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SB-726 CalWORKs: benefits overpayment. (2017-2018)

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Senate Bill No. 726

CHAPTER 930

An act to amend, repeal, and add Section 11004 of the Welfare and Institutions Code, relating to CalWORKs.

[Approved by Governor September 29, 2018. Filed with Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 726, Wiener. CalWORKs: benefits overpayment.

Existing federal law provides for allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states. Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which, through a combination of state and county funds and federal funds received through the TANF program, each county provides cash assistance and other benefits to qualified low-income families.

Existing law authorizes current and future grants payable to an assistance unit to be reduced due to prior overpayments. Existing law prohibits a county from attempting to recover payments when the outstanding overpayments are less than \$35, if the individual is no longer receiving aid under the CalWORKs program.

This bill would instead set the limit of the outstanding overpayments at \$250, or a higher threshold established by the State Department of Social Services, if the department determines that a higher threshold is more cost effective. The bill would prohibit the department from establishing a lower threshold. The bill would require a county to expunge an overpayment if the county determines that the overpayment has been caused by a major systemic error or negligence. The bill would make conforming changes to related provisions.

Existing law requires, if an overpayment has been made to an assistance unit that is no longer receiving public social services, that the recovery be made by an appropriate action under state law against the income or resources of the individual responsible for the overpayment or against the family.

This bill would instead provide that, if an overpayment has been made to an assistance unit that is no longer receiving public social services, recovery shall be made by appropriate action under state law and, except in cases involving an investigation into suspected fraud, deem an overpayment uncollectible and expunge that overpayment if the individual responsible for the overpayment has not received aid under CalWORKs for 36 consecutive months or longer.

Existing law prohibits the commencement of a civil or criminal action against a person based on alleged unlawful application for or receipt of public social services if the case record of the person has been destroyed after the required retention period.

This bill would also prohibit the commencement of the action if the case record or any consumer credit report used in the case has not been made available or has been destroyed, as specified.

This bill would authorize the State Department of Social Services to implement these provisions through an all-county letter or similar instruction until emergency regulations are adopted, and would require the department to adopt emergency regulations on or before January 1, 2021, and to adopt final regulations thereafter.

This bill would make its provisions operative on July 1, 2019.

By increasing the duties of county agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing law continuously appropriates moneys from the General Fund to defray a portion of county costs under the CalWORKS program.

This bill would instead provide that the continuous appropriation would not be made for purposes of implementing the bill.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11004 of the Welfare and Institutions Code is amended to read:

11004. The provisions of this code relative to public social services for which state grants-in-aid are made to the counties shall be administered fairly to the end that all persons who are eligible and apply for such public social services shall receive the assistance to which they are entitled promptly, with due consideration for the needs of applicants and the safeguarding of public funds.

(a) Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility and grant.

(b) Any applicant for, or recipient or payee of, such public social services shall be responsible for reporting accurately and completely within his or her competence those facts required of him or her pursuant to subdivision (a) and to report promptly any changes in those facts.

(c) Current and future grants payable to an assistance unit may be reduced because of prior overpayments. In cases where the overpayment was caused by agency error, grant payments shall be reduced by 5 percent of the maximum aid payment of the assistance unit. Grant payments to be adjusted because of prior overpayments because of any other reason shall be reduced by 10 percent of the maximum aid payments for the assistance unit. A recipient may have an overpayment adjustment in excess of the amounts allowable under this section if the recipient requests it.

(d) No determination of ineligibility shall be made retrospectively so as to result in an assessment of an overpayment when there is a failure on the part of an applicant or recipient to perform an act constituting a condition of eligibility, if the failure is caused by an error made by a state agency or a county welfare department, and if the amount of the grant received by the applicant or recipient would not have been different had the act been performed.

(e) Prior to effectuating any reduction of current grants to recover past overpayments, the recipient shall be advised of the proposed reduction and of his or her entitlement to a hearing on the propriety of the reduction.

(f) If the department determines after a hearing that an overpayment has occurred, the county providing the public social services shall seek to recover, in accordance with subdivision (c), the full amount of the overpayment to the assistance unit, including any amount paid while the hearing process was pending. Such adjustment shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of such recovery the extent of liability for restitution.

(g) If the individual is no longer receiving aid under Chapter 2 (commencing with Section 11200) recovery of overpayments received under that chapter shall not be attempted where the outstanding overpayments are less than thirty-five dollars (\$35). Where the overpayment amounts owed are thirty-five dollars (\$35) or more, reasonable cost-effective efforts at collection shall be implemented. Reasonable efforts shall include notification of the amount of the overpayment and that repayment is required. The department shall define reasonable cost-effective collection methods. In cases involving fraud, every effort shall be made to collect the overpayments regardless of the amount.

(h) If the individual responsible for the overpayment to the assistance unit is no longer eligible for public social services or if he or she becomes a member of another assistance unit, recoupment of overpayments shall be made against the individual or his or

her present assistance unit, or both.

(i) Where an overpayment has been made to an assistance unit which is no longer receiving public social services, recovery shall be made by appropriate action under state law against the income or resources of the individual responsible for the overpayment or against the family.

(j) No civil or criminal action may be commenced against any person based on alleged unlawful application for or receipt of public social services, where the case record of such person has been destroyed after the expiration of the four-year retention period pursuant to Section 10851.

(k) (1) When an underpayment or denial of public social services occurs and, as a result, the applicant or recipient does not receive the amount to which he or she is entitled, the county shall provide public social services equal to the full amount of the underpayment unless prohibited by federal law. In cases that have both an underpayment and an overpayment, the underpayment shall be offset against the overpayment prior to correcting any remaining underpayment.

(2) Any corrective payments made pursuant to this subdivision shall be disregarded in determining the income of the family and shall be disregarded in determining the resources of the family in the month the corrective payment is made and in the following month.

(l) This subdivision shall be applicable only to applicants, recipients and payees under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9. Any suits to recover overpayments described in subdivision (f) shall be brought on behalf of the county by the county counsel unless the board of supervisors delegates such duty to the district attorney by ordinance or resolution.

(m) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed.

SEC. 2. Section 11004 is added to the Welfare and Institutions Code, to read:

11004. The provisions of this code relative to public social services for which state grants-in-aid are made to the counties shall be administered fairly to the end that all persons who are eligible and apply for those public social services shall receive the assistance to which they are entitled promptly, with due consideration for the needs of applicants and the safeguarding of public funds.

(a) Any applicant for, or recipient or payee of, those public social services shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility and grant.

(b) Any applicant for, or recipient or payee of, those public social services shall be responsible for reporting accurately and completely within his or her competence those facts required of him or her pursuant to subdivision (a) and to promptly report any changes in those facts.

(c) Current and future grants payable to an assistance unit may be reduced because of prior overpayments. In cases in which the overpayment was caused by agency error, grant payments shall be reduced by 5 percent of the maximum aid payment of the assistance unit. Grant payments to be adjusted because of prior overpayments because of any other reason shall be reduced by 10 percent of the maximum aid payments for the assistance unit. A recipient may have an overpayment adjustment in excess of the amounts allowable under this section if the recipient requests it.

(d) A determination of ineligibility shall not be made retrospectively so as to result in an assessment of an overpayment when there is a failure on the part of an applicant or recipient to perform an act constituting a condition of eligibility, if the failure is caused by an error made by a state agency or a county welfare department, and if the amount of the grant received by the applicant or recipient would not have been different had the act been performed.

(e) Prior to effectuating any reduction of current grants to recover past overpayments, the recipient shall be advised of the proposed reduction and of his or her entitlement to a hearing on the propriety of the reduction.

(f) If the department determines after a hearing that an overpayment has occurred, the county providing the public social services shall seek to recover the overpayment in accordance with subdivision (c), including any amount paid while the hearing process was pending. That adjustment shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of such recovery the extent of liability for restitution.

(g) (1) If the individual responsible for an overpayment is no longer receiving aid under Chapter 2 (commencing with Section 11200), recovery of overpayments received under that chapter shall not be attempted when the outstanding overpayments are less than two hundred fifty dollars (\$250). When an overpayment collection is attempted, reasonable cost-effective efforts at collection shall be implemented. Reasonable efforts shall include notification of the amount of the overpayment and that

repayment is required. The department shall define reasonable cost-effective collection methods. In cases involving fraud, every effort shall be made to collect the overpayments regardless of the amount.

(2) The department may establish a threshold higher than two hundred fifty dollars (\$250) if it determines that a higher threshold is more cost effective, but the department shall not set a lower threshold than that amount.

(3) Notwithstanding subdivision (c), a county shall expunge an overpayment if the county determines that the overpayment has been caused by a major systemic error or negligence, as those terms are defined by the department.

(h) If the individual responsible for the overpayment to the assistance unit becomes a member of another assistance unit, recovery of overpayments shall be made against the individual or his or her present assistance unit, or both.

(i) (1) If an overpayment has been made to an assistance unit that is no longer receiving public social services, recovery shall be made by appropriate action under state law.

(2) Except in cases involving an investigation into suspected fraud, if the individual responsible for the overpayment has not received aid under Chapter 2 (commencing with Section 11200) for 36 consecutive months or longer, the county shall deem an overpayment uncollectible and expunge, in accordance with existing expungement procedures, an overpayment received under that chapter.

(j) A civil or criminal action shall not be commenced against any person based on alleged unlawful application for or receipt of public social services if the case record, or any consumer credit report used in the civil or criminal case of that person for the purpose of determining that the overpayment, has not been made available to that person or has been destroyed after the expiration of the three-year retention period pursuant to Section 10851.

(k) (1) When an underpayment or denial of public social services occurs and, as a result, the applicant or recipient does not receive the amount to which he or she is entitled, the county shall provide public social services equal to the full amount of the underpayment unless prohibited by federal law. In cases that have both an underpayment and an overpayment, the underpayment shall be offset against the overpayment prior to correcting any remaining underpayment.

(2) Any corrective payments made pursuant to this subdivision shall be disregarded in determining the income of the family and shall be disregarded in determining the resources of the family in the month the corrective payment is made and in the following month.

(l) This subdivision shall be applicable only to applicants, recipients and payees under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9. Any suits to recover overpayments described in subdivision (f) shall be brought on behalf of the county by the county counsel unless the board of supervisors delegates that duty to the district attorney by ordinance or resolution.

(m) This section shall become operative on July 1, 2019.

SEC. 3. (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement and administer this act through an all-county letter or similar instruction until emergency regulations are adopted.

(b) The department shall adopt emergency regulations implementing this act on or before January 1, 2021. The department may readopt any emergency regulation authorized by this subdivision that is the same as, or substantially equivalent to, any emergency regulation previously adopted pursuant to this section. The initial adoption of regulations pursuant to this subdivision and one readoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State, and each shall remain in effect for no more than 180 days, by which time final regulations shall be adopted.

SEC. 4. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for purposes of this act.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.