



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 9

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

FROM: Anna Henning, Staff Attorney

RE: Option to Establish a New Unit in the Department of Administration

DATE: December 9, 2010

This Memo presents an option, suggested by Senator Darling and Representative Gottlieb, for committee discussion. The option is to recommend legislation establishing a new unit within the Department of Administration (DOA) that would oversee fraud investigation, overpayment recovery, and related program integrity activities.

Background

Under current law, the Department of Health Services (DHS), the Department of Children and Families (DCF), and county and tribal agencies are required to undertake specified measures related to the program integrity of the programs they administer. For example, federal regulations require DHS to establish fraud investigation programs for the Medical Assistance (MA) and FoodShare programs. [42 C.F.R. s. 455.13 and 7 C.F.R. s. 272.4 (g).] For the FoodShare program, DHS is also required to take measures to detect duplication among applicants and with regard to the issuance of benefits. [7 C.F.R. s. 272.4 (e).] In addition, under current state law, 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.] Current law likewise authorizes counties to establish local fraud investigation programs. [s. 49.197 (2), Stats.]

Federal law also specifically requires the state to operate a unit, separate from the administering agency, to investigate and prosecute suspected fraud by providers in the MA program. [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), fulfills that requirement.

In fiscal year 2008-09, DCF created a Fraud Detection and Investigation Unit (FDIU) which has a particular focus on fraud in the Wisconsin Shares program. It also established child care anti-fraud task forces, which investigate and prosecute fraud in Milwaukee, Kenosha, and Racine Counties.

The committee has heard in testimony that, with the exception of DOJ's prosecutions of MA providers and DCF's recent efforts to address fraud in the Wisconsin Shares program, resources for fraud investigation and overpayment recovery have diminished. Current law requires DCF to allocate \$605,500 per fiscal year of the current biennium for activities to reduce fraud and payment errors. [s. 49.175 (1) (h), Stats.] In the current fiscal year, 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 the W-2 program, generally. DHS did not allocate any funding to county and tribal agencies for that purpose in 2010.

Models in Other States

Several states have offices of inspector general dedicated to monitoring or investigating fraud or errors in public assistance programs. Such offices are typically located within the agency that administers public assistance programs in the state. Exceptions include the Florida's Public Assistance Fraud Unit, which is located in the Florida Department of Law Enforcement, and the Office of Welfare Inspector General in New York State, which is housed in the state's Department of Audit and Control.

The New York's Office of Welfare Inspector General is specifically directed to conduct and supervise investigations related to programs administered by the state's Department of Social Services, including department operations. The head of the office is appointed by the New York State Comptroller, with the advice and consent of the state Senate. The office differs from other offices of inspector general because it has prosecutorial authority in addition to the responsibility to investigate fraudulent activity. [N.Y. Exec. Law ss. 46 to 50.]

Another relevant example is the Office of Inspector General in the Texas Health and Human Services Commission. Although not separate from the administering agency, that office is led by an Inspector General who is appointed by the Governor and is responsible for overseeing program efficiency in addition to investigating fraud.

Option for Legislation

The committee could recommend legislation establishing a new unit to oversee fraud investigation, overpayment recovery, and related program integrity activities. Committee members Senator Darling and Representative Gottlieb have suggested that the unit might be located in DOA. The unit may be authorized to contract with counties and tribes, or consortia of counties and tribes, to undertake program integrity initiatives. However, the notion is that the new unit would be accountable for specified outcomes and would have oversight of program integrity activities.

DOA would need new statutory authority to establish the unit. In addition, a new appropriation would likely need to be made, and full-time or part-time employment positions would need to be authorized.

The committee might wish to consider the following questions related to this option:

- Should the unit be established as a pilot program or as a permanent entity?
- Where within DOA should the unit be housed?
- What level of administrator should head the unit?
- What should the scope of the unit's responsibilities be? Would its focus be on recipient fraud only? Which public assistance programs should be included?
- How many full-time equivalent positions should be authorized?
- What amount should be appropriated? What should be the type and source of the appropriation?
- Should the person leading the unit be a gubernatorial appointment? If not, how would the person be chosen?
- What statutory guidance should be provided regarding performance expectations or legislative oversight?
- Should the proposal include a role for the Legislative Audit Bureau?
- What effect would the new unit have on existing program integrity activities in DHS, DCF, and county and tribal agencies?

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