



WISCONSIN LEGISLATIVE COUNCIL

PUBLIC ASSISTANCE PROGRAM INTEGRITY

Legislative Council Conference Room
Madison, Wisconsin

October 12, 2010
10:00 a.m. – 2:55 p.m.

[The following is a summary of the October 12, 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

Chair Jauch 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; Rep. Mark Gottlieb; and Public Members Richard Basiliere, Steven Cook, Jonathan Delagrave, David Feiss, Lilly Irvin-Vitela, LaTonya Johnson, Harold Menendez, and Linda Struck.

COMMITTEE MEMBER EXCUSED: Rep. Kelda Roys.

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

APPEARANCES: Hal Bergan, Administrator, Division of Unemployment Insurance, Wisconsin Department of Workforce Development.

Approval of the Minutes of the September 8, 2010 Meeting

Mr. Feiss moved, seconded by Representative Gottlieb, to approve the minutes of the September 8, 2010 meeting. The motion carried on a unanimous voice vote.

Description of Materials Distributed

Ms. Shannon summarized the materials that were mailed to committee members prior to the meeting. She mentioned that Memo No. 4, *Introduction to the Process for Recodification of Provisions of Ch. 49, Stats., Public Assistance and Children and Family Services*, dated September 30, 2010, provides background information in preparation for a meeting of the Drafting Subcommittee scheduled for October 20, 2010. She noted that several of the materials distributed, including Memo No. 5 and Memo No. 6, would be discussed later in the meeting.

Presentation by Department of Workforce Development (DWD)

[Note: A PowerPoint presentation utilized by the speaker is posted on the committee's Internet site.]

Hal Bergan, Administrator, Division of Unemployment Insurance, DWD

Mr. Bergan provided an overview of the Unemployment Insurance Division's approach to reducing overpayments and fraud with respect to unemployment benefits. He distinguished the majority of overpayments, which result from errors or misunderstandings, from the relatively small number of overpayments resulting from fraudulent concealment of information. He also described the impact of the economic recession on the division's activities. He stated that, as a result of the recession, the number of benefits paid through the state's unemployment insurance program increased to \$3.2 billion in 2009, compared with approximately \$850 million in a normal year.

Mr. Bergan provided data on overpayments recovered in 2009 and described the process by which the division assesses and collects forfeitures. He said that the system utilized by the division has the advantage of being generally self-executing: when a person re-files for benefits, payments are automatically withheld until any forfeiture obligation has been satisfied.

Mr. Bergan discussed the most common types of overpayments and the division's utilization of crossmatching to detect them. Examples of crossmatching include matching the names of recipients with quarterly wage records collected by DWD and matching such names with state new hire records or information shared by neighboring states. He said that as a result of the increased volume of claims caused by the recession, the division is hiring additional staff to conduct crossmatches, handle collections, and investigate fraud.

Finally, Mr. Bergan described a typical fraud case. He explained that each week, a person receiving unemployment benefits must submit a new claim affirming that the person has been available to work, contacted at least two potential employers, and fulfilled other requirements. Mr. Bergan said that fraud usually results from a false answer to one or more questions contained in the weekly claim.

Chair Jauch asked whether the division has been able to measure outcomes from additional staffing. Mr. Bergan noted that quantified outcomes will be based on the percentage of overpayments detected compared to the total number of overpayments estimated by a federal audit. When last completed, the division was recovering approximately 78% of overpayments. Mr. Bergan stated that the percentage is relatively good compared to other states, but that the division is attempting to improve its numbers through a focus on increasing the efficiency of systems for overpayment detection.

Chair Jauch inquired whether there had been any high-profile prosecutions for unemployment insurance fraud. Mr. Bergan stated that one notable prosecution is in the works. He also commented that prosecutions are generally more resource-intensive than investigations but often result in awards for restitution, which give the same result as the division's internal overpayment collection efforts.

Ms. Irvin-Vitela asked which overpayment detection strategies the division had found to be most useful. Mr. Bergan stated that crossmatching data has been an especially useful tool, and noted that information gathered from conversations with individual adjudicators has also proven helpful.

Mr. Cook asked whether some of the information exchanged in crossmatches might be available to other state agencies. Mr. Bergan explained that although DWD engages in a significant amount of information sharing, it does so in a controlled manner, so as to stay within the bounds of strict data-sharing agreements. He also noted that state law limits the department's ability to share information related to unemployment benefits. Senator Jauch requested that Mr. Bergan provide citations for statutes restricting information sharing.

Senator Darling asked what recommendations Mr. Bergan has for the committee. Mr. Bergan said that a state-level unit to investigate and prosecute fraud might be effective, but he noted that it would be unlikely to produce the same returns as have been possible through the prosecution of providers in the Medical Assistance (MA) program.

Chair Jauch asked how the division's additional staff positions are funded. Mr. Bergan stated that the positions are federally funded. He explained that a federal formula ties funding for program integrity activities to the amount of benefits distributed, so the amount of funding for staff will likely change as the economy improves.

Senator Darling requested that information be provided regarding the state's investment in program integrity over the past eight years. Chair Jauch mentioned that the committee staff could obtain that information from the Department of Health Services (DHS) and the Department of Children and Families (DCF).

Discussion of Committee Assignment

The Special Committee reviewed Memo No. 5, *Current Law and Options Relating to the Responsibility to Investigate Fraud in Public Assistance Programs*, and Memo No. 6, *Options for Committee Discussion*, both dated October 4, 2010. They also considered a draft letter to Under Secretary Kevin Concannon of the U.S. Department of Agriculture.

Memo No. 5

Ms. Henning explained that Memo No. 5 provides background information regarding the allocation of responsibility for public assistance fraud investigation, together with options for legislation suggested to the Special Committee on that topic. She described responsibilities under current law for conducting fraud investigations in programs administered by DCF and DHS. She responded to questions from committee members regarding approaches taken by other states.

Committee members discussed the option to establish a new state-level unit to investigate fraud in public assistance programs. They debated what balance between state and local responsibilities, and what combination of resources, might be appropriate. The members reached a consensus that a regional

consortia approach should be explored and directed committee staff to develop an option for a regional consortia program that would potentially be established as a pilot project. Ms. Struck recommended that a county consortia pilot project that DHS conducted in 2005-06 might be examined as a model.

Chair Jauch requested that committee members who serve at the county level provide recommendations regarding the resources that would be most useful at the regional level. Staff were also directed to include an option for a possible state-level office, which might be focused on prosecutions.

Draft Letter to Under Secretary Concannon

Ms. Sappenfield explained that a draft letter to Under Secretary Concannon had been prepared at the request of the Special Committee. She said the request had been prompted by concerns raised by Mr. Delagrave regarding federal regulations limiting agencies' ability to report a household's lack of utilization of FoodShare benefits to a child protective service agency.

Mr. Delagrave thanked the Special Committee for agreeing to send the letter. Chair Jauch requested that the draft be prepared for the signatures of the four members of the Legislature present at the meeting.

Memo No. 6

Ms. Shannon, Ms. Sappenfield, and Ms. Henning described legislative options and background information included in Memo No. 6. Ms. Shannon explained that the legislative options included had been suggested by committee members or by presenters who testified before the committee. She noted that each option was attributed to the person who had suggested it.

Fraud and Overpayment Prevention

Ms. Shannon described options suggested by Ms. Johnson and Mr. Menendez to improve the prevention of fraudulent activity and overpayments. Mr. Menendez clarified that his suggestion regarding additional mechanisms was not intended to profile program participants but to assist applicants who may need help and to improve overall accuracy. Chair Jauch noted that the suggestions in this section would not require statutory changes.

Sanctions

Ms. Sappenfield detailed options suggested by Mr. Menendez, Ms. Johnson, and presenters from DCF related to sanctions. Mr. Menendez explained the need for definitions that can be used consistently across programs. Chair Jauch suggested that the Drafting Subcommittee consider revisions to definitions.

Mr. Menendez agreed to provide examples of waivers of overpayment recovery provisions utilized in federal programs. He also agreed to provide examples of cases in which the indefinite suspension of benefits based on "reasonable suspicion" has been problematic. Representative Gottlieb clarified that concerns raised regarding the "reasonable suspicion" standard implicated two separate issues: (1) a recommendation to better define "reasonable suspicion;" and (2) a recommendation to change the law such that reasonable suspicion would not serve as the basis for the indefinite suspension of benefits.

System Integrity

Ms. Shannon and Ms. Henning described options suggested by committee members and presenters to improve system integrity. Mr. Delagrave provided background information on the reasons for his recommendations related to the FoodShare program. In response to questions from committee members, Ms. Henning explained various federal regulations that limit state flexibility with regard to the FoodShare program. Committee staff was directed to ask DHS for information regarding its procedures for monitoring red flags with respect to the use of FoodShare benefits.

Committee members agreed that the proposal to create standards and goals for error and fraud rates could be incorporated into a possible pilot program for regional consortia.

Funding

Chair Jauch noted that the options related to funding had been discussed earlier in the meeting, with regard to the allocation of resources and the potential creation of a pilot program.

Other Business

The committee confirmed *November 16, 2010* and *December 14, 2010* as the dates for upcoming meetings.

Adjournment

The meeting was adjourned at 2:55 p.m.

AH:ty