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Division of Medicaid Services

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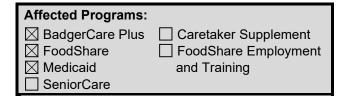Fax: 608-266-1096

Date: December 1, 2021
        <mark>Amended September 29, 2022</mark>   DMS Operations Memo 21-25

To: Income Maintenance Supervisors
        Income Maintenance Lead Workers
        Income Maintenance Staff

Affected Programs:	
☒ BadgerCare Plus	☐ Caretaker Supplement
☒ FoodShare	☐ FoodShare Employment
☒ Medicaid	and Training
☐ SeniorCare	

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Overpayment Claims Establishment Policy Changes

<mark>The Department of Health Services (DHS) is no longer using the Intentional Health Care Program Violation Acknowledgement form. It has been removed from the online Forms Library. This memo has been amended to remove references to this form, update handbook section names and contact information, and add a description of the changes.</mark>

CROSS REFERENCE

- FoodShare Wisconsin Handbook 7.3.1 Benefit Overpayment, 7.3.2 Calculating Overpayment Claim Amounts, and 3.14.1 Intentional Program Violation (IPV) Disqualification
- BadgerCare Plus Handbook <mark>28</mark> ~~Corrective Action~~ Overpayments
- Medicaid Eligibility Handbook <mark>22.2</mark> ~~Corrective Action~~ Overpayments
- Process Help 31.3 Benefit Recovery (BV)
- WI § 49.497
- WI § 49.793
- 7 U.S. Code § 2022

EFFECTIVE DATE

December 1, 2021

PURPOSE

This operations memo announces changes to FoodShare and health care policies for overpayment claims establishment. To increase cost effectiveness, agency efficiency, and create claims more equitably, the look back period for some overpayments will be changed, a minimum threshold for overpayment claims will be set, and the date of discovery will be redefined.

BACKGROUND

When a member receives benefits they were not entitled to, it is considered an overpayment. Income Maintenance (IM) agencies establish claims against members to repay the benefits they weren't entitled to receive. There are three types of overpayments for FoodShare: client error, non-client error, and Intentional Program Violation (IPV). For health care, there are two types: recoverable and unrecoverable overpayments.

Note: The policy changes described in this memo do not impact the other criteria not mentioned in this memo that are used to determine the type of overpayment for each program.

POLICY

The following policy changes for overpayment claims establishment are effective beginning December 1, 2021. Any claims established on or after December 1, 2021 are subject to these new policies, regardless of when the overpayment referral was created.

Note: The policies described in this memo do not override any temporary policies in place during the COVID-19 pandemic, including but not limited to the prohibition on assessing overpayments for months during the federal public health emergency.

CHANGE TO LOOK BACK PERIOD

Beginning December 1, 2021, the look back period will be redefined for each program.

The FoodShare look back period for client and non-client errors will be twelve months from the date of discovery, defined below. The look back period will remain at six years preceding the date of discovery for duplicate benefits (i.e.., receiving FoodShare for the same month in more than one state), FoodShare IPV, or trafficking claims.

Recoverable health care overpayments not based on fraud will have a look back period of twelve months from the date of discovery.

The lookback period for health care overpayments based on fraud convictions, a signed Intentional Health Care Program Violation Acknowledgement form, or a member receiving duplicate benefits is limited to six years preceding the date of discovery. For health care, duplicate benefits are defined as situations in which a member moved out of state, enrolled in another state's Medicaid program, and received services under Wisconsin Medicaid more than two months after the move occurred.

Example 1: Sue applies for FoodShare and BadgerCare Plus on November 6, 2021 and is found eligible for both programs. On January 20, 2022, the IM worker discovers the earned income was miscalculated on Sue's case. The IM worker correctly calculates the earned income and Sue is found ineligible for both FoodShare and BadgerCare Plus. The overpayment amount is over $500, and the overpayment claim is created on the same date the case was corrected. The look back period for FoodShare, based on

the date of discovery, is November through February. There is no overpayment for BadgerCare Plus because it was an agency error and therefore a non-recoverable overpayment.

Example 2: Steve has been receiving FoodShare for the last 18 months. The IM Worker receives verification on November 5 that Steve falsified his information with the agency, and he has been a resident of Illinois the entire time. Steve is not receiving FoodShare in Illinois. The agency does not pursue an IPV and the worker enters the overpayment claim on November 6 and a notice is sent to the member. The overpayment is considered client error and the look back period is reduced to twelve months from the date of discovery, December through November.

The look back period can extend back from the date of discovery to the date of application **if** the agency pursues an IPV by:

1. Having Steve agree to and sign a waiver of the administrative disqualification hearing; or
2. Steve signs a disqualification consent agreement after being referred for prosecution; or
3. Steve is convicted for the FoodShare violation in a local/state/federal court or a finding has been entered that an IPV has occurred in an Administrative Disqualification Hearing or judicial proceeding.

OVERPAYMENT CLAIMS MINIMUM THRESHOLD

For FoodShare, there is currently no threshold amount for overpayment claims against participating food units and a threshold of $125 for non-participating food units. For health care, there is currently no threshold amount for overpayment claims.

Beginning December 1, 2021, the minimum threshold **for each claim** is $500 for client and non-client error FoodShare overpayments for both participating and non-participating food units, and for recoverable health care overpayments. If the overpaid amount is less than $500, no claim will be established unless it meets one of the following criteria:

- Health care overpayments based on fraud convictions ~~or a signed Intentional Health Care Program Violation Acknowledgement form~~.
- FoodShare IPV claims
- FoodShare overpayments discovered through a State Quality Control (QC) review
- Overpayments related to a member receiving duplicate benefits. For FoodShare, duplicate benefits are defined as receiving benefits for the same month in more than one state or more than one case (except for those residing in a shelter for battered persons). For health care, duplicate benefits are defined as situations in which a member moved out of state, enrolled in another state's Medicaid program, and received services under Wisconsin Medicaid more than two months after the move occurred.

For members with overpayments for both FoodShare and health care, the threshold policy may result in the agency creating a claim for one program and not the other.

Example 3: After reviewing the case and gathering the appropriate verifications, the IM worker determines that Henry has a $250 overpayment for FoodShare and $2,700 overpayment for health care.

Based on the new minimum threshold policy, only a claim for the health care overpayment for $2,700 is created.

Example 4: After reviewing the case and gathering the appropriate verifications, the IM worker determines there are two periods during the lookback period when Shirley received FoodShare benefits for which she was not eligible: $250 during the period of September 1 – September 30 and $750 during the period of January 1 – March 31. Since the September period does not meet the $500 threshold, an overpayment claim must not be created for that period. An overpayment claim must be created for the January 1 – March 31 period since it is over the threshold.

DATE OF DISCOVERY DEFINITION

FoodShare currently defines the date of discovery as "the date the agency became aware of a potential overpayment" and this date is used to establish the look back period. Health care programs do not currently define the date of discovery.

Beginning December 1, 2021, FoodShare and health care programs will define the date of discovery as "the date the worker creates the overpayment claim in the system and triggers notice to the member."

For FoodShare, when the requested information needed to confirm the amount of an overpayment is not returned or is incomplete, the best available information, such as information obtained through SWICA or other data exchanges, may be used. Refer to overpayment policies in the FoodShare Wisconsin Handbook 7.3.1 Benefit Overpayment and 7.3.2 Calculating Overpayment Claim Amounts.

For health care, when the requested information needed to determine if an overpayment exists is not returned or is incomplete, the best available information is used to determine the overpayment. As an example, information obtained through SWICA or other data exchanges may be used as best available information for health care programs. Overpayment amounts are calculated differently for each health care program, refer to specific policies in the BadgerCare Plus Handbook 28 ~~Corrective Action~~ Overpayments and the Medicaid Eligibility Handbook 22.2 ~~Corrective Action~~ Overpayments.

Example 5: A FoodShare case is suspected of having an IPV. The IM worker schedules an Administrative Disqualification Hearing with DHA and following the hearing, the administrative law judge issues a decision that there was an IPV for FoodShare. The worker must now create the overpayment claim based on the six-year look back period. The date on which the claim is created in BRITS, that triggers the notice of overpayment, becomes the date of discovery.

Example 6: The IM worker discovers an unreported job through a SWICA wage match and requests verification of historical wages on October 1 with a verification due date of October 30 (30 days to supply verification). On October 15, the household returns information showing that the employment should have been reported in May. The worker creates an overpayment in BRITS and triggers notice of overpayment to the member on the same day. October 15 is the date of discovery because that is the date the overpayment was confirmed, and action was taken to notify the member.

If the verification was not received by the due date of October 30, the worker would use the best available information to calculate the overpayment. In this example, on October 31, the worker uses the

SWICA match to calculate the overpayment amount, creates the claim, and triggers notice to the member, making October 31 the date of discovery.

CONTACTS

BEOT CARES Information and Problem Resolution Center:
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DHS/DMS/BEEP/CH/RW