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**State of Wisconsin
Governor Scott Walker**

TO: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Job Center Leads and Managers
Training Staff
Child Care Coordinators

FROM: Erik Hayko, Section Chief
Bureau of Child Care Administration
Division of Early Care and Education

DECE/BCCA OPERATIONS MEMO					
No: 12-56 Amended					
DATE: 10/30/2012					
FS	<input type="checkbox"/>	MA	<input type="checkbox"/>	BC+	<input type="checkbox"/>
SC	<input type="checkbox"/>	CTS	<input type="checkbox"/>	CC	<input checked="" type="checkbox"/>
W-2	<input type="checkbox"/>	FSET	<input type="checkbox"/>	EA	<input type="checkbox"/>
CF	<input type="checkbox"/>	JAL	<input type="checkbox"/>	JC	<input type="checkbox"/>
RAP	<input type="checkbox"/>	WIA	<input type="checkbox"/>	Other	<input type="checkbox"/> *
				EP	
PRIORITY: HIGH					

SUBJECT: Enforcing Child Care Intentional Program Violations (IPV) for Clients

CROSS REFERENCE: Child Care Manual Chapter 2A- Client Policy Manual- sections 2.1.4 Investigations and 2.1.5 Overpayments

EFFECTIVE DATE: November 1, 2012

PURPOSE

The purpose of this Operations Memo is to describe the updated policies and procedures for determining if an applicant or recipient has committed an intentional program violation (IPV) and communicate how to apply sanctions resulting from an IPV in the Wisconsin Shares (Shares) child care subsidy program.

BACKGROUND

Under current policy, the determination of an intentional program violation is made through an administrative hearing, a conviction by a court of law, if a client signs a Waiver of Administrative Disqualification Hearing (ADH) form or when a client signs a Disqualification Consent Agreement form. After the first and second IPV, an individual continues to be eligible for Shares. However, after a third IPV determination, the individual's child care benefits may be permanently denied.

2011 Wisconsin Act 202 (Act 202) created Wis. Stat. s.49.001 (3m) which defines an intentional program violation as follows:

Intentionally making a false or misleading statement, intentionally misrepresenting or withholding facts, or intentionally committing any act that constitutes a violation of state or federal law for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking benefits under Chapter 49.

Act 202 also:

1. Amended s.49.151(2)(a) to specify that the Department of Children and Families (Department), a Wisconsin Works (W-2) agency, or an entity administering Shares under contract with the Department may make the determination whether an individual *applying for or receiving* emergency assistance, W-2, or Shares subsidy benefits has committed an intentional program violation;
2. Created s.49.151(2)(a)1. 2. and 3. to provide denial periods for each IPV committed; and,
3. Removed language at s.49.155(8) that made an individual ineligible to receive a child care subsidy for up to five (5) years if they are found to have violated any Shares provision.

EFFECTIVE DATE

2011 Wisconsin Act 202 is effective on November 1, 2012 and applies to acts and omissions that occur after that date. If the Department or a local agency determines that an individual has committed an IPV that occurred on or after November 1, 2012, the individual is subject to the denial period defined under the statute.

DETERMINATION OF AN IPV

An IPV is an act in which an individual intentionally makes a false or misleading statement, intentionally misrepresents or withholds facts, or intentionally commits any act that constitutes a violation of state or federal law for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking benefits under Chapter 49.

An IPV may include, but is not limited to, the following examples:

- Concealing or intentionally not reporting income or assets;
- Failing to report household composition change (including minor children) when failure to do so would have affected the individual's eligibility;
- Failing to disclose/report non-Wisconsin residency;
- Submitting documentation that has been forged or tampered with;
- Submitting false information;
- Accepting a kickback from a provider;
- Colluding with a provider to falsify Shares attendance reporting records.

IPV DENIAL PERIODS

Under the new law, the determination of an IPV in the Shares program is made by the administering agency, including the Department, or a local county or tribal agency under contract with the Department. When the administering agency determines that a violation of the program was intentional, the agency shall deny benefits to the individual for the following periods:

- ◆ 6 months for the first intentional violation;
- ◆ 12 months for the second intentional violation; and,
- ◆ Permanently for the third intentional violation.

Once established, the IPV denial period will follow the sanctioned individual(s). Shares eligibility will be denied in **any** case when the sanctioned individual is part of the assistance

group. The IPV denial period will be imposed for the period specified under the statute, whether the case is open or closed.

If the IPV results in a Shares overpayment, the local agency must also establish and recover the overpayment.

IPV DETERMINATIONS

Under Wisconsin Shares policy, either the primary or second parent may sign an application, renewal, or Six Month Review Form (SMRF) form. Therefore, an IPV can apply to either party. However, the IPV is most often applied to the primary parent who makes the application and is responsible for reporting program changes and is at least 18 years old. In a two-parent household, the IPV may be applied to the other parent if that parent is at least 18 years old, is part of the assistance group, and is responsible for the intentional action. Further, if both parents have committed an IPV, both may be sanctioned.

Local agencies are responsible to investigate whether a program violation was intentional. To insure uniform application of the IPV policy within each county and tribe, all IPV determinations must be reviewed and approved by a supervisor or the supervisor's designee. In unusual and complex cases, the local agency may request that the IPV determination be reviewed by Shares program staff at the Department.

NOTICE OF IPV DETERMINATION AND DENIAL PERIOD

After the IPV determination is made, a notice must be provided to the Shares applicant or recipient before the IPV denial period is applied. A Notice of Eligibility is automatically generated when the worker enters the IPV into the CARES Mainframe system. For example:

- ◆ An IPV entered into the system before adverse action (the date each month in which a modification to a case needs to be confirmed to have it reflected in the next month of benefits), will be effective the first day of the next month. (e.g. an IPV entered December 7, 2012 will be effective January 1, 2013.)
- ◆ An IPV entered into the system after adverse action will be effective the first day of the second month following the entry. (e.g.- an IPV entered December 28, 2012 will be effective February 1, 2013.)

Specific instructions for making appropriate IPV entries into CARES will be issued in a DECE Technical Assistance memo.

APPEAL RIGHTS

An individual denied Shares benefits as a result of an IPV may contest the determination and request a hearing within 30 days after the date of the notice (Wis. Stat. 49.151 (2) (b)).

Pursuant to Division of Hearings and Appeals Rule Chapter HA 1, a request for a hearing shall be made in writing or by fax to the Division of Hearings and Appeals (DHA). Under the terms of the child care contract, counties and tribes are required to provide legal representation at Chapter 227 hearings.

County and tribal attorneys are encouraged to contact the DCF Office of Legal Counsel for assistance via email at DCFCalLegal@wisconsin.gov, via phone at (608) 261-8671, via fax at (608) 261-6972 or via mail at:

Office of Legal Counsel- Client IPV
Department of Children and Families
P.O. Box 8916
201 E. Washington Avenue, Room G200
Madison, WI 53708-8916

The process and time to file an appeal for all adverse determinations (overpayment, benefit reduction, denial of benefits for reasons other than an IPV) are not affected by this change. Pursuant to Division of Hearings and Appeals Rule Chapter HA 3, a request for a hearing may be made in writing or orally to the local agency or to the Division of Hearings and Appeals (DHA). If an oral request is made to the local agency, the request must be reduced to writing by the agency and signed by the petitioner. A local agency receiving a hearing request shall immediately date-stamp the request and forward it to DHA.

CONTINUATION OF CHILD CARE BENEFITS DURING THE APPEAL PROCESS

If the individual with an IPV determination is currently receiving Shares benefits, the individual may request a continuation of benefits during the appeal process by including it in their appeal request. When the local agency worker is made aware that a continuation of benefits has been ordered by the Administrative Law Judge (ALJ) and if the request for continuation of benefits is made within the 30 days after the date of the Notice of Eligibility, the worker must take steps to open the case and re-run eligibility. If the individual meets all the eligibility requirements for Shares, the benefits will continue uninterrupted until the ALJ makes the final decision on the appeal. Continuation of benefits *does not apply* if the ALJ determines that benefits should not continue during the appeal process.

If Shares benefits are continued during the appeal process, the IPV denial period does not begin until the final decision is issued in the appeal. If the IPV is upheld, the worker must provide a new Notice of Eligibility to the recipient with the start date for the new IPV denial period. For example:

- ◆ An IPV determination is made and entered on December 10, 2012 with an effective date of January 1, 2013. The individual requests an appeal and a continuation of benefits before January 30. The family is eligible for Shares and the worker re-runs eligibility. On March 29, the ALJ reaches a final decision to uphold the IPV determination. The worker generates a Notice of Eligibility and adverse action relating to the IPV denial period which will take effect on May 1, 2013.

If the sanctioned individual is an applicant who has not completed the eligibility determination process and is not receiving Shares benefits, no Shares will be issued until a final IPV decision has been issued.

IPV AND OTHER PROGRAMS

Individuals determined to have committed an IPV in the Shares program may be referred to the administering agency of any other public assistance program. W-2 agencies, county agencies, and tribes are encouraged to cooperate with each other when investigating and determining an IPV.

IPV determinations for W-2, Shares and Emergency Assistance are made independently of each other. Shares IPV sanctions are separate from W-2, or Emergency Assistance programs.

The IPV denial periods may be different among programs. The IPV's in different programs are not counted when determining if a subsequent program violation has occurred.

If W-2 determines that an IPV has occurred, the Shares assistance group will not be eligible for Shares benefits during the W-2 denial period unless the sanctioned parent is participating in another approved activity.

TECHNICAL ASSISTANCE MEMOS

The Department is working with the CARES system to automate the IPV process. A Technical Assistance memo will be issued with interim instructions for entering the IPV into the **CARES Mainframe**. In early spring 2013, another Technical Assistance memo will be issued with instructions for entering an IPV in the **Cares Worker Web (CWW)**.

WHERE TO SEND A FRAUD REFERRAL

- To report fraud in the Wisconsin Shares program, a fraud referral may be made to dcfmbchildcarefraud@wisconsin.gov
- To report fraud in the W-2 or Emergency Assistance program, a fraud referral may be made to w2fraud@wisconsin.gov
- To report fraud in the FoodShare, Medicaid, WIC or BadgerCare programs, a fraud referral needs to be made to <https://www.reportfraud.wisconsin.gov/rptfrd/default.aspx>
- To report fraud in any public assistance program, a referral can also be made to the local agency.

2011 WISCONSIN ACT 202

<https://docs.legis.wisconsin.gov/2011/related/acts/202>

CONTACT

For child care related policy questions outside of Milwaukee County:

County and tribal Child Care Coordinators should contact their Bureau of Regional Operations (BRO) Child Care Coordinator at

http://dcf.wisconsin.gov/regional_operations/pdf/contact_list.pdf.

For child care related policy questions for Milwaukee County:

Child Care Help Desk at: childcare@wisconsin.gov or (608) 264-1657.

*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – FoodShare Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, *Other EP – Other Employment Programs.

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