



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3277/1
EAW:amn

2017 SENATE BILL 255

May 17, 2017 - Introduced by Senators MARKLEIN, HARSDORF, OLSEN and STROEBEL, cosponsored by Representatives KOOYENGA, ROHRKASTE, BILLINGS, DUCHOW, HUTTON, KATSMA, KULP, MURPHY, RIPP, SUBECK and TITTL. Referred to Committee on Health and Human Services.

1 **AN ACT** *to repeal* 46.036 (5m) (b) 2., 49.34 (5m) (b) 2., 49.34 (5m) (b) 3., 49.343
2 (6) (a) 2. and 49.343 (6) (b); *to consolidate, renumber and amend* 49.343 (6)
3 (a) (intro.) and 1.; *to amend* 46.036 (4) (c), 46.036 (5m) (b) 1., 46.036 (5m) (e),
4 46.036 (5m) (em), 49.34 (4) (c), 49.34 (5m) (b) 1., 49.34 (5m) (em), 49.343 (5) (c),
5 49.343 (6) (c) and (d) and 301.08 (2) (e); and *to create* 46.036 (5m) (b) 3., 46.036
6 (5m) (b) 4., 49.34 (5m) (b) 4., 49.34 (5m) (b) 5., 301.08 (2) (em) and 301.08 (2) (em)
7 7. of the statutes; **relating to:** surplus retention limitations for providers of
8 rate-based services purchased by certain state and county departments and
9 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes certain changes with respect to the retention and disposition of surpluses generated by a provider of rate-based client services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services (county department).

Current law permits a nonprofit, nonstock corporation that contracts with DCF, DOC, DHS, or a county department to provide rate-based client services (provider)

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to retain up to 5 percent of the contract amount from any surplus revenues received under the contract. Current law permits a provider to use those retained funds only to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by that service.

This bill provides that a contract for a rate-based service must allow a provider to retain from a surplus up to 5 percent of the revenue received under the contract until a different percentage is determined by DCF, DOC, or DHS by rule. Any total annual surplus exceeding the amount the provider is allowed to retain under the bill must be refunded upon written request of the purchasers of the rate-based service. The bill also eliminates the restrictions on the expenditure of the surplus funds retained by the provider.

Under current law, if the provider accumulates funds from more than one contract period in an amount greater than 10 percent of all current contracts, the provider must, at the request of a purchaser, refund the purchaser's proportional share of that excess. The provider must then use any of that excess that is not refunded to a purchaser to reduce the provider's unit rate per client service in the next contract period. In addition, current law provides that if a provider has held an accumulated reserve of 10 percent or more of the amount of all current contracts for that rate-based service for four consecutive contract periods, the provider must apply 50 percent of those accumulated funds to reducing its unit rate per client service in the next contract period. This bill eliminates those 10 percent accumulated surplus retention limits.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.036 (4) (c) of the statutes is amended to read:

2 46.036 (4) (c) Unless waived by the department, biennially, or annually if
3 required under federal law, provide the purchaser with a certified financial and
4 compliance audit report if the care and services purchased exceed ~~\$25,000~~ \$100,000.

5 The audit shall follow standards that the department prescribes.

6 **SECTION 2.** 46.036 (5m) (b) 1. of the statutes is amended to read:

7 46.036 (5m) (b) 1. ~~Subject to subd. 2. and pars. (e) and (em), if~~ If revenue under
8 a contract for the provision of a rate-based service exceeds allowable costs incurred

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1 in the contract period, the contract shall allow the provider may to retain from the
2 surplus ~~generated by that rate-based service~~ up to 5 percent of the revenue received
3 under the contract. ~~A provider that retains a surplus under this subdivision shall~~
4 ~~use that retained surplus to cover a deficit between revenue and allowable costs~~
5 ~~incurred in any preceding or future contract period for the same rate-based service~~
6 ~~that generated the surplus or to address the programmatic needs of clients served~~
7 ~~by the same rate-based service that generated the surplus~~ unless a uniform rate is
8 established by rule under subd. 4., in which case the contract shall allow the provider
9 to retain the uniform percentage rate established by the rule. The retained surplus
10 is the property of the provider.

11 **SECTION 3.** 46.036 (5m) (b) 2. of the statutes is repealed.

12 **SECTION 4.** 46.036 (5m) (b) 3. of the statutes is created to read:

13 46.036 (5m) (b) 3. If on December 31 of any year the provider's accumulated
14 surplus from all contract periods ending during that year for a rate-based service
15 exceeds the allowable retention rate under subd. 1., the provider shall provide
16 written notice of that excess to all purchasers of the rate-based service. Upon the
17 written request of such a purchaser received no later than 6 months after the date
18 of the notice, the provider shall refund the purchaser's proportional share of that
19 excess. If the department determines based on an audit or fiscal review that the
20 amount of the excess identified by the provider was incorrect, the department may
21 seek to recover funds after the 6-month period has expired. The department shall
22 commence any audit or fiscal review under this subdivision within 6 years after the
23 end of the contract period.

24 **SECTION 5.** 46.036 (5m) (b) 4. of the statutes is created to read:

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1 46.036 (5m) (b) 4. The department, in consultation with the department of
2 children and families and the department of corrections, shall promulgate rules to
3 implement this subsection including all of the following:

4 a. Requiring that contracts for rate-based services under this subsection allow
5 a provider to retain from any surplus revenue up to 5 percent of the total revenue
6 received under the contract, or a different percentage rate determined by the
7 department. The percentage rate established under this subdivision shall apply
8 uniformly to all rate-based service contracts under this subsection.

9 b. Establishing a procedure for reviewing rate-based service contracts to
10 determine whether a contract complies with the provisions of this subsection.

11 **SECTION 6.** 46.036 (5m) (e) of the statutes is amended to read:

12 46.036 (5m) (e) Notwithstanding par. (b) ~~1. and 2.~~, the department or a county
13 department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that purchases care and
14 services from an inpatient alcohol and other drug abuse treatment program that is
15 not affiliated with a hospital and that is licensed as a community-based residential
16 facility, may allocate to the program an amount that is equal to the amount of
17 revenues received by the program that are in excess of the allowable costs incurred
18 in the period of a contract between the program and the department or the county
19 department for purchase of care and services under this section. The department or
20 the county department may make the allocation under this paragraph only if the
21 funds so allocated do not reduce any amount of unencumbered state aid to the
22 department or the county department that otherwise would lapse to the general
23 fund.

24 **SECTION 7.** 46.036 (5m) (em) of the statutes is amended to read:

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1 46.036 **(5m)** (em) Notwithstanding pars. (b) ~~1. and 2.~~ and (e), a county
2 department under s. 46.215, 51.42, or 51.437 providing client services in a county
3 having a population of 500,000 or more or a nonstock, nonprofit corporation
4 providing client services in such a county may not retain a surplus under par. (b) ~~1.,~~
5 ~~accumulate funds under par. (b) 2.,~~ or allocate an amount under par. (e) from
6 revenues that are used to meet the maintenance-of-effort requirement under the
7 federal temporary assistance for needy families program under 42 USC 601 to 619.

8 **SECTION 8.** 49.34 (4) (c) of the statutes is amended to read:

9 49.34 **(4)** (c) Unless waived by the department, biennially, or annually if
10 required under federal law, provide the purchaser with a certified financial and
11 compliance audit report if the care and services purchased exceed ~~\$25,000~~ \$100,000.
12 The audit shall follow standards that the department prescribes.

13 **SECTION 9.** 49.34 (5m) (b) 1. of the statutes is amended to read:

14 49.34 **(5m)** (b) 1. ~~Subject to subds. 2. and 3. and par. (em), if~~ If revenue under
15 a contract for the provision of a rate-based service exceeds allowable costs incurred
16 in the contract period, the contract shall allow the provider may to retain from the
17 surplus generated by that rate-based service up to 5 percent of the ~~contract amount.~~
18 ~~A provider that retains a surplus under this subdivision shall use that retained~~
19 ~~surplus to cover a deficit between revenue and allowable costs incurred in any~~
20 ~~preceding or future contract period for the same rate-based service that generated~~
21 ~~the surplus or to address the programmatic needs of clients served by the same~~
22 ~~rate-based service that generated the surplus. This subdivision does not apply to~~
23 ~~a child welfare agency that is authorized under s. 48.61 (7) to license foster homes,~~
24 ~~a group home, as defined in s. 48.02 (7), or a residential care center for children and~~
25 ~~youth, as defined in s. 48.02 (15d) revenue received under the contract unless a~~

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1 uniform rate is established by rule under subd. 5., in which case the contract shall
2 allow the provider to retain the uniform percentage rate established by the rule. The
3 retained surplus is the property of the provider.

4 **SECTION 10.** 49.34 (5m) (b) 2. of the statutes is repealed.

5 **SECTION 11.** 49.34 (5m) (b) 3. of the statutes is repealed.

6 **SECTION 12.** 49.34 (5m) (b) 4. of the statutes is created to read:

7 49.34 **(5m)** (b) 4. If on December 31 of any year the provider's accumulated
8 surplus from all contract periods ending during that year for a rate-based service
9 exceeds the allowable retention rate under subd. 1., the provider shall provide
10 written notice of that excess to all purchasers of the rate-based service. Upon the
11 written request of such a purchaser received no later than 6 months after the date
12 of the notice, the provider shall refund the purchaser's proportional share of that
13 excess. If the department determines based on an audit or fiscal review that the
14 amount of the excess identified by the provider was incorrect, the department may
15 seek to recover funds after the 6-month period has expired. The department shall
16 commence any audit or fiscal review under this subdivision within 6 years after the
17 end of the contract period.

18 **SECTION 13.** 49.34 (5m) (b) 5. of the statutes is created to read:

19 49.34 **(5m)** (b) 5. The department, in consultation with the department of
20 health services and the department of corrections, shall promulgate rules to
21 implement this subsection including all of the following:

22 a. Requiring that contracts for rate-based services under this subsection allow
23 a provider to retain from any surplus revenue up to 5 percent of the total revenue
24 received under the contract, or a different percentage rate determined by the

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1 department. The percentage rate established under this subdivision shall apply
2 uniformly to all rate-based service contracts under this subsection.

3 b. Establishing a procedure for reviewing rate-based service contracts to
4 determine whether a contract complies with the provisions of this subsection.

5 **SECTION 14.** 49.34 (5m) (em) of the statutes is amended to read:

6 49.34 **(5m)** (em) Notwithstanding par. (b) ~~1. and 2.~~, a county department under
7 s. 46.215, 51.42, or 51.437 providing client services in a county having a population
8 of 750,000 or more or a nonstock, nonprofit corporation providing client services in
9 such a county may not retain a surplus generated by a rate-based service or
10 accumulate funds from more than one contract period for a rate-based service from
11 revenues that are used to meet the maintenance-of-effort requirement under the
12 federal temporary assistance for needy families program under 42 USC 601 to 619.

13 **SECTION 15.** 49.343 (5) (c) of the statutes is amended to read:

14 49.343 **(5)** (c) The identification of the measurements specified in sub. (6) (a)
15 and the development of the payment levels specified in sub. (6) (a).

16 **SECTION 16.** 49.343 (6) (a) (intro.) and 1. of the statutes are consolidated,
17 renumbered 49.343 (6) (a) and amended to read:

18 49.343 **(6)** (a) For purposes of implementing a performance-based contracting
19 system, the department, in cooperation with the advisory committee created under
20 sub. (5), shall do all of the following: ~~1. Identify~~ identify measurements by which to
21 evaluate the performance of providers in meeting both the goals for the children
22 placed in their care and the goals for the out-of-home care system in this state and
23 adjust, as needed, those measurements.

24 **SECTION 17.** 49.343 (6) (a) 2. of the statutes is repealed.

25 **SECTION 18.** 49.343 (6) (b) of the statutes is repealed.

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1 **SECTION 19.** 49.343 (6) (c) and (d) of the statutes are amended to read:

2 49.343 **(6)** (c) Beginning on January 1, 2011, the department shall select a
3 representative sample of providers and evaluate the performance of those providers
4 in attaining the measurements identified under par. (a) ~~1~~. Based on that evaluation,
5 the department, in consultation with the advisory committee created under sub. (5),
6 shall adjust, as needed, those measurements by December 31, 2011.

7 (d) Beginning on January 1, 2013, the department shall evaluate the
8 performance of all providers in this state in attaining the measurements identified
9 under par. (a) ~~1~~. Based on that evaluation, the department, in consultation with the
10 advisory committee created under sub. (5), shall adjust, as needed, those
11 measurements by December 31, 2013, and in subsequent years as determined
12 necessary by the department.

13 **SECTION 20.** 301.08 (2) (e) of the statutes is amended to read:

14 301.08 **(2)** (e) The ~~Except as provided in par. (em),~~ the purchaser shall recover
15 from provider agencies money paid in excess of the conditions of the contract from
16 subsequent payments made to the provider.

17 **SECTION 21.** 301.08 (2) (em) of the statutes is created to read:

18 301.08 **(2)** (em) 1. In this paragraph:

19 a. "Provider" means a nonstock corporation organized under ch. 181 that is a
20 nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this
21 section to provide client services on the basis of a unit rate per client service or a
22 county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that contracts
23 under this section to provide client services on the basis of a unit rate per client
24 service.

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1 b. “Rate-based service” means a service or a group of services, as determined
2 by the department, that is reimbursed through a prospectively set rate and that is
3 distinguishable from other services or groups of services by the purpose for which
4 funds are provided for that service or group of services and by the source of funding
5 for that service or group of services.

6 2. If revenue under a contract for the provision of a rate-based service exceeds
7 allowable costs incurred in the contract period, the contract shall allow the provider
8 to retain from the surplus up to 5 percent of the revenue received under the contract
9 unless a uniform rate is established by rule under subd. 7., in which case the contract
10 shall allow the provider to retain the uniform percentage rate established by the rule.
11 The retained surplus is the property of the provider.

12 3. If on December 31 of any year the provider’s accumulated surplus from all
13 contract periods ending during that year for a rate-based service exceeds the
14 allowable retention rate under subd. 2., the provider shall provide written notice of
15 that excess to all purchasers of the rate-based service. Upon the written request of
16 such a purchaser received no later than 6 months after the date of the notice, the
17 provider shall refund the purchaser’s proportional share of that excess. If the
18 department determines based on an audit or fiscal review that the amount of the
19 excess identified by the provider was incorrect, the department may seek to recover
20 funds after the 6-month period has expired. The department shall commence any
21 audit or fiscal review under this subdivision within 6 years after the end of the
22 contract period.

23 5. Notwithstanding subd. 2., a county department under s. 46.215 providing
24 client services in a county having a population of 750,000 or more or a nonstock,
25 nonprofit corporation providing client services in such a county may not retain a

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1 surplus generated by a rate-based service or accumulate funds from more than one
2 contract period for a rate-based service from revenues that are used to meet the
3 maintenance-of-effort requirement under the federal temporary assistance for
4 needy families program under 42 USC 601 to 619.

5 6. All providers that are subject to this paragraph shall comply with any
6 financial reporting and auditing requirements that the department may prescribe.
7 Those requirements shall include a requirement that a provider provide to any
8 purchaser and the department any information that the department needs to claim
9 federal reimbursement for the cost of any services purchased from the provider and
10 a requirement that a provider provide audit reports to any purchaser and the
11 department according to standards specified in the provider's contract and any other
12 standards that the department may prescribe.

13 **SECTION 22.** 301.08 (2) (em) 7. of the statutes is created to read:

14 301.08 (2) (em) 7. The department, in consultation with the department of
15 health services and the department of children and families, shall promulgate rules
16 to implement this paragraph including all of the following:

17 a. Requiring that contracts for rate-based services under this subsection allow
18 a provider to retain from any surplus revenue up to 5 percent of the total revenue
19 received under the contract, or a different percentage rate determined by the
20 department. The percentage rate established under this subdivision shall apply
21 uniformly to all rate-based service contracts under this paragraph.

22 b. Establishing a procedure for reviewing rate-based service contracts to
23 determine whether a contract complies with the provisions of this paragraph.

24 **SECTION 23. Nonstatutory provisions.**

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1 (1) RATE-BASED SERVICE CONTRACTS. If on the effective date of this subsection,
2 the amount accumulated by a provider, as defined in sections 46.036 (5m) (a) 1., 49.34
3 (5m) (a) 1., and 301.08 (2) (em) 1. a. of the statutes, from all contract periods ending
4 before that date for all rate-based services, as defined in sections 46.036 (5m) (a) 2.,
5 49.34 (5m) (a) 2., and 301.08 (2) (em) 1. b. of the statutes, provided by the provider
6 exceeds 10 percent of the provider's total contract amount for all rate-based services
7 in the year before the effective date of this subsection, the provider shall provide
8 written notice of that excess to all purchasers of that rate-based service and, upon
9 the written request of such a purchaser received no later than 6 months after the date
10 of the notice, shall return to the purchaser the purchaser's proportional share of that
11 excess. If the department of health services under section 46.036 (5m) of the statutes,
12 the department of children and families under section 49.34 (5m) of the statutes, or
13 the department of corrections under section 301.08 (2) (em) of the statutes
14 determines based on an audit or fiscal review that the amount of the excess identified
15 by the provider was incorrect, the department may seek to recover funds after the
16 6-month period has expired. The department shall commence any audit or fiscal
17 review under this subsection within 6 years after the end of the contract period.

SECTION 24. Initial applicability.

18
19 (1) RATE-BASED SERVICE CONTRACTS. This act first applies to a contract under
20 which a provider commences performance on the effective date of this subsection.

SECTION 25. Effective date.

21
22 (1) RATE-BASED SERVICE CONTRACTS. This act takes effect on the January 1 after
23 publication.

24 (END)