



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

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

FROM: Anna Henning, Staff Attorney

RE: Current Law and Options Relating to the Responsibility to Investigate Fraud in Public
Assistance Programs

DATE: October 4, 2010

This Memo provides background information regarding the allocation of responsibility for fraud investigation in public assistance programs. It also presents options for legislation raised in testimony to the committee and by committee members.

Background

Programs Administered by the Department of Children and Families

Under current law, the Department of Children and Families (DCF) must establish a program to investigate suspected fraud on the part of participants in the Wisconsin Works (W-2) Program, including in the Wisconsin Shares child care subsidy program. [s. 49.197 (1m), Stats.] State statutes do not expressly address the investigation of provider fraud in Wisconsin Shares or other components of W-2.

One type of activity specifically authorized is the provision of funds to county departments of human or social services for fraud investigation. Current law likewise authorizes counties to establish local fraud investigation programs. [s. 49.197 (2), Stats.] In calendar year 2010, DCF allocated a total of \$544,500 to counties and tribes for the investigation of fraud in Wisconsin Shares. Of that amount, \$257,959 was allocated for fraud reduction activities in Milwaukee County. DCF also allocated \$60,500 for fraud investigation in W-2, generally.¹

¹ Current law requires DCF to allocate a total of \$605,500 per fiscal year for all activities to reduce fraud and payment errors. [s. 49.175 (1) (h), Stats.]

In fiscal year 2008-09, DCF created the Fraud Detection and Investigation Unit (FDIU) which has a particular focus on fraud in the Wisconsin Shares program. DCF has also created child care anti-fraud task forces, through which the department partners with district attorneys' offices to investigate and prosecute fraud in Milwaukee, Kenosha, and Racine Counties. FDIU currently has five employees who monitor counties' and tribes' program integrity efforts and assist the task forces, among other functions.

Programs Administered by the Department of Health Services

Federal regulations require the Department of Health Services (DHS) to establish fraud investigation programs for the Medical Assistance (MA) and FoodShare programs (at the federal level called Supplemental Food and Nutrition Program or SNAP). [42 C.F.R. s. 455.13; 7 C.F.R. s. 272 (4) (g).] State law authorizes the creation of the Public Assistance Fraud Program, operated by DHS. [s. 49.845 (a), Stats.] That program gives primary responsibility for fraud investigation to county and tribal Income Maintenance (IM) agencies. In calendar year 2010, DHS allocated no funding to IM agencies specifically for the purpose of investigating fraud. Some counties fund fraud investigators by utilizing general funds allocated to local IM agencies for program administration, or by leveraging county tax revenue. However, testimony from county representatives before the committee raised concerns that a lack of resources has affected many counties' ability to conduct fraud investigation activities.

For MA, federal law also specifically requires the state to operate a separate unit, housed outside of DHS, with authority to investigate and prosecute suspected fraud by providers. [42 U.S.C. ss. 1396 (a) (61) and 1396b (q) (4).] The Medicaid Fraud and Elder Abuse Control Unit, located within the Department of Justice (DOJ), is responsible for the investigation and prosecution of fraud by MA providers. Unlike other programs that investigate fraud in the state, this unit is located outside of the administering agency and has both investigative and prosecutorial authority.

Prosecutorial Authority

Current state law authorizes DOJ and local district attorneys to prosecute public assistance fraud cases. [ss. 165.50 (1) and 49.495, Stats.] However, testimony indicated that, with the exception of large-scale cases of MA provider fraud handled by the Medicaid Fraud and Elder Abuse Control Unit, public assistance fraud cases typically are not prosecuted unless county investigators have first devoted significant resources to investigation. Thus, although suspected criminal conduct may be referred to local district attorneys' offices, committee members discussed that declining resources for fraud investigation at the county level and a lack of incentive to prosecute small-scale cases may contribute to relatively low numbers of prosecutions for public assistance fraud in the state.

Availability of Federal Matching Funds

For MA, positions in the Medicaid Fraud and Elder Abuse Control Unit are funded in large part by a 75% federal match for state funds expended for those positions. In the FoodShare program, a 50% federal match is provided for administrative costs, including state expenditures for investigations and prosecutions. [7 U.S.C. s. 2025 (a).] For public assistance programs funded by federal block grants (e.g., W-2 and Wisconsin Shares), federal funds are limited to the amount of the grants. Although fraud investigation is a legitimate purpose for which block grants may be used, no additional federal funding is provided specifically to support fraud investigation activities.

Approaches in Other States

Approaches to allocating responsibility for fraud investigation differ among other states. Many states have given state-level entities responsibility for public assistance fraud investigation, although such entities may coordinate with local administrative and law enforcement agencies. Among those states, it is common to house investigation units within the state agencies that administer public assistance programs.² Alternatively, a small number of states have established a unit that is separate from the administering agency.³ At least one state has an investigations office comprised of both a central office and multiple regional offices.⁴ Other states appear to primarily delegate the responsibility for detecting public assistance fraud to county agencies.

Options Raised by the Committee

The following options for legislation have been raised in testimony and by members of the committee:

- Establish a state-level unit to investigate fraud in public assistance programs. (Currently, as discussed above, MA provider fraud is investigated by DOJ.)
 - For programs administered by DHS, the FDIU might be expanded.
 - The unit could be located in a non-administering agency (e.g., DOJ or DOA) or within administering agencies (i.e., DCF and DHS).
 - Investigators could be located in a central location or in regions throughout the state.
 - The unit's scope could be limited to large-scale cases only.
 - The unit's responsibility could include front-end eligibility verification, or such verification could be handled at the county level.

² Examples of states with investigatory units located in program administering agencies include Alaska (Public Assistance Fraud Unit in the state's Department of Health and Human Services); Kentucky (Office of Inspector General in the state's Cabinet for Health and Family Services); Louisiana (Program Integrity and Improvement Division in the state's Department of Children and Family Services); Michigan (Office of Inspector General in the state's Family Independence Agency); Mississippi (Bureau of Program Integrity in the state's Department of Human Services); Montana (Investigations Unit in the state's Department of Social Services); Nebraska (Special Investigations Unit in the state's Department of Health and Human Services); Nevada (Investigations and Recovery Office in the state's Department of Health and Human Services, Division of Welfare and Supportive Services); New Hampshire (Office of Special Investigations in the state's Department of Health and Human Services); New Mexico (Office of Inspector General in the state's Department of Human Services); Oregon (Fraud Investigation Unit in the state's Department of Human Services); Rhode Island (Fraud Unit in the state's Department of Human Services); Tennessee (Investigations Section in the state's Department of Human Services); Texas (Office of Inspector General in the state's Health and Human Services Commission); Washington (Division of Fraud Investigations in the state's Department of Social and Health Services); and West Virginia (Office of Inspector General in the state's Department of Health and Human Resources).

³ Examples include Florida's Public Assistance Fraud Unit, located within the Florida Department of Law Enforcement, and New York's Office of the Welfare Inspector General.

⁴ The Missouri Department of Social Services' Office of Investigations has one central and five regional offices.

- Create a risk assessment officer position within each administering agency.
 - Officers could report to someone within the agencies or to another entity, such as a legislative committee.
 - Officers could be given investigatory authority.

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