



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1576/1
ALL:all:all

2015 SENATE BILL 21

February 3, 2015 - Introduced by JOINT COMMITTEE ON FINANCE, by request of Governor Scott Walker. Referred to Joint Committee on Finance.

AUTHORS SUBJECT TO CHANGE

1 AN ACT relating to: state finances and appropriations, constituting the
2 executive budget act of the 2015 legislature.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill is the "executive budget bill" under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations⁵ for the 2015-2017 fiscal biennium.

The bill repeals and recreates the appropriation schedule in chapter 20 of the statutes, thereby setting the appropriation levels for the 2015-2017 fiscal biennium. The descriptions that follow relate to the most significant changes in the law that are proposed in the bill. In most cases, changes in the amounts of existing spending authority and changes in the amounts of bonding authority under existing bonding programs are not discussed.

For additional information concerning this bill, see the Department of Administration's publication *Budget in Brief* and the executive budget books, the Legislative Fiscal Bureau's summary document, and the Legislative Reference Bureau's drafting files, which contain separate drafts on each policy item. In most cases, the policy item drafts contain a more detailed analysis than is printed with this bill.

GUIDE TO THE BILL

As is the case for all other bills, the sections of the budget bill that affect statutes are organized in ascending numerical order of the statutes affected.

SENATE BILL 21**HEALTH AND HUMAN SERVICES****PUBLIC ASSISTANCE**

Under current law, DCF administers the Transform Milwaukee Jobs program in Milwaukee County and the Transitional Jobs program outside of Milwaukee County, which provide work experience for unemployed individuals by providing a subsidy for wages and other employment expenses to employers that employ the individuals. Under the Wisconsin Works (W-2) program, DCF may provide job search assistance, placement in a subsidized job, or a stipend for up to four months to certain noncustodial parents. Also under current law, DCF may contract with any county, tribal governing body, or W-2 agency to administer a work experience and job training program for noncustodial parents who have failed to pay child support due to unemployment or underemployment. Such individuals may be ordered by a court to register for a work experience and job training program.

This bill requires every individual who applies to participate in the Transform Milwaukee Jobs program or the Transitional Jobs program, who applies for W-2 services and benefits for noncustodial parents, or who applies for or is ordered by a court to register for a work experience and job training program (collectively, a program), to complete a questionnaire that screens for the abuse of a controlled substance. If, based on the answers to the questionnaire, DCF or the administering agency with which DCF has contacted determines that there is a reasonable suspicion that an individual is abusing a controlled substance, the individual must undergo a test for the use of a controlled substance. If the test results are positive and the individual does not present satisfactory evidence that he or she has a valid prescription for the controlled substance, the individual must participate in substance abuse treatment to remain eligible for a program. If, at the end of treatment, the individual tests negative, or positive with a valid prescription for the controlled substance, he or she will have satisfactorily completed the substance abuse screening and testing and treatment requirements for the program.

Under current law, DHS pays, within specified limits, funeral, burial, and cemetery expenses for decedents who, during life, received certain public assistance benefits, such as W2 benefits or Medical Assistance benefits, and whose estates at death are insufficient to pay those expenses. This bill provides that, if an eligible decedent, or the decedent's spouse or another person, owns a life insurance policy insuring the decedent's life and the face value is more than \$3,000, any amount that DHS would otherwise pay for the decedent's funeral, burial, or cemetery expenses will be reduced by one dollar for each dollar that the insurance policy exceeds \$3,000.

The bill also requires DHS to pursue recovery of the amount of funeral, burial, and cemetery expenses provided on behalf of a decedent by making a claim in the decedent's estate and in the estate of the decedent's spouse. As with estate recovery for other types of public assistance benefits, DHS may recover from all property of the decedent or the decedent's spouse, and there is a presumption that all property in the spouse's estate was marital property held with the decedent and that 100 percent of the property in the spouse's estate is subject to the claim of DHS. Unlike estate recovery for other types of public assistance benefits, however, the claim for funeral, burial, and cemetery expenses must be allowed even if the decedent in whose

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estate the claim is made has a surviving spouse or a surviving child who is under the age of 21 or disabled and DHS is not permitted to waive recovery if DHS determines that recovering the amount paid on the decedent's behalf would work an undue hardship in a particular case.

Under current law, the federal food stamp program, now known as the Supplemental Nutrition Assistance Program (SNAP) and called FoodShare in this state, assists eligible low-income individuals (recipients) to purchase food. SNAP benefits are paid entirely with federal moneys. The cost of administration is split between the federal and state governments. The program is administered in this state by DHS. Under current law, DHS may require a recipient of SNAP benefits who is able and who is 18 to 60 years of age to participate in the FoodShare employment and training program (FSET) to be eligible for SNAP benefits, unless the recipient is participating in a Wisconsin Works employment position, is the caretaker of a child under the age of six years, or is enrolled at least half time in school or in a training program or an institution of higher education.

This bill requires DHS to submit to the secretary of the federal Department of Agriculture (USDA) a request for a waiver that would authorize DHS to screen and, if indicated, test participants in the FSET program for illegal use of a controlled substance without presenting evidence of a valid prescription. If the waiver is approved, DHS must then screen and, if indicated, test FSET participants for illegal use of a controlled substance without presenting evidence of a valid prescription. The bill also requires that if the waiver is approved in the 2015-17 fiscal biennium, DHS must address any future fiscal impact resulting from the requirements in its biennial budget request for the 2017-19 fiscal biennium.

WISCONSIN WORKS

The Wisconsin Works (W-2) program under current law, which is administered by DCF, provides work experience and benefits for low-income custodial parents who are at least 18 years old. Generally, under current law, to be eligible for a W-2 employment position and a job access loan, the total length of time in which an individual or an adult member of the individual's family has participated in or received benefits under certain W-2 programs may not exceed 60 months. A W-2 agency may extend this time limit if the agency determines that unusual circumstances exist that warrant an extension of the participation period.

Under this bill, the time limit on participating in or receiving benefits under these W-2 programs is 48 months. The bill allows a W-2 agency to extend this time limit if it determines that the individual is experiencing hardship or that the individual's family includes an individual who has been battered or subjected to extreme cruelty.

W-2 provides work experience to participants through placement in one of a number of different employment positions, including Trial Employment Match Program jobs, community service jobs, and transitional placements. Current law provides that a participant who refuses to participate in any employment position is ineligible to participate in W-2 for three months. This bill makes the following changes to the behaviors that constitute refusal to participate:

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1. Currently, it is a refusal to participate if a participant expresses verbally or in writing that he or she refuses to participate. The bill removes this behavior as an option for demonstrating a refusal to participate.

2. Currently, it is a refusal to participate if a participant fails, without good cause, to appear for an interview with a prospective employer or if a participant in a transitional placement fails, without good cause, to appear for an assigned activity. The bill makes it a refusal to participate to fail, without good cause, to appear for an interview with a prospective employer, whether subsidized or not, or with a work experience provider, for an assigned work activity, as defined under applicable federal law, or for an activity assigned by a W-2 agency.

3. Currently, it is a refusal to participate if a participant voluntarily leaves appropriate employment or training without good cause. The bill makes it a refusal to participate if a participant leaves, without good cause, appropriate employment, whether subsidized or not, or training or an appropriate assigned work experience activity or a work experience site.

4. Currently, it is a refusal to participate if a participant loses employment as a result of being discharged for cause. The bill also makes it a refusal to participate if a participant is discharged from appropriate training for cause or from a work experience site for cause.

Currently under W-2, a W-2 agency pays an employer that employs an individual placed in a Trial Employment Match Program job a wage subsidy amount negotiated between the W-2 agency and the employer, that may not be less than the federal or state minimum wage that applies to the individual. The employer must pay the individual at least the minimum wage that applies to the individual. Also under current law, DCF pays an employer that employs an individual participating in the Transform Milwaukee Jobs Program or Transitional Jobs Program a subsidy equal to the wages that the employer pays the individual for hours actually worked, up to 40 hours per week at the federal or state minimum wage that applies to the individual. The employer must pay the individual not less than the applicable federal or state minimum wage for hours actually worked, but the employer may pay the individual more than the amount of the wage subsidy that DCF pays to the employer.

This bill authorizes a W-2 agency to negotiate with the employer of an individual in a Trial Employment Match Program job, and DCF to negotiate with the employer of an individual in a job under the Transform Milwaukee Jobs Program or Transitional Jobs Program, a wage subsidy amount that the W-2 agency or DCF will pay to the employer that may not be more than the minimum wage. The employer must still pay the individual for hours actually worked at not less than the federal or state minimum wage that applies to the individual.

Currently under W-2, an individual who is the parent of a child under the age of 13 or, if the child is disabled, under the age of 19, who needs child care services to participate in various educational or work activities, and who satisfies other eligibility criteria may receive a child care subsidy for child care services under the W-2 program. This child care subsidy program is known as Wisconsin Shares.

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Under current law, in all areas of the state except Milwaukee County, DCF must enter into a contract with a county department or agency to make an initial determination about whether individuals who are in a particular geographic region or who are members of a particular Indian tribal unit are eligible for the child care subsidies under Wisconsin Shares. Also under current law, the same county department or agency must administer Wisconsin Shares for that geographic region or Indian tribal unit. Current law requires DCF, to the extent practicable and with certain restrictions, to allocate funds for the administration of Wisconsin Shares in a geographic region or Indian tribal unit in the same proportion as the geographic region's or Indian tribal unit's proportionate share of all statewide child care subsidy authorizations and eligibility redeterminations in the 12-month period prior to the start of the contract period.

Under this bill, DCF has the option to make child care subsidy eligibility determinations, to contract with a county department or agency to make these determinations, or to contract with a county department or agency to share in making these determinations. If DCF contracts with a county department or agency for the eligibility determination function, the bill requires DCF to allocate funds for this function under the contract.

The bill also requires DCF to allocate funds for a county department's or agency's administration of Wisconsin Shares in the same proportion as the geographic region's or Indian tribal unit's proportionate share of all funding allocated for eligibility determination functions. Alternatively, the bill allows DCF to elect to allocate these funds in the same proportion as the geographic region's or Indian tribal unit's proportionate share of all children for whom a child care subsidy was issued in the most recent 12-month period for which applicable statistics are available prior to the start of the contract period.

Under current law, if a W-2 agency plans to take action against an individual who participates in W-2 that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W-2, the agency must provide written notice of the proposed action and reasons for the action and allow the participant a reasonable time after providing the notice to rectify the deficiency, failure, or other behavior to avoid the proposed action. This draft removes these notice and rectification requirements.

Under current law, the Learnfare program requires school age children of W-2 participants, with some exceptions, to meet certain school enrollment standards. Current law requires certain individuals who are subject to the school attendance requirement to participate in case management provided under the Learnfare program, including minor parents, habitual truants, and dropouts. This bill also requires a child who is subject to the school attendance requirement and whose W-2 group includes an individual who has been unable to participate in W-2 activities due to the child's school-related problems to participate in case management provided under the Learnfare program.

Under current law, DCF contracts with a W-2 agency to administer W-2 in a geographical area. Within 60 days of being awarded a W-2 contract, a W-2 agency is required to establish a community steering committee to focus on job creation, job

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training, and other employment-related services for persons who are eligible for trial employment match program jobs or community service jobs. Current law requires the W-2 agency to recommend members of the committee to the chief executive officer (CEO) of each county the agency serves, who then appoints members to the committee in proportion to the population of that county relative to the population of each other county served by the W-2 agency. Under this bill, a W-2 agency appoints the members of a community steering committee, following certain requirements to allow representation of each county the agency serves.

MEDICAL ASSISTANCE

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. Under current law, under an approved waiver of federal law, DHS administers a demonstration project under MA that provides health care coverage to low-income adults under the age of 65 who do not have children and who are not otherwise eligible for MA.

This bill requires DHS to submit to the secretary of the federal Department of Health and Human Services an amendment to the waiver that was already approved that would authorize DHS to do all of the following under the demonstration project: 1) impose monthly premiums as determined by DHS; 2) impose higher premiums for enrollees who engage in behaviors that increase their health risks, as determined by DHS; 3) require a health risk assessment for all enrollees; 4) limit eligibility to no more than 48 months; and 5) require a drug screening assessment and, if indicated, a drug test as a condition of eligibility. DHS must implement any changes that are approved. If the amendment is approved, in whole or in part, in the 2015-17 fiscal biennium, DHS must identify any costs incurred or savings resulting from the new requirements in the quarterly report on MA changes that DHS must submit to JCF under current law, as well as address any future fiscal impact resulting from the requirements in its biennial budget request for the 2017-19 biennium.

To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual's financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into or purchased on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual's application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the note's value.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than

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fair market value on or after a specific date (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. Under current law, the purchase by an individual or his or her spouse of a promissory note is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill provides that if an individual or his or her spouse enters into or purchases a promissory note on or after the effective date of the 2015-17 budget act, it is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

Currently, some MA services are provided through programs that operate under a waiver of federal Medicaid laws, including services provided through the BadgerCare Plus (BC+) program. Under current law, certain individuals are ineligible for BC+ for three months while they have access to certain health insurance coverage during specified time periods. Certain other individuals are also subject to three months of ineligibility under current law if the federal Department of Health and Human Services approves. This bill eliminates the three months of ineligibility for all of those individuals whose access to other health insurance has ended.

Subject to any necessary federal approval, this bill adds licensed midwife services, as well as substance abuse treatment services provided by a medically monitored treatment service or a transitional residential treatment service to other services paid for currently under the MA program. This bill also requires, subject to federal approval, DHS to provide MA reimbursement to pharmacists who meet certain requirements specified by DHS for administering vaccines to people 6 to 18 years of age.

This bill makes additional changes to the MA program, including: 1) requiring DHS to increase the MA reimbursement rate in Brown, Polk, and Racine counties to providers of pediatric dental care and adult emergency dental services, if DHS receives any necessary federal approval for the increased rate; 2) allocating moneys for the fiscal biennium for DHS to make supplemental payments to certain hospitals that have a disproportionate share of low-income patients and setting specifications for those payments; and 3) directing that the state share of payments for health care services provided in a school to children who are eligible for MA in excess of a certain amount be deposited in the MA trust fund and expended for reducing waiting lists for children's long-term care services and other children's services.

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Currently, a law enforcement officer or certain other persons, in counties other than Milwaukee County, may take an individual into custody for emergency detention if the officer or other person has cause to believe that the individual is

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1 be paid to all certified primary care providers who provide obstetric or gynecological
2 care to those recipients.

3 **SECTION 1796.** 49.45 (23) (c) of the statutes is repealed.

4 **SECTION 1797.** 49.45 (23) (g) of the statutes is created to read:

5 49.45 (23) (g) 1. The department shall submit to the secretary of the federal
6 department of health and human services an amendment to the waiver requested
7 under par. (a) that authorizes the department to do all of the following with respect
8 to the childless adults demonstration project under this subsection:

9 a. Impose monthly premiums as determined by the department.

10 b. Impose higher premiums for enrollees who engage in behaviors that increase
11 their health risks, as determined by the department.

12 c. Require a health risk assessment for all enrollees.

13 d. Limit an enrollee's eligibility under the demonstration project to no more
14 than 48 months. The department shall specify the eligibility formula in the waiver
15 amendment.

16 e. Require, as a condition of eligibility, that an applicant or enrollee submit to
17 a drug screening assessment and, if indicated, a drug test, as specified by the
18 department in the waiver amendment.

19 2. If the secretary of the federal department of health and human services
20 approves the amendment to the waiver under par. (a), in whole or in part, the
21 department shall implement the changes to the demonstration project under this
22 subsection specified in subd. 1. a. to e. that are approved by the secretary, consistent
23 with the approval.

24 **SECTION 1798.** 49.45 (24k) of the statutes is created to read:

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1 **SECTION 1833.** 49.79 (9) (d) of the statutes is created to read:

2 49.79 (9) (d) 1. The department shall request from the secretary of the federal
3 department of agriculture a waiver to permit the department to screen and, if
4 indicated, test, as specified by the department in the waiver request, participants in
5 an employment and training program under this subsection for illegal use of a
6 controlled substance without presenting evidence of a valid prescription.

7 2. If a waiver under subd. 1. is granted and in effect, the department shall
8 screen and, if indicated, test, in a manner approved in the waiver granted by the
9 secretary of the federal department of agriculture, participants in an employment
10 and training program under this subsection for illegal use of a controlled substance
11 without presenting evidence of a valid prescription.

12 **SECTION 1834.** 49.849 (1) (c) of the statutes is amended to read:

13 49.849 (1) (c) "Nonrecipient surviving spouse" means any person who was
14 married to a recipient while the recipient was receiving or when the recipient
15 received public assistance and who survived the recipient.

16 **SECTION 1835.** 49.849 (1) (e) of the statutes is amended to read:

17 49.849 (1) (e) "Public assistance" means any services provided as a benefit
18 under a long-term care program, as defined in s. 49.496 (1) (bk), medical assistance
19 under subch. IV, long-term community support services funded under s. 46.27 (7),
20 or aid under s. 49.68, 49.683, ~~or 49.685,~~ or 49.785.

21 **SECTION 1836.** 49.849 (2) (a) (intro.) of the statutes is amended to read:

22 49.849 (2) (a) (intro.) Subject to par. (b), the department may collect from the
23 property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an
24 amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the
25 long-term community support services under s. 46.27 that is recoverable under s.

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1 piercing, and tanning under section 255.08, 2013 stats., and sections 252.23 to
2 252.25, 2013 stats., in effect on the effective date of this paragraph remain in effect
3 until their specified expiration dates or until modified or rescinded by the
4 department of financial institutions and professional standards.

5 (f) *Credential fees.* Notwithstanding sections 463.10 (3), 463.12 (3), and 463.25
6 (2) (b) of the statutes, fees for the issuance and renewal of licenses and permits issued
7 under sections 463.10, 463.12, and 463.25 of the statutes shall, for years 2015 and
8 2016, be according to the rules described under paragraph (e).

9 (4) **PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY ELIGIBILITY.** Notwithstanding
10 section 49.688 (2) of the statutes, as affected by this act, a person who is participating
11 in the program under section 49.688 of the statutes on the effective date of this
12 subsection is not required to comply with section 49.688 (2) (a) 6. of the statutes, as
13 created by this act, before January 1, 2016.

14 (5) **REQUIREMENTS FOR FOODSHARE EMPLOYMENT AND TRAINING PROGRAM DRUG**
15 **SCREENING.** If, during the 2015-17 fiscal biennium, the secretary of the federal
16 department of agriculture approves the waiver requested under section 49.79 (9) (d)
17 1. of the statutes, as created by this act, the department of health services shall
18 address, in the department's biennial budget request under section 16.42 of the
19 statutes for the 2017-19 fiscal biennium, any future fiscal impact resulting from
20 actions taken under section 49.79 (9) (d) 2. of the statutes, as created by this act.

21 (6) **REQUIREMENTS FOR ASSISTANCE FOR CHILDLESS ADULTS DEMONSTRATION PROJECT.**
22 If, during the 2015-17 fiscal biennium, the secretary of the federal department of
23 health and human services approves, in whole or in part, the amendment to the
24 waiver under section 49.45 (23) (a) of the statutes that is requested under section

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1 49.45 (23) (g) 1. of the statutes, as created by this act, the department of health
2 services shall do all of the following:

3 (a) Identify, in its quarterly report to the joint committee on finance under
4 section 49.45 (2n) of the statutes, any costs incurred or savings realized in the
5 2015-17 fiscal biennium as a result of actions taken under section 49.45 (23) (g) 1.
6 a. to e. of the statutes, as created by this act, as approved by the secretary of the
7 federal department of health and human services.

8 (b) Address, in the department's biennial budget request under section 16.42
9 of the statutes for the 2017-19 fiscal biennium, any future fiscal impact resulting
10 from actions taken under section 49.45 (23) (g) 1. a. to e. of the statutes, as created
11 by this act, as approved by the secretary of the federal department of health and
12 human services.

13 (7) MENTAL HEALTH CRISIS SERVICES GRANTS. From the appropriation account
14 under section 20.435 (2) (gk) of the statutes, the department of health services shall
15 award a total of \$1,500,000 in fiscal year 2015-16 as onetime grants to counties for
16 mental health crisis services.

17 (8) DISPROPORTIONATE SHARE HOSPITAL PAYMENTS.

18 (a) Subject to paragraph (c) and notwithstanding section 49.45 (3) (e) of the
19 statutes, from the appropriation accounts in section 20.435 (4) (b) and (o) of the
20 statutes, the department of health services shall pay to hospitals that serve a
21 disproportionate share of low-income patients a total of \$35,910,900 in fiscal year
22 2015-16 and \$35,842,300 in fiscal year 2016-17. The department of health services
23 may make a payment to a hospital under this subsection under the calculation
24 method described in paragraph (b) if the hospital meets all of the following criteria:

25 1. The hospital is located in this state.