



WISCONSIN LEGISLATIVE COUNCIL

PUBLIC ASSISTANCE PROGRAM INTEGRITY

Legislative Council Conference Room
Madison, Wisconsin

September 8, 2010
10:00 a.m. – 3:45 p.m.

[The following is a summary of the September 8, 2010 meeting of the Special Committee on Public Assistance Program Integrity. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Vice-Chair Hintz called the committee to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Robert Jauch, Chair; Rep. Gordon Hintz, Vice-Chair; Sen. Alberta Darling; Reps. Mark Gottlieb and Kelda Roys; and Public Members Richard Basiliere, Jonathan Delagrave, David Feiss, Lilly Irvin-Vitela, LaTonya Johnson, and Linda Struck.

COMMITTEE MEMBERS EXCUSED: Public Members Steven Cook and Harold Menendez.

COUNCIL STAFF PRESENT: Anne Sappenfield and Pam Shannon, Senior Staff Attorneys; and Anna Henning, Staff Attorney.

APPEARANCES: Jason Helgeson, Administrator, Division of Health Care Access and Accountability, Jim Jones, Deputy Administrator and Director, FoodShare Program, and Alan White, Director, Bureau of Program Integrity, Department of Health Services; J. B. Van Hollen, Attorney General and Tom Storm, Assistant Attorney General and Director, Medicaid Fraud Control Unit, Department of Justice; Sarah Diedrick-Kasdorf, Senior Legislative Associate, Wisconsin Counties Association (Moderator); John Rathman, Deputy Director, Outagamie County Department of Health and Human Services; Marcia MacKenzie, Dane County Corporation Counsel; and Sue Rohde, Fraud Investigator, Waukesha County Department of Health and Human Services.

Approval of the Minutes of the August 4, 2010 Meeting

Representative Roys moved, seconded by Mr. Feiss, to approve the minutes of the August 4, 2010 meeting. The motion carried on a unanimous voice vote.

Description of Materials Distributed

Pam Shannon described the materials that were mailed to committee members prior to the meeting and summarized the major points of Memo No. 2, *Program Integrity Provisions Relating to the Wisconsin Medical Assistance and FoodShare Programs*.

Anna Henning briefly summarized Memo No. 3, *Materials from the Department of Children and Families*, which describes documents sent by the Department of Children and Families in response to requests made by committee members at the August 4, 2010 meeting.

Presentation by Department of Health Services Staff

Jason Helgerson, Administrator, Division of Health Care Access and Accountability; Jim Jones, Deputy Administrator and Director, FoodShare Program; and Alan White, Director, Bureau of Program Integrity

Mr. Helgerson, Mr. Jones, and Mr. White gave a detailed PowerPoint presentation, *Assuring the Integrity of Wisconsin's Medicaid and FoodShare Programs*.

Mr. Helgerson explained that Wisconsin's Medicaid program (called Medical Assistance or MA) includes services in two broad categories (with numerous subcategories of program participants): MA, which provides health care assistance to low-income elderly and disabled persons, and BadgerCare Plus, which provides assistance to low-income families and certain childless adults. He noted that the federal government pays about 58% of most benefit costs and 50% of administrative costs for MA and BadgerCare Plus.

He said that FoodShare is Wisconsin's name for the former federal food stamps program, which is now known as the Supplemental Nutrition Assistance Program (SNAP) and is administered by the Food and Nutrition Service of the U.S. Department of Agriculture (USDA). The federal government pays 100% of FoodShare benefit costs and 50% of FoodShare administrative costs. Also, the federal government oversees FoodShare retailers and program integrity activities relating to retailers, while states handle eligibility determinations and member enrollment.

Mr. Helgerson explained the role of DHS and county and tribal governments in administering the two programs. DHS' responsibilities include setting policies and processes within federal and state laws, paying providers, maintaining eligibility systems, administering programs for Milwaukee County and for childless adults, overseeing MA program integrity for providers and members and FoodShare program integrity for members, and contracting with other entities for services to certain members. County and tribal government responsibilities (except in Milwaukee County) include determining program eligibility and carrying out program integrity duties, advising the state on income maintenance policy development, and, in some instances, providing direct services, such as mental health and public

health services. County and tribal agencies receive federal matching funds for administrative costs paid for by the local agencies.

Regarding program enrollment, Mr. Helgersen said that there has been significant caseload growth in both MA and FoodShare. He said that this growth is due to the economic downturn, policies making it easier to access programs, and the expansion of MA to include BadgerCare Plus. He explained that DHS has recently implemented changes in eligibility systems, processes, and policies to deal with increased caseloads and improve access to programs. For FoodShare, changes included elimination of an asset test, simplified reporting, voluntary rather than mandatory employment and training, elimination of face-to-face interviews, and use of telephonic signatures.

Mr. Jones discussed DHS' program integrity efforts as they relate to program participants (referred to as "members") and explained that there are three kinds of payment errors: unintentional member errors, worker and system errors, and intentional member misstatements or omissions (fraud). He noted that the average payment error rate for FoodShare (measuring what percentage of total amount spent was incorrect) in the period 2000-2002 was 12.8% and that it has been reduced significantly since that time, due to the systems and policy changes.

Mr. Jones noted that Wisconsin's MA payment error rate has also been improving, dropping from 7.2 % in 2006 to 2.9% in 2008. He cited specific efforts to reduce errors, including statewide payment accuracy consultation with local agencies, a statewide review of 1% of the most error-prone cases, implementation of an electronic case file system, and automated data exchange with trusted third-party sources.

Chair Jauch asked how the error rates relate to fraud and abuse. Mr. Helgersen said that the error rate is an effective measure of the efficacy of state and county efforts to ensure that only eligible persons are actually enrolled in a program.

Mr. Jones explained various efforts to improve MA and FoodShare member program integrity, including: (1) front-end verification, under which error prone cases are identified before the person receives benefits; (2) an income maintenance quality assurance system (IMQA) which requires 1% of the most error prone cases to be reviewed by a supervisor each month; and (3) the federal Public Assistance Reporting Information System (PARIS) which matches Wisconsin data with that of other states and federal agencies to identify duplicate benefits and those, such as federal veterans benefits, that could be billed before MA is utilized.

He noted efforts on the part of local agencies, including investigation and referral of potentially fraudulent activity, entry of data into the CARES system to track fraud investigations, administrative disqualification hearings for FoodShare, and referral of intentional program violations in FoodShare and MA for criminal prosecution.

Mr. Jones discussed the department's future plans with respect to member program integrity, including: (1) using a Robert Wood Johnson grant to create a system for information sharing; (2) making \$500,000 in bonus funds available to fund a fraud initiative for regional county consortia modeled after the Central Wisconsin Fraud Prevention Investigation Consortium; (3) an asset verification system for MA; and (4) client education to promote accuracy.

Chair Jauch asked for more information about the county consortia initiative, which Mr. Jones agreed to provide.

Mr. Jones noted that the national health care reform legislation allows for greater integration across data systems, including IRS tax information for MA eligibility and citizenship and immigration information from the Department of Homeland Security. He closed by requesting that the committee consider a legislative recommendation to permit sharing of automated information to assure accurate eligibility determinations. He agreed to provide the committee with more specific information about what DHS is seeking in the way of legislation.

Mr. White discussed the activities of the Bureau of Program Integrity regarding MA provider fraud prevention and detection. He noted that pursuant to federal regulations, the bureau administers a surveillance and utilization review system (SURS) which identifies, audits, and refers suspected cases of MA overpayments caused by fraud, waste, and abuse.

He noted that the bureau certifies and decertifies providers, conducts recertification every three years, and provides technical assistance and written provider updates. The bureau also conducts audits, recoups MA funds that were inappropriately claimed, and refers suspected fraud to the Medicaid Fraud Control Unit and other law enforcement or regulatory agencies, such as the U.S. Attorney, the OIG, and local law enforcement. He noted that suspected cases of waste and abuse, as opposed to fraud, are generally addressed by the bureau through the state's administrative processes.

Mr. White also explained the multi-faceted federal role in MA program integrity, which was greatly expanded with enactment of the Deficit Reduction Act of 2005, to include the deployment of federal Medicaid integrity contract auditors and recovery audit contractors, audits and reviews by both the federal Centers for Medicare and Medicaid Services (CMS) and Office of the Inspector General (OIG). He noted that CMS program integrity teams make onsite visits to the state once every three years.

He described a number of ways in which fraud can occur, noting that the biggest area of fraud occurs in the context of claims submission and billing practices. He provided examples of cases of provider fraud in Wisconsin, such as billing for services not performed, billing and retaining payment from both MA and Medicare, and billing for the same service more than once.

Mr. White explained various fraud detection safeguards in place at the pre-payment, claim processing, and post-payment stages, including, for example, prior authorization, manual claims review, and audits. Other fraud detection mechanisms include peer group comparisons, tracking member care patterns, matching services, particularly transportation services as an adjunct to a medical service, and matching to other databases.

Mr. White cited some emerging issues of concern, particularly in the areas of home health care, durable medical equipment and services, personal care attendant services, pharmacy, and transportation. He also explained program integrity measures required by health care reform legislation. Finally, he described additional steps the department is taking, including hiring additional fraud prevention staff, conducting onsite audits of at-risk providers, and participating in an interagency taskforce.

Ms. Johnson asked for information on progress in reducing wait times for calls to the Milwaukee Call Center and current wait time for case review. Mr. Helgeson noted that wait times for calls has decreased, but that the center still needs improvement. He said that case review wait time depends on the case. He agreed to provide follow-up information.

Mr. Delagrave asked whether federal law would permit agencies to refer recipients to a child welfare agency if they do not use their FoodShare benefits. Chair Jauch asked Mr. Delagrave to provide more information on this issue.

Chair Jauch asked what the department is doing regarding the problem of recipients receiving duplicate benefits from more than one state. Mr. Jones responded that there is a multi-state collaborative effort to share information. He pointed out that federal SNAP (FoodShare) benefits can follow a person to another state.

Ms. Johnson said she believes that recipients should be required to show identification to prove who they are throughout the process, which is problematic if face-to-face interviews are eliminated.

Presentation by Department of Justice Staff

J.B. Van Hollen, Attorney General, and Tom Storm, Assistant Attorney General and Director, Medicaid Fraud Control Unit

Attorney General Van Hollen provided an overview of the Medicaid Fraud and Elder Abuse Unit, located within the Wisconsin Department of Justice. He explained that federal law requires every state to have a special unit for investigating and prosecuting Medicaid fraud. He said that the federal government provides 75% of the funding for federally approved positions within the unit. He emphasized that the state receives a large return for its relatively small investment: the unit has returned more than \$35 million to the state's MA program during the past four fiscal years, and an additional \$26 million has been awarded in judgments but not yet collected.

Attorney General Van Hollen mentioned that the unit is authorized by both state and federal statutes. He explained that it operates with a "strike force" model, enabling it to focus limited resources on a restricted agenda and utilize its expertise in the particular area of Medicaid fraud. He said a memorandum of understanding sets forth the unit's relationship with DHS.

Attorney General Van Hollen stated that in addition to recovering fraudulently obtained funds through prosecutions, the unit's work has a deterrent effect on potential wrongdoing. He mentioned three reasons why he believes the unit's model is effective: (1) independence; (2) expertise; and (3) "special unit" function. He stated that the separation of fraud investigation functions from program administration enables the unit to investigate cases without competing administrative concerns.

Attorney General Van Hollen recommended that the unit's model be applied to the investigation and prosecution of other types of public assistance fraud. He acknowledged that investigations in other programs might not yield the same high return on investment, but stated that the deterrent effect might be the primary goal of a new unit. He noted that the DOJ has the resources and capability to operate such a unit.

Chair Jauch commended the work of the department and unit. He commented that whatever legislative approach is adopted should require state and local cooperation. Attorney General Van Hollen responded that state and local partnerships are crucial. He noted that it would be important, in the event that a new unit was created, to maintain concurrent prosecutorial jurisdiction with local district attorneys. He said that currently, much public assistance fraud is not being prosecuted, because local law enforcement agencies have little incentive to focus on cases involving relatively small amounts of money.

Vice-Chair Hintz asked whether federal matching funds are available to fund fraud investigation staff for public assistance programs other than MA. Mr. Basilere noted that a 50% match is available for program administration costs in the FoodShare program.

Vice-Chair Hintz asked how the unit has been affected by increased enrollment in the state's MA program. Attorney General Van Hollen responded that because the unit focuses primarily on provider fraud, the impact has been relatively small.

Chair Jauch asked whether there is evidence that a new special unit would result in a greater number of public assistance fraud prosecutions. Attorney General Van Hollen answered that an increase would likely result from a greater devotion of resources to fraud investigation and prosecution efforts.

Mr. Feiss inquired whether any investigators in the unit are sworn law enforcement officers, and whether a new unit should include such officers. Attorney General Van Hollen said that there are no sworn law enforcement officers in the unit. Mr. Storm mentioned that it would be helpful to have such officers in the unit, for example to make arrests or obtain warrants.

Mr. Feiss asked how formal the unit's relationship is with DHS. Mr. Storm explained that the memorandum of understanding provides a legal basis for a formal relationship.

Senator Darling stated that she agrees with the Attorney General's suggestion to create a new public assistance fraud unit. She said it would also be helpful to examine what can be done at the county level in conjunction with a statewide unit.

Representative Gottlieb asked whether a new unit would require enabling legislation. Attorney General Van Hollen responded that enabling legislation would be needed.

Presentation by County Staff

Sarah Diedrick-Kasdorf, Senior Legislative Associate, Wisconsin Counties Association (Moderator); John Rathman, Deputy Director, Outagamie County Department of Health and Human Services; Marcia MacKenzie, Dane County Corporation Counsel; and Sue Rohde, Fraud Investigator, Waukesha County Department of Health and Human Services

Ms. Diedrick-Kasdorf gave opening comments. She discussed the role that counties play in administering Wisconsin's public assistance programs. She stated that funding allocations have decreased while caseloads have increased, leaving a large funding gap.

Mr. Rathman discussed funding for counties' fraud investigation efforts. He said that beginning in January 2010, such funding has decreased significantly and become fragmented. He mentioned that DHS no longer allocates funding designated for fraud prevention and investigation. He stated that counties have relied on a combination of their income maintenance allocations and tax levies to make up the difference.

Mr. Rathman said that because it has managed to fund a full-time fraud investigator, Outagamie County is in a better position than many Wisconsin counties. He stated that the Outagamie County Board has funded part of the position with county dollars, and also allows incentive payments to be used to fund the position.

Mr. Rathman recommended that an integrated funding stream be established for fraud prevention in the Wisconsin Works (W-2), FoodShare, MA, and Wisconsin Shares programs. He also recommended that coordinated training and reporting systems be created.

Ms. MacKenzie walked the committee through a sample recipient fraud investigation, giving the timeline from an initial investigation through multiple appeals and re-applications. She said that there is a need for attorneys to work on public assistance fraud cases, including during the appeals process. She also said that she has heard from local district and U.S. attorneys offices that prosecutions will be brought only after a case is referred with sufficient documentation.

Ms. Rohde described her experience as Waukesha County's fraud investigator and said that she was also testifying on behalf of the Wisconsin Association of Public Assistance Fraud Conference (WAPAF). She explained that she now is the only investigator in Waukesha County's fraud unit, down from three investigators several years ago. She testified that many counties made no claims for overpayments during 2009, reflecting a lack of resources for fraud investigation at the county level. She said that in Waukesha, limited resources have led to a focus on cases that can be handled administratively, as she lacks resources to prepare cases for prosecution.

Vice-Chair Hintz asked what percentage of cases referred to fraud investigators are of the complex nature described by Ms. MacKenzie. Ms. MacKenzie and Ms. Rohde responded that such cases comprise a significant percentage of those referred.

Vice-Chair Hintz asked about the likely return on investment of a statewide unit versus resources devoted to county-level investigations. Mr. Rathman said that he believes fraud programs pay for themselves. He also noted that a centralized system is needed for training and other functions.

Chair Jauch commented that it is important to bear in mind the distinction between overpayment recovery and program integrity. He asked the panel what they see as the most effective use of money allocated to counties. Mr. Rathman said the most effective use likely differs by county: large counties may want to operate their own fraud units, whereas small counties might choose to join consortia. Ms. MacKenzie added that information technology tools are also helpful.

Mr. Basiliere noted that for the FoodShare program, the state is authorized to retain a larger percentage of overpayments collected as a result of fraud than as a result of errors. He suggested that prioritizing the investigation of intentional fraud might make sense.

Ms. Irvin-Vitela asked what performance-based resources might look like. Mr. Rathman explained that it might resemble the approach taken in programs for which the state already uses performance-based funding, such as child support or W-2.

Chair Jauch asked the panel to comment on DHS' proposal to make \$500,000 available for the development of consortia. Mr. Rathman said the funding is great news, but counties need a long-term funding mechanism.

Mr. Basiliere asked whether past consortia efforts had been successful. Ms. Rohde explained that some were disbanded because they covered too large an area or resources were exhausted. Ms. Struck commented that a consortium had worked effectively in the Eau Claire County area.

Discussion of Committee Assignment

The committee discussed research and proposals to be developed in advance of its next meeting. Chair Jauch mentioned several themes that have emerged in the committee's deliberations, including a need to provide resources to counties and to provide incentives for prosecutions. He also noted that it is important to consider the issue from a practical point of view, with a realistic understanding of limited resources.

Ms. Irvin-Vitela said that she would like to see a cost comparison for funding at the county level versus the creation of a separate fraud unit at the state level. Mr. Basiliere commented that a centralized unit might be more cost effective. Representative Gottlieb said that a centralized unit might have success with large-scale provider fraud, but smaller investigations might be most effective at the county level. Mr. Feiss agreed that it might be difficult to centralize recipient fraud investigation.

Representative Roys stated that the committee should not lose sight of the error reduction side of program integrity, or improvements that might be made regarding technology.

Mr. Delagrave requested that information be prepared regarding how much flexibility the state has under federal law to modify standards and rules regarding the FoodShare and Wisconsin Shares programs.

Finally, committee members provided recommendations for speakers at upcoming meetings.

Other Business

The committee confirmed October 12, 2010 and November 16, 2010 as the dates for upcoming meetings.

Adjournment

The meeting was adjourned at 3:45 p.m.

PS:AH:ty:jb