if they are no longer eligible. Monthly Food Share benefit payments nearly tripled from \$65.3 million to \$181.4 million comparing March 2020 to November 2021. A family of three making \$10,000 could have received an additional \$60,000 plus in government benefits and tax credits in 2021 when you include COVID relief stimulus payments. This is more than the average income in 2019.

With the huge amounts of federal dollars flowing into these programs, it's more important than ever to make sure these dollars are used appropriately. Public assistance programs should be safety nets for the truly needy, not lifelong programs. This bill brings more transparency to our government assistance programs in Wisconsin.

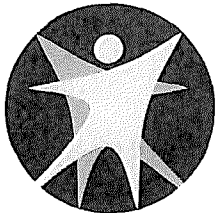
The first part of the bill requires the Department of Administration to submit a report each odd-numbered year to the Joint Committee on Finance which includes a compilation of public assistance program benefits for four hypothetical assistance groups and compares them with the average income and median-income for these same groups.

The four hypothetical assistance groups to be analyzed include a single adult individual; a married adult couple; a single adult parent with two children; and a married adult couple with two children. The report must include, among other items, the availability of all state and federal public benefits related to housing, child care, health care, internet, heat, electricity, food, water, employment support and training assistance and refundable tax credits. The goal of the report would be to provide members of the legislature with more information regarding the disbursement of public benefits in Wisconsin.

The second part of the bill codifies many of the tasks the Office of the Inspector General (OIG) at the Department of Health Services (DHS) states they are performing on their website. This includes, monitoring and auditing providers, tracking retailer and recipient fraud, providing accountability to taxpayers, and referring cases of fraud to the appropriate authorities. In addition to posting their findings online monthly, this bill also requires the OIG to send a report to the legislature annually summarizing their efforts and findings.

The OIG was created to track and prevent fraud, waste, and abuse in public assistance programs administered by DHS, like Medicaid, FoodShare, and Family Care. The OIG used to report monthly on some of their findings, but have not issued any of these updates on their website since September 2019. It's important that this office is transparent and held accountable in their efforts to address fraud, waste and abuse in some of our most important, and costly, public benefit programs.

I ask you to support Assembly Bill 942 and thank you once again for your time to consider this piece of legislation that promotes transparency in these important programs.



State of Wisconsin
Department of Health Services

Tony Evers, Governor
Karen E. Timberlake, Secretary-Designee

TO: Members of the Assembly Committee on Public Benefit Reform

FROM: HJ Waukau, Legislative Director

DATE: February 8, 2022

RE: AB 942, relating to: Requiring a biennial report to the Joint Committee on Finance on the availability of public benefits for certain groups of individuals and duties of the Office of Inspector General in the Department of Health Services

The Department of Health Services (DHS) would like to submit testimony for information only on Assembly Bill 942 (AB 942) regarding the duties of the Office of Inspector General (OIG) in DHS. AB 942 would delineate the duties, obligations, and responsibilities of OIG beyond what is currently in state statute.

The DHS OIG exists in state statute under Wis. Stat. § 15.193 and was created by the 2013-15 biennial budget act (2013 Act 20). When OIG was created, Act 20 did not delineate duties, obligations, or responsibilities. Since its creation OIG has protected Wisconsin taxpayers by tracking and preventing fraud, waste, and abuse in public assistance programs administered by DHS. This includes programs such as Medicaid, FoodShare, and Family Care. DHS OIG operates by consolidating all program integrity, audit, and fraud investigation activities into one office, saving taxpayers millions of dollars since its inception. OIG staff works closely with other state and local partners to identify misuses of public assistance funds, and where appropriate, forwards fraud cases to federal, state, and local officials for prosecution. Further, OIG's internal audits protect and augment the accountability of DHS programs and operations.

The provisions of AB 942 would put into statute parameters regarding the operations and duties of DHS OIG. Codifying the operations of OIG could help DHS and OIG address challenges it faces in administering its duties. This would be especially helpful when decisions and actions taken by OIG are appealed or challenged by entities against whom OIG has rendered an action. Having codified duties would bolster and strengthen OIG's decisions and actions particularly when challenged in court where OIG and DHS have face strong opposition in the past. Further, the reporting and public posting requirements of AB 942 would improve public awareness of the actions of OIG and hopefully have a dampening effect on provider fraud.

However, the parameters laid out by AB 942 do not capture all of the operations administered by OIG and are narrower than the current mission established for OIG. This includes proactively working with providers so that they can bill for services appropriately and preserve access to services for members.

SB 942 does not address the Internal Audit Section which is tasked with identifying and preventing risk through audits of DHS operations. This section is critical for DHS to effectively oversee its own operations and remain good stewards of taxpayer funds. Additionally, AB 942 as currently written creates inconsistencies between state and federal laws, specifically laws pertaining to Medical Assistance and Supplemental Nutrition Assistance Program benefits. Lastly, the reporting requirements under AB 942 would be difficult to implement on a monthly basis as the auditing and investigative activities typically span over several months. Requiring reporting on a biennial basis would be more consistent with OIG's

work and would yield better data and analysis. Coinciding with the additional reporting requirements, additional staff could be necessary in the future to support the activities of OIG as the workload needed to carry out the mission of OIG may evolve over time. AB 942 does not provide DHS with any additional funding beyond what is currently available under its existing budget.

DHS thanks the Committee for the opportunity to provide testimony for information only and offers its services as a resource for the Committee.

TO: Assembly Committee on Public Benefit Reform

FROM: Kathleen Papa, RN

DATE: February 8, 2022

RE: Assembly Bill 942

I offer this written testimony about the provisions of Assembly Bill 942 that deal with the authority of the Wisconsin Department of Health Services Office of the Inspector General (“OIG”).

If the Legislature does anything regarding OIG’s authority, I urge you to (1) compel OIG to work with the Division of Medicaid Services and provider associations on proactive efforts to increase provider understanding of Medicaid policies and procedures (including the development of clear and unambiguous standards, training, and technical assistance); (2) direct that audits focus on actual fraud, waste, and abuse—considering the cost-drivers in Medicaid; and (3) limit recoupment to instances where a provider has been overpaid by Medicaid.

Background

On behalf of independent nurses who provide care to Medicaid enrollees, six years ago I brought a declaratory judgment action against the Wisconsin Department of Health Services. The DHS Office of the Inspector General (“OIG”) was recouping Medicaid payments made to nurses, even when it was undisputed that the nurses had provided covered services to Medicaid enrollees. Instead of focusing on whether or not Medicaid overpaid nurses, OIG auditors instead focused on whether or not the nurses’ records were perfect and complied with the auditors’ interpretations of Medicaid rules, handbook provisions, and updates. If the auditor perceived any documentation shortcoming, then OIG sought to recoup Medicaid funds—even where the alleged shortcomings did not call into question the actual provision of care or the accuracy of the claim for reimbursement. In some instances, OIG sought to recoup months’ or years’ worth of payments which the nurse had earned and received from Medicaid. I was tired of OIG bullying nurses and decided to stand up to OIG.

Waukesha County Judge Kathryn Foster agreed that OIG was exceeding its statutory authority by recouping from Medicaid providers based on its perfection standard. Throughout the litigation, Judge Foster made clear that OIG could and should audit providers and take back money if providers are overpaid, but it should not be taking hard-earned money from nurses because of perceived shortcomings in Medicaid documentation. Judge Foster’s Decision and Order (Attachment 1) was affirmed by the Wisconsin Supreme Court in a 6-0 decision. *Papa v. DHS*, 2020 WI 66.

Recommendations

OIG should focus on preventing and detecting fraud, waste, and abuse. I'm not sure the proposed bill does anything to promote this priority, however. The bill seems to expand OIG's responsibilities, instead of narrowing its focus.

If you want to ensure that there are Medicaid providers available to take care of Medicaid enrollees, you cannot permit OIG to recoup based on any perceived violation of Medicaid policy or procedure. This only encourages OIG to play "gotcha" with providers – taking back money the providers earned. Providers should not be subjected to onerous audits and recoupment efforts when most all of them are providing essential care to Medicaid enrollees and attempting to navigate the morass of Medicaid policies and procedures to get reimbursed. To address this concern, I urge you to reinforce the Supreme Court's decision interpreting Wis. Stat. § 49.45(3)(f) in any bill you pass.

In addition, OIG should be encouraged to focus on the biggest cost-drivers in Medicaid. Over the past decade they have focused a disproportionate amount of time on certain types of providers – generally smaller (such as nurses or personal care agencies) – ensuring that every insignificant detail of Medicaid policy has been followed. And although in some instances OIG auditors found some imperfection in recordkeeping, OIG uncovered very little in overpayments. It would be more prudent for OIG to focus on the actual big cost-drivers in the Medicaid program.

Also, OIG should be encouraged to work with stakeholders as essential partners, instead of adversaries. Along with the Medicaid Program, OIG should foster partnerships with provider associations to collaboratively address provider education, technical assistance, training and fraud prevention and detection. You could require such activities and have OIG report on these efforts on an annual basis.

If I can provide any additional information to the Legislature on this topic, please let me know.

Kathleen Papa
38936 Forest Run, Oconomowoc



**Wisconsin Personal Services
Association, Inc.**
139 E Wisconsin Avenue, Oconomowoc WI 53066

TO: Chair Krug and Members of the Assembly Committee on Public Benefit Reform

FROM: Todd Costello, President, Wisconsin Personal Services Association, costellot@clanet.org

DATE: February 8, 2022

RE: Assembly Bill 942 provisions relating to the DHS Office of Inspector General

Thank you for the opportunity to provide testimony on Assembly Bill 942, as it relates to the Department of Health Services' (DHS) Office of Inspector General (OIG).

I currently serve as the President of the Wisconsin Personal Services Association (WPSA), which is the leading statewide association of personal care and other in-home care providers. Personal care agencies support efforts to prevent waste, fraud and abuse in the state's Medicaid program. We also share the bill author's opinion that DHS OIG's authority needs to be clearly outlined in state statute. No such guardrails currently exist, which has led to overreach by OIG.

We would like to request that AB 942 be amended to reflect the Wisconsin Supreme Court's unanimous ruling in *Papa vs. DHS*, which found that DHS OIG was inappropriately clawing-back payments from Medicaid providers. We also have other recommended modifications to the bill's proposed statutory language that are attached to this testimony. These items relate to preventing further OIG overreach and preventing duplication of duties between regulatory entities.

Personal care agencies who provide Medicaid services are subject to rigorous oversight by the Department of Health Services' Division of Quality Assurance (DQA), which ensures agencies are in compliance with Medicaid regulations. Agencies are also subject to oversight and auditing by the DHS OIG. Over the past several years, the DHS OIG has subjected direct care providers to frequent and intense compliance audits that are often in stark contrast to DQA's findings. Being regulated by two separate entities—DQA and DHS OIG—with differing interpretations of Medicaid regulations creates confusion for agencies.

DHS OIG's actions have also threatened the financial stability of personal care agencies in the middle of a severe direct care workforce crisis that is leaving many Wisconsinites without essential in-home caregivers. OIG has clawed-back months' or years' worth of payments from direct care agencies over minor clerical errors when the provision of care was never in

question. There have been cases where an agency was asked to pay back funds because a worker had bad penmanship or accidentally wrote the wrong day.

There are also numerous instances when a DHS DQA surveyor conducted a survey and found full compliance with personal care regulations, only to have DHS OIG auditors issue findings (and seek recoupment) that are inconsistent with the DQA review.

The Wisconsin Supreme Court ruled unanimously on July 9, 2020, in *Papa vs. DHS*, that DHS OIG exceeded its authority by using a “perfection policy” to make claw-back payments over minor clerical errors—even in cases when care was indisputably and appropriately provided.

The Wisconsin Supreme Court ordered DHS OIG to limit recoupment activities to situations where DHS OIG cannot verify one of the following: 1) that services were actually provided; 2) that the reimbursement claim is appropriate for the service provided; 3) that the reimbursement claim is accurate for the service provided.

Please amend AB 942 to add the Wisconsin Supreme Court’s findings to state statute to set clear limits on OIG’s ability to claw back payments from providers. In addition, we have provided suggested modifications to the bill’s existing language to prevent further overreach and to ensure clear boundaries between DQA and OIG.

Medicaid providers welcome the opportunity to work collaboratively with OIG to develop practices that support high-quality providers through enhanced education efforts and corrective action processes.

Thank you for the opportunity to provide testimony on AB 942. Please don’t hesitate to contact me with any questions.

Suggested Changes to AB 942

Additions:

- Add statutory language to limit DHS OIG's recovery/clawback authority to that outlined by the Wisconsin Supreme Court in *Papa vs. DHS*.
- Add statutory language directing DHS OIG to Develop a corrective action process to fix documentation or clerical errors instead of implementing penalties for paperwork mistakes that do not impact consumer care. (i.e. bad penmanship, missed signatures, etc.).
- Add statutory language limiting DHS OIG's recovery/clawback window to one year.

Changes to Existing Bill Language:

- **Page 6, Ins. 19-20**

Current language "Auditing providers of services under MA to ensure compliance with MA law and rules."

Amend to: "Auditing providers of services under MA to ensure providers are accurately billing MA for covered services provided to MA enrollees."

Reason: This is an overbroad charge to OIG that does not focus their efforts on fraud, waste, and abuse. It's also repetitive of what DQA does for certain provider types, including personal care agencies.

- **Page 6, Ins. 22**

Current Language: "Providing education and technical assistance to providers through audit activities."

Amend to: "Providing education and technical assistance to providers."

Reason: Providers need proactive education, training and technical assistance. Audits-- which lead to recoupment--are not an effective tool for education and training. OIG (and MA) should be directed to work with provider associations to develop effective education programs and technical assistance to promote understanding of MA policies and procedures and to reduce the likelihood of unintentional errors.

- **Page 7, Ins. 1-2**

Current Language: "Conducting on-site visits to high-risk providers before Medical Assistance program certification."

Concern: DHS DQA is already charged with conducting on-site surveys of free-standing personal care agencies prior to certification in DHS 105.17. We believe this language creates duplication and further confusion of the roles of DQA and OIG. Further, we believe that any activities that are tied to being "high-risk" should come with a requirement that OIG review provider categories of risk to ensure the classification is supported by Wisconsin data.

- **Page 7, Ins. 3-4:**

Current Language: "Educating providers and beneficiaries about Medical Assistance program law and rules."

Amend to: Add language requiring OIG and Medicaid to work to provider groups to develop and deliver effective provider education.

Concern/Recommendation: Provider and beneficiary education should be considered separately.

- **Page 7, Lns. 5-6:** This should be a MA duty, not OIG.

Current Language: "Ensuring contracts with providers contain language that helps prevent fraud, waste, and abuse."

Amend to: Remove from the bill. This is the responsibility of DQA, not OIG.

- **Page 7, Lns. 7-8:** This should be a MA duty, not OIG.

Current Language: "Ensuring the claims processing system has edit and audit procedures in place to prevent medically unlikely claims."

Amend to: Remove from the bill. This is the responsibility of DQA/Medicaid, not OIG.

- **Page 7, Ln. 9:**

Current Language: "Suspending provider payments when there are credible allegations of fraud."

Amend to: Make consistent with the federal rule upon which it is based (§ 455.23 Suspension of payments in cases of fraud) to ensure that OIG has thoroughly reviewed the allegation to determine it is credible and an allegation of fraud and that OIG has considered whether or not there is good cause not to suspend the payments.

○ **Page 7, Ln. 10-11:**

Current Language: "Conducting audits and reviews of providers for compliance with Medical Assistance laws and rules."

Amend to: Delete. This is a repeat of (a) on page 6.

○ **Page 8, Ln. 24 to Page 9, Ln. 13**

Current Language: "Annually submit to the legislature under s. 13.172 (2) a report summarizing the accomplishments in preventing and stopping fraud in public assistance..."

Amend to: Add a requirement that OIG report on provider education and technical assistance efforts. Also require evidence of education and resolution of any provider appeals or discrepancies of findings reflective of collaborative process. Report should include recoupment practice compliance based on *Papa vs. DHS* court ruling.

○ **Page 8, Lns. 17-21:**

Current Language: "Upon request of the office of the inspector general for information relevant to an investigation of fraud, waste, or abuse in a public assistance program, any state agency that receives such a request shall cooperate with the office of the inspector general by providing any information in its possession responsive to that request."

Amend to: Add "subject to applicable confidentiality provisions."