



FIRST READING



ILLINOIS GENERAL ASSEMBLY LEGISLATIVE RESEARCH UNIT

VOLUME 25, NO. 4

MAY 2012

States Step Up Efforts to Fight Medicaid Fraud

Health care fraud and abuse—especially in Medicaid—is a rising concern of states and the federal government. The National Conference of State Legislatures (NCSL) says state Medicaid fraud control offices saw rapid increases in recent years in the number and sophistication of schemes targeting Medicaid programs. NCSL reported in 2010 that fraud and abuse took 3% to 10% of Medicaid payments nationwide, but the average state recovery rate was only 0.09%. The U.S. Department of Health and Human Services estimated that the federal share of improper Medicaid payments in fiscal year 2010 was \$22.5 billion—9.4% of federal Medicaid spending that year.

Health care fraud and abuse may be committed by patients, providers, and/or insurers. Patients may file claims for services not received; forge or alter receipts; or get unneeded medications or products to sell illegally. Providers may bill for services not provided; bill for a more costly service than the one provided; or order unneeded tests. Insurers might overstate their costs for claims. NCSL says that about 72% of health care fraud is committed by medical providers; 10% by patients; and the rest by others, including insurers.

State health care fraud and abuse control programs seek to reduce opportunities to defraud Medicaid; recoup payments based on false claims; and encourage strict compliance with fraud and abuse laws.

The federal government and states are increasing their efforts to prevent fraud and abuse. Every

state except North Dakota has a Medicaid Fraud Control Unit (MFCU) to investigate fraud, waste, and abuse by administrators and providers. These offices, which must be separate from state Medicaid agencies, are 75% federally funded. They employ auditors, lawyers, investigators, and other personnel needed to perform their duties. Some states including Illinois have another office, such as an Inspector General, to investigate fraud and abuse in Medicaid or other health care payment programs.

New York and Texas—the states with the largest Medicaid budgets—have very large and active agencies that use data analysis to recoup misused funds or prevent their misuse. Organizations that research Medicaid fraud note those two states for the structures they use to prevent and fight Medicaid abuse, rather than for any specific practices they employ.

This article describes some federal laws on Medicaid fraud and abuse, and some states' actions to detect and prevent it. The information on other states' actions is from a number of sources that cited such programs as noteworthy. States are typically closed-mouthed about details of their Medicaid antifraud programs, so it is not possible to compare the actions of all states to determine which do the most—or which practices other states use that Illinois does not. Illinois may already have taken some or even all of these actions in some form.

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Federal Law

The federal Patient Protection and Affordable Care Act (2010)—which made many changes to health insurance requirements in the U.S.—also included some provisions meant to prevent Medicaid fraud, waste, and abuse. For instance, it required the Secretary of Health and Human Services to establish a Medicaid provider screening program. The Secretary sets levels of screening based on the risk of fraud, waste, and abuse posed by each category of provider. Screening must involve a license check; it may also include a criminal background check, fingerprinting, unscheduled site visits, database checks, and other methods. The Secretary may apply stricter oversight temporarily to some new providers. States have to comply with those requirements as a condition of getting federal Medicaid matching funds. They must also contract with recovery audit contractors to identify underpayments and overpayments, and to recover overpayments.

A state must suspend payments to a Medicaid provider while investigating a credible charge that the provider committed fraud (as defined by the state under federal regulations). State Medicaid plans must provide for termination of any provider or supplier that is terminated under Medicare, or under another state's

Medicaid plan, to make it harder for fraudulent providers or suppliers to move between programs or states.

Illinois Actions

Illinois' Medicaid Fraud Control Unit is in the Department of State Police. The Department of Healthcare and Family Services has an Office of Inspector General (OIG) to oversee the integrity of its functions, including Medicaid. Some of the actions the OIG has taken to detect and prevent Medicaid fraud are:

- Use of advanced computer technology to research and stop trends that may lead to abuse.
- Pre-enrollment verifications for non-emergency transportation and durable medical equipment providers.
- Monitoring of selected providers to confirm that services were actually provided.
- Targeting of Medicaid applications that contain suspicious information or meet special criteria for pre-eligibility investigations, to prevent ineligible persons from receiving benefits.
- Post-payment compliance audits, quality-of-care reviews, and Medicaid eligibility reviews.
- Imposition of sanctions, suspensions, or terminations of Medicaid providers found to have abused or defrauded the system.

- Restriction to a single physician or pharmacy for up to 24 months for Medicaid patients using services excessively.

Two nearly identical House bills introduced this year—H.B.'s 4118 (Feigenholtz) and 4635 (Lilly)—proposed a variety of methods to prevent waste, fraud, and abuse in the Medicaid and Children's Health Insurance Programs. Actions to be required included:

- (1) Provider data verification and provider screening technology to prevent inappropriate payments to sanctioned, retired, or deceased providers, or incorrect addresses.
- (2) State-of-the-art clinical code editing technology, and predictive modeling and analytics technologies, to improve claims and coding accuracy and identify billing or usage patterns that present a high risk of fraud before payment is made.
- (3) Fraud investigative services that combine retrospective claims analysis with prospective waste, fraud, and abuse detection techniques.

The state would contract for these services using a shared savings model, in which providers of these services would get a percentage of savings achieved. Both bills were assigned to a House committee but in March were re-referred to the Rules Committee for lack of action.

Senate Bill 2840 (Mulroe-Raoul—Cassidy) as amended in the Senate would require that all vendors, before enrolling in Medicaid, be subject to increased oversight, screening, and review based on categories of risk of fraud, waste, and abuse. Public agencies would be required to allow the Department of Health-care and Family Services access to all data needed for eligibility and payment verifications, and to provide such data to the Inspector General for Medicaid integrity functions and oversight purposes. The bill passed the Senate and was in the House Executive Committee at press time.

New York

The New York State Department of Health administers New York's Medicaid program. Administratively under it is the Office of the Medicaid Inspector General (OMIG). It coordinates state oversight of at least 8 state departments', offices', and commissions' Medicaid spending. It is charged with preventing and detecting fraud and abusive and wasteful practices in Medicaid. It can pursue civil actions against persons or organizations to recover funds; it refers criminal cases to the Attorney General's MFCU and other law enforcement agencies.

The OMIG has an \$80 million budget in FY 2012 to oversee the nation's largest Medicaid program (with a nearly \$55 billion budget). Its five divisions, and several other offices, address many aspects of Medicaid compliance, fraud prevention, and funds recovery.

The OMIG reports moving from a "pay and chase" model to one of cost avoidance and provider compliance. Using teams with experts who may include data analysts, auditors, and administrators, OMIG works to learn some of the basic causes of fraud and abuse, so it can identify cases of concern and correct problems before they are serious. By focusing each team on a specific service category, it diversifies its expertise and helps ensure that laws and regulations are interpreted and enforced consistently statewide.

Data analysis is a large part of OMIG's antifraud efforts. But it says knowledge of each industry is vital in directing its data mining. An example is its recent pharmacy inventory verification review teams, led by pharmacists who could direct the analyses based on their industry knowledge. OMIG reports that such experts save time as well as increasing its accuracy and consistency.

The New York State Department of Law, headed by its Attorney General, houses the state's MFCU. It has seven offices around the state as well as specialized divisions for complex civil fraud investigations; data organization and maintenance for complex data analysis; and patient protection in New York City.

Texas

The Texas Health and Human Services Commission (HHSC), which oversees the state's Medicaid program, and the Texas Attorney General's office have a memorandum of understanding to ensure cooperation between the two agencies

in investigating and prosecuting Medicaid fraud allegations.

The HHSC's Office of the Inspector General (OIG) is charged with finding waste, fraud, and abuse in the state's health services programs, and taking administrative actions to recoup funds and impose penalties. Although this includes identifying Medicaid fraud, the OIG's oversight is not confined to the state's Medicaid program.

The Medicaid Provider Integrity section of the OIG investigates Medicaid fraud allegations. It refers cases possibly involving criminal conduct to the state's MFCU for criminal investigation; it also refers cases to licensing boards, law enforcement agencies, or the OIG's Sanctions section for action.

In addition to pursuing settlements, administrative hearings, and legal actions itself, the OIG's Sanctions section works with the Attorney General to ensure that convicted providers are excluded from the state's Medicaid program; collect restitution in criminal cases; and impose payment holds.

About \$46 million of the HHSC's approximately \$15 billion budget goes to the OIG. The OIG is divided into regional teams, with experts on various topics on each team. Field experts also belong to provider specialty teams that allow communication on trends and enforcement mechanisms statewide.

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States Step Up Efforts to Fight Medicaid Fraud

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The OIG credits a visible, hands-on approach, including over 650 persons around the state on teams working directly with Medicaid providers, for its success against Medicaid fraud. An OIG spokesman recently used five concepts to describe its approach to finding and fighting Medicaid fraud:

- (1) It focuses on provider fraud, because providers commit the most fraud and may misuse funds for services to many Medicaid patients. Over 91% of funds recovered by OIG since FY 2004 were from providers.
- (2) It limits losses by putting a hold on funds when there is a credible allegation of fraud.
- (3) It assigns teams of experts to handle cases on similar topics, allowing investigators to increase their speed and accuracy in investigating identified problem areas.
- (4) It has shifted some of the focus of its investigative units to training and cooperating with managed-care organizations. This allows more opportunities to prevent fraud and catch unintentional errors early.
- (5) It uses data analysis to protect program integrity. It has also identified a new mechanism for doing so: “graph

pattern analysis.” In this type of analysis, OIG staff maps Medicaid spending and identifies suspicious spending patterns in the state. This allows the OIG to make better use of large amounts of data from multiple databases to identify suspicious activity for investigation.

Texas’ MFCU is in the Attorney General’s office. It has a central office and eight field offices around the state.

The Attorney General’s office also has a Civil Medicaid Fraud Division to prosecute cases under the state’s Medicaid fraud prevention law. Among other remedies, it can recover funds and suspend or revoke Medicaid provider agreements and provider licenses. State law allows any member of the public to bring an allegation of alleged Medicaid fraud to the Division on the state’s behalf. The Division determines whether to prosecute such a charge; if it does not, the whistleblower can file suit.

Other States

The federal Centers for Medicare and Medicaid Services conducts triennial reviews of state Medicaid fraud operations, and issues annual reports on best practices of the group of states reviewed each year. Its June 2011 report addressed seven states and the District of Columbia. It described good practices in several, which are briefly described below.

Kentucky

Kentucky has an especially thorough provider enrollment and re-enrollment process. All providers must be enrolled by state staff, who check three databases of persons who have been excluded from federal programs. State-sanctioned providers are listed on a state Website. Kentucky’s Medicaid program integrity area also has access to a database of all controlled substance prescriptions filled in the state, helping it identify unusual prescription activity and reduce the time and cost of prescription fraud investigations. The state Department for Medicaid Services may terminate Medicaid providers at its discretion, allowing problem providers to be removed before questionable payments pile up. A memorandum of understanding among the state Medicaid agency, state Office of Inspector General, and Medicaid Fraud Control Unit lists each agency’s responsibilities and improves coordination among them.

Louisiana

Non-emergency medical transportation providers applying for Medicaid certification, if an owner or co-owner has been convicted of a crime, must be verified with the state’s Medicaid program integrity area to be certified. Prior authorization by an organization that contracts with the state Medicaid agency for this purpose is required for all transportation services, and a Medicaid Transportation form must be signed by the beneficiary, provider, and driver as proof of service. The state’s Medicaid program

integrity staff works closely with its provider enrollment contractor; all processes of the contractor must be approved by state staff.

Tennessee

A software program is used to verify and validate managed-care data submissions, cutting errors. A new law makes it a felony to lie or willfully withhold evidence in connection with a fraud investigation. The Medicaid Integrity Program report says intent to defraud can be hard to prove, but the new law makes it easier for the state to get a criminal conviction (and thus exclude a problem provider from Medicaid) because there is a lower standard of proof that a provider lied or withheld information during an investigation. A Provider Fraud Task Force established in 2007 is credited with improving collaboration among state entities involved in Medicaid.

District of Columbia

The District identified its durable medical equipment (DME) enrollment process as being effective. Pre-enrollment site visits are required at all DME suppliers within 30 miles of the District's Medicaid agency, to verify application information. Suppliers beyond that radius must have telephone interviews. New DME providers must attend an orientation that includes fraud and abuse training, and re-enroll every 3 years. The District also assigns staff members to specific provider and service types, to increase their familiarity with those areas and so improve effectiveness.

Miscellaneous states

A recent Alabama law requires each mobile dentistry operation to have an official business address in the state; keep records at that address; be associated with an established dental facility; and provide an information sheet to patients at the end of each visit. The law is meant to help prevent dental fraud and abuse in Medicaid.

Arizona sponsors a semi-annual meeting for managed-care organization compliance officers, Medicaid program integrity staff, and other state personnel involved in Medicaid, where they are updated and trained in fraud and abuse issues. The state reported an increased number of fraud referrals from managed-care organizations due to the meetings. Kentucky also reported that quarterly meetings between state staff and managed-care organizations have been effective.

Digital Card Technology

Some states have proposed or implemented biometric technology in Medicaid cards to reduce fraud. For example, a 2011 North Carolina law established a Smart Card Pilot Program to replace current Medicaid cards. The pilot program is to do all of the following:

- (1) Authenticate recipients at the start and end of each "point of transaction" to prevent card sharing and other forms of fraud.

- (2) Deny ineligible persons at points of transaction.
- (3) Authenticate providers at points of transaction to prevent phantom billing and other kinds of provider fraud.
- (4) Secure and protect recipients' personal identity and information.
- (5) Reduce total Medicaid spending by reducing the average cost per recipient.

In October 2011, Texas began issuing digital Medicaid cards in lieu of monthly letters for clients to show to providers. Providers swipe the cards to verify client eligibility. They also can check on clients' information, including eligibility and history of services, at a secure Website. □

Sarah E. Franklin, Senior Research Associate and Thomas J. Bazan, Research Associate

"How many legs does a dog have if you call the tail a leg? Four. Calling a tail a leg doesn't make it a leg."
Abraham Lincoln

BrainyQuote.com

Gestation Stalls for Sows Bring Controversy

Most sows on U.S. farms are kept in gestation stalls during gestation. Animal-rights groups such as the Humane Society of the United States condemn gestation stalls as inhumane. Scientific evidence does not conclusively support any specific type of sow housing. Gestation stalls may pose some physical and behavioral health concerns for sows; but it is not clear that other housing systems prevent similar health problems. Despite the possible advantages of group housing for sows, cost is a consideration, as a large-scale conversion from gestation stalls could raise prices for farmers and consumers. This article describes the use of gestation stalls; issues involved in housing sows; current bans on gestation stalls; industry positions; and economic issues.

Types of Housing for Sows

Gestation stalls (or crates) are used to hold individual sows during pregnancy. Stalls are generally 2 feet wide and 7 feet long, allowing sows some movement but usually not allowing them to turn around. Sows may have social interaction only with the sows in the stalls directly on either side. Typically, stalls are made of tubular metal frames with a feed trough and a water supply at the front and a slatted floor to allow excreta to drop to a pit below; most stalls do not have bedding. Sows typically spend 15 weeks of their 18-week reproductive cycle in a gestation

stall; the other 3 weeks are usually spent in a farrowing crate. (“Farrowing” means the birthing period of a sow.)

A farrowing crate has separate but connected areas for a sow and her piglets. This allows the piglets to feed but also prevents the sow from accidentally crushing a piglet. Farrowing crates also allow farmers to regulate the temperature on each side, keeping the sow cool and the piglets warm. In general, farrowing crates have not become an issue for animal welfare advocates. This is likely due to the short period of confinement (3 weeks) and the protection that crates provide to piglets.

Group sow housing, an alternative to gestation stalls, occurs in more variations than gestation stalls. Group housing may be in fully enclosed buildings; in open-fronted buildings; in buildings with access to the outdoors; or outdoors but with temporary shelters provided. The size of the group, the amount of space per sow, the type of flooring or ground, and the type of feeding system also varies.

History of Gestation Stalls

Swine farmers’ adoption of gestation stalls is a reflection of the move from outdoor swine farming to more efficient indoor farming, and of the major restructuring of the swine industry in the



1990s from smaller farms to consolidated corporate producers. Between 1990 and 2006 the number of swine sites in the U.S. dropped from 268,140 to 65,940, but pig output did not decline. By 2000, over half of the country’s swine were in the 50 largest hog farms.

The U.S. Department of Agriculture’s Livestock Behavior Research Unit summarized changes in sow housing below:

Over the last few decades, sow housing has generally moved from somewhat extensive systems towards intensive systems, with sows housed indoors, in non-bedded individual enclosures called gestation crates or stalls. These housing systems offer some benefits for the farmer, such as housing more sows per unit area compared with loose housing systems, incorporation of a mechanized manure handling system reducing both straw and labor costs and making monitoring and care of individual sows easier.

Sow crates were determined to be the most economically efficient use of building space, allowing the greatest number of sows to be housed in a given space.

Concerns About Gestation Stalls

Most scientific research on the effects of gestation stalls on sows' well-being has focused on physiological stress responses. Stress levels are commonly studied by measuring cortisol levels in the blood or saliva. Cortisol is a steroid hormone released during stressful events such as temperature changes, disease, or aggression. An increase in cortisol causes physiological responses such as increased heart rate and blood pressure, reduced digestion, and an acute inhibition of immune response. Statistically significant differences have been found between cortisol levels of sows kept in group pens versus gestation stalls, but not always in the same direction: some studies found higher levels in sows housed in stalls, but other studies found higher levels in sows housed in group pens.

There are also concerns about lack of availability of space for sow movement in each stall. Sows kept in stalls may be prone to injuries such as skin lesions due to being confined in a small space. On the other hand, there are risks of injury in group pens due to aggression between sows. An animal scientist at the University of Illinois said that no studies demonstrate an optimum space requirement for sows. Space requirements depend greatly on sow gestation stage and behavior. Although there are risks of injury in both gestation stalls and group pens, she said that injury reduction depends more on a farmer's ability to manage sows properly.

Some sows kept in stalls have been observed engaging in repetitive behavior such as biting the stall bars or rubbing on the pen surface. Although such behavior is classified as a sign of welfare problems, scientists agree that the behaviors can be reduced through keeping feed available, increased bedding, and added foraging material.

Sows in groups develop a hierarchy system, with some dominating others. Dominant sows may show aggression toward less dominant sows. Such aggression can include vulva biting. Gestation stalls make such behavior impossible.

Reproductive Success

There can be differences in reproductive output between sows kept in stalls and in group pens, but few studies on this topic are available. Thus there is no clear evidence on a relationship between sow housing type and reproductive success.

States Banning Stalls

Seven states ban tethering or confinement of sows in a way that prevents them from turning around freely: Arizona, California, Colorado, Florida, Maine, Michigan, and Oregon. Colorado allows a sow to be kept in a farrowing unit up to 12 days before her expected due date. Five of those states (Arizona, California, Maine, Michigan, and Oregon) allow confinement for 7 days before a sow's expected due date. Florida allows an exception "during the prebirthing period." Violation is a misdemeanor in Arizona, California, Colorado, and Florida. In

Maine, violation can result in 1 to 3 years in prison; in Oregon it is a Class A violation punishable by a fine. Michigan authorizes its Attorney General to file civil actions to prevent unlawful confinement.

In 2010, Ohio created a Livestock Care Standards Board to issue rules to govern the care and well-being of livestock. The Board's rules require that a sow be able to lie down fully on her side without both her head resting on a raised feeder and her rear quarters coming in contact with the back of the stall or pen. Gestation stalls may be used in existing facilities through 2025; they have been prohibited in new facilities built since 2010. After 2025, gestation stalls may be used only "post weaning for a period of time that seeks to maximize embryonic welfare and allows for the confirmation of pregnancy" and in special circumstances involving a sow's well-being (such as injury, frailty, thinness, or aggressiveness). (Group-housed sows are often kept in stalls for about 35 days between weaning and implantation; this is safer for the sow and the embryos, and allows pregnancy to be more easily confirmed.)

Other Countries Banning Gestation Stalls

The European Union (EU) banned farm buildings newly built or rebuilt starting in 2003 from using gestation stalls for pregnant sows and gilts (female pigs that have never reproduced) from week 4 after insemination until 1 week before farrowing. For farms already using gestation stalls, the ban will take effect in 2013.

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Gestation Stalls for Sows Bring Controversy

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In 1997 the EU Scientific Veterinary Committee released a report of its conclusions and recommendations about gestation stalls. In general, the report found that sows should be kept in housing systems that minimize aggression and injury. It concluded that the overall welfare of sows seems to be better when kept in groups and not confined to gestation stalls. It said that housing systems should meet the following criteria:

- Grouped sows should be fed using a system ensuring that each sow gets adequate food without competition and risk of injury.
- Sows should have access to soil or straw for rooting.
- Housing facilities should include communal lying areas, in addition to feeding stalls or boxes, of at least 1.3 square meters per sow or 0.92 square meters for gilts.
- Housing facilities should contain enough space for a sow to avoid aggression from other sows.
- If a sow is injured and must be kept in an individual housing system, it should allow the sow to turn around comfortably.

New Zealand pig farms are to be banned from using gestation stalls after December 3, 2015. Until then, use of gestation stalls may be allowed for up to 4 weeks after mating.

The Australian pork industry has voluntarily agreed to phase out use of gestation stalls by 2017.

Positions of Interest Groups

Animal welfare groups including the Humane Society of the United States (HSUS), Mercy for Animals, and People for the Ethical Treatment of Animals (PETA) have been major opponents of gestation crates. The HSUS has promoted legal bans on such crates in several states, and encouraged retailers to stop buying pork from producers that use crates. In 2010 HSUS released the findings of an undercover investigation of a Virginia pig farm owned by a subsidiary of Smithfield Foods, reporting conditions so poor that some sows “had bitten their bars so incessantly that blood from their mouths coated the fronts of their crates.” In response to the limited space and type of flooring used in gestation crates, Mercy for Animals says on its Website: “The unnatural flooring and lack of exercise causes obesity and crippling leg disorders, while the deprived environment results in neurotic coping behaviors”

The American Veterinary Medical Association (AVMA) policy on pregnant sow housing recognizes that there are advantages and disadvantages to different systems, and encourages research into systems that would improve sow welfare. Its policy suggests that sow housing systems should:

- (1) Provide every animal access to appropriate food and water;
- (2) Promote good air quality and allow proper sanitation;

- (3) Protect sows from environmental extremes;
- (4) Reduce exposure to hazards that can result in injuries, pain, or disease;
- (5) Facilitate the observation of individual sows to assess their welfare;
- (6) Allow sows to express normal patterns of behavior.

The American Association of Swine Veterinarians (AASV) states that gestation stalls meet AASV criteria if used correctly. The AASV considers correct administration to be housing systems that meet standards similar to those described in the AVMA policy.

The National Pork Producers Council (NPPC) and the National Pork Board (NPB) support the AVMA and AASV policies on sow housing. The NPPC opposes laws banning specific sow housing practices, saying “scientific research has shown that there is no one, single best way to house a pregnant sow.” In a statement released in response to a February 2012 decision by McDonald’s Corporation to encourage its pork suppliers to phase out use of gestation stalls, the NPPC repeated its statement quoted above, adding that it welcomes the views and desires of pork consumers through the market rather than government. The NPB states that the core issue is the quality of care each pig receives, regardless of housing type. (The NPB is responsible for the Pork Checkoff in which pork producers must invest 40¢ for each \$100 sold to fund several programs, including research.)

The NPB Pork Quality Assurance Plus (PQA+) program manual says that to meet PQA+ standards, a pig housed in a stall must be able to “lie down fully on its side (full lateral recumbency) without the head having to rest on a raised feeder and the rear quarters coming in contact with the back of the stall at the same time.”

The Illinois Pork Producers Association (IPPA) has stated the following position on the subject:

The Illinois Pork Producers Association builds its animal care and well-being programs on this foundation: What is best for the pig? IPPA also relies on the best scientific research available, and the best scientific research now available indicates there are several types of production systems that can be good for pigs. Those systems include open pens, gestation stalls and open pastures.

Producer and Food Industry Actions

The largest U.S. pork producer, Smithfield Foods, committed to converting 30% of its sows to group housing by the end of 2011, with a goal of 100% conversion by 2017. The eighth largest U.S. producer, Cargill, has also committed to adopting group housing for gestating sows. In 2009, Cargill reported that half of its contract farms were using group housing. In 2010 it announced the opening of the Cargill Sow Innovation Center in Sugar Grove, Kentucky to do research on improvements in sow care and health. In February

2012, Hormel reported plans to phase out gestation crates before 2018.

In 2007, Burger King became the first large fast-food chain to announce it would begin buying more pork from suppliers that do not use gestation crates. On February 13, 2012, McDonald’s Corporation stated that it would ask its five largest pork providers to show plans to reduce reliance on gestation crates for pregnant sows, and that it planned to make further decisions in May. On March 8, 2012, the Compass Group (the world’s largest food service company) announced that it would eliminate use of gestation crates in its U.S. facilities by 2017. The Humane Society of the United States reports that other restaurant and retail chains that “have taken steps to move away from pork from producers that use gestation crates” include Harris Teeter, Wolfgang Puck, Wendy’s, Red Robin, Sonic, Subway, and Safeway.

Costs of Transitioning From Crates

An industry-wide transition from gestation crates to various kinds of group housing could raise pork producers’ capital costs and thus prices to consumers. Requiring conversion of existing facilities before the end of their useful lives could have potentially high costs, and the initial transition is likely to require a learning curve for the care and management of sows. An analysis by Dr. Brian Buhr of the University of Minnesota Department of Applied Economics estimated the one-time costs to the pork industry to

transition all existing sow barns in the U.S. from crate to group housing at between \$900 million and \$4 billion. The age of each barn (up to 25 years) would determine whether it would be more economical to build new ones or retrofit existing ones. Buhr says that consumers would need to be willing to pay a higher cost for pork from group-raised sows.

On the other hand, an Iowa State University Animal Industry Report stated that if managed correctly and efficiently, group housing in “hoop barns” may lower production costs. (Hoop barns are tent-like structures with lower capital costs than conventional barns. They generally have “steel pipe arches” covered by a resistant fabric and attached to wooden walls; the ends of each structure are usually left open for ventilation.) Buhr countered that hoop barns are unlikely to replace larger commercial facilities, and that the Iowa study did not account for the cost of retrofitting or replacing existing crate facilities to allow group housing.

The AVMA also cautions that in group housing systems, each sow must receive adequate food and individual management. Implementing a new group feeding system would involve costs for construction, labor, and training. □

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Illinois, Florida Self- Defense Laws Differ

After February's fatal shooting of Trayvon Martin in Florida, public attention was drawn to that state's so-called "stand your ground" provisions on self-defense. Illinois' statutory sections on self-defense have no "stand your ground" component, although their application to situations such as the Florida shooting might not be entirely clear in all cases.

Florida's "stand your ground" provisions say:

776.012 Use of force in defense of person.

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to [section] 776.013.

776.013 Home protection; use of deadly force; presumption of

fear of death or great bodily harm.

. . . . [Subsections (1) and (2) apply if an intruder enters a dwelling or occupied vehicle.]

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

Illinois' Criminal Code of 1961 has nothing closely analogous to those sections. Its sections on self-defense are quoted below in relevant part, with the most applicable parts underlined.

Sec. 7-1. Use of force in defense of person.

(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

. . . . [Emphasis added]

Sec. 7-4. Use of force by aggressor.

The justification described in the preceding Sections of this Article is not available to a person who:

(a) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(b) Initially provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(c) Otherwise initially provokes the use of force against himself, unless:

(1) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(2) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force. [Emphasis added]

A 1993 Illinois Appellate Court decision commented on subsection 7-4(c) as follows:

The law provides . . . that if an initial aggressor commits a battery to another individual, and

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Court Invalidates Fundraising Restrictions on PACs

A federal district judge in Chicago in March issued a permanent injunction barring the State Board of Elections from enforcing parts of two sections of the Illinois Election Code. Those provisions had been challenged by Personal PAC (a pro-choice organization). Personal PAC had argued that Illinois' limits on amounts of contributions that political action committees (PACs) can accept, and its ban on anyone's forming more than one PAC, violate the First Amendment to the U.S. Constitution.

The ban on PACs' accepting large contributions (10 ILCS 5/9-8.5(d)) says:

(d) During an election cycle, a political action committee may not accept contributions with an aggregate value over the following: (i) \$10,000 from any individual, (ii) \$20,000 from any corporation, labor organization, political party committee, or association, or (iii) \$50,000 from a political action committee or candidate political committee. A political action committee may not accept contributions from a ballot initiative committee.

The ban on forming more than one PAC (10 ILCS 5/9-2(d)) says:

(d) Beginning January 1, 2011, no natural person, trust,

partnership, committee, association, corporation, or other organization or group of persons forming a political action committee shall maintain or establish more than one political action committee. The name of a political action committee must include the name of the entity forming the committee.

Both restrictions were added by P.A. 96-832 (2009)—a broad campaign finance and election law reform act.

Personal PAC's argument that the laws unconstitutionally restrict political speech relied on two recent federal cases: *Citizens United v. Federal Election Commission* (2010) and *Wisconsin Right to Life v. Barland* (2011). They are briefly described below.

In *Citizens United*, the U.S. Supreme Court held that the public's interest in preventing corruption does not justify restrictions on independent expenditures. It reasoned that independent expenditures "do not give rise to corruption or the appearance of corruption."

In *Wisconsin Right to Life*, the U.S. Court of Appeals for the Seventh Circuit, in Chicago, struck down a Wisconsin law that limited how much people could donate to committees engaged exclusively in independent spending. The Seventh Circuit held that "after *Citizens United* there is no valid government interest sufficient to justify imposing limits on fundraising by independent-expenditure organization" (emphasis in original).

In the March 2012 case, *Personal PAC v. McGuffage*, District Judge Marvin E. Aspen held that Illinois laws limiting fundraising by independent expenditure organizations, and how many PACs an entity can establish, violate the First Amendment to the U.S. Constitution. He cited the *Citizens United* and *Wisconsin Right to Life* cases, and said that he found no basis for distinguishing the Illinois laws from the Wisconsin law that the Seventh Circuit had invalidated.

Defendants (members of the State Board of Elections) asked the court (in the judge's words) to take into account Illinois' political climate "and find that in Illinois there is a real risk that independent expenditure will lead to apparent or perceived corruption." They said the U.S. Supreme Court's premise that independent expenditures do not lead to *quid pro quo* corruption should not be applied to Illinois.

The judge said that unless the U.S. Supreme Court elaborates on how the ruling in *Citizens United* should be applied to individual states' political climates, he is bound to follow its holding that independent expenditures do not lead to corruption. Unless that happens, laws imposing limits on fundraising by independent expenditure organizations cannot be upheld.

The Office of the Attorney General, which represented the State Board of Elections, had not yet decided whether to appeal this decision at press time. □

Melissa S. Cate
Senior Research Associate

Illinois, Florida Self-Defense Laws Differ

(continued from p. 10)

this victim responds by exerting actual force against the aggressor, then the aggressor is justified in employing further force in self-defense only if he is threatened with death or great bodily harm and has no reasonable means of escape.

The 1993 case involved a confrontation between a school superintendent and a teacher, during which the teacher struck the superintendent several times. The Appellate Court judges upheld the teacher's conviction for aggravated battery against his assertion that he was defending himself against expected force from the superintendent. Those facts may not be similar to the Trayvon Martin shooting. But subsection 7-4(c) could apply to an incident of that general type, if a defendant "provoke[d] the use of force against himself" and then did not try to escape that force. On the other hand, if the evidence did *not* show that a defendant had provoked his adversary, the defendant's claim of self-defense would be governed by subsection 7-1(a). It allows use of force likely to cause death or great bodily harm, but only if the defendant reasonably believed it necessary to prevent death, great bodily harm, or a forcible felony. Unlike section 7-4, it does not mention a duty to retreat. However, use of deadly force in self-defense presumably is not necessary if one can escape the other person's use of force by retreating. □

David R. Miller
Deputy Director for Research

Abstracts of Reports Required to be Filed With General Assembly

The Legislative Research Unit staff is required to prepare abstracts of reports required to be filed with the General Assembly. Legislators may receive copies of entire reports by sending the enclosed form to the State Government Report Distribution Center at the Illinois State Library. Abstracts are published quarterly. Legislators who wish to receive them more often may contact the executive director.

Adult Redeploy Illinois Oversight Board

Annual Report, FY 2011

Adult Redeploy offers financial incentives to counties implementing community-based plans in lieu of prison for nonviolent offenders. Counties must agree to a 25% reduction in imprisonments, with penalties for missing the goal. Cook, Fulton, Madison, McLean, and Winnebago Counties were approved as additional pilot sites in 2011; the total number of pilot sites is 10. Six sites in operation 6 months or less have diverted 207 people, potentially saving \$3.3 million; four more sites will begin implementation in 2012. Total savings by end of 2012 were projected at \$6 million. (730 ILCS 190/20(e) (2)(I); Jan. 2012, 23 pp. + 4 appendices)

Aging Dept.

Older Adult Services Act report, 2012

Describes history of Older Adult Services Act; lists goals, objectives by goal, and timeline for objectives. Accomplishments in 2011 include participating in developing federal minimum standards for Options Counseling; a core service of Aging and Disability Resource Centers; and

completing feasibility review for Cash & Counseling program. (320 ILCS 42/15(c); Jan. 2012, 39 pp.)

Attorney General

Lead poisoning cases, 2011

Attorney General is required to report lead poisoning cases referred by Illinois Department of Public Health. None were referred in 2011. (410 ILCS 45/12.1; Jan. 2012, 1 p.)

Auditor General

CTA retiree health care trust, 2011

Auditor General is required to review funding level of CTA's health care trust annually. Projected income plus assets (\$737.9 million) exceeded projected benefits (\$693.5 million) by 6.4%, so no reduction in benefits or increase in contributions was needed. (30 ILCS 5/3-2.3(e); Dec. 2011, 8 pp. + appendix)

Central Management Services Dept.

Bilingual needs and pay survey, FY 2011

Of 50 responding agencies, 32 reported bilingual needs with 2,096 bilingual positions required. In all, 1,921 employees got bilingual pay: 1,150 Hispanic, 362

non-Hispanic, 391 sign language, 18 Braille. Department of Human Services reported needing the most bilingual employees at 1,209. (20 ILCS 415/9(6); Dec. 2011, 15 pp.)

State Employee Child Care Centers, 2011

The state oversees two on-site childcare centers in Chicago and Springfield for employees' children. Chicago's State of Illinois Child Development Center in the Bilandic Building has National Association for the Education of Young Children accreditation. Springfield's Bright Horizons Child Care Center at Department of Revenue added an infant room and a junior kindergarten room for children in their last year before kindergarten. Dependent Care Assistance Program allows state employees to fund child care (not only at the two centers) with pretax dollars. (30 ILCS 590/3; Dec. 2011, 4 pp.)

State Government Suggestion Award Program Board annual report, 2011

Board met monthly in 2011 and received 142 new suggestions. None resulted in monetary awards. Board now has three vacancies. (20 ILCS 405/405-130(b); undated, rec'd Dec. 2011, 3 pp.)

Supported Employment Program (SEP) annual report, 2011

Program helps state agencies employ people with severe mental or physical disabilities. In December 2011 it had 10 employees in five agencies. All needed job

coaches or support when appointed; seven no longer needed assistance. (5 ILCS 390/9(b); Dec. 2011, 2 pp.)

Commerce & Economic Opportunity Dept.

Build Illinois revenue funds, 2011
Build Illinois Capital Revolving Loan Fund balance fell from \$5.39 million to \$2.24 million; Illinois Equity Fund fell from \$866,000 to \$602,000; Build Illinois Large Business Attraction Fund fell from \$1.01 million to \$664,000. Build Illinois Capital Revolving Loan Fund loan, investment, award, and grant disbursements totaled \$1.38 million; Illinois Equity Fund disbursements, \$0; and Build Illinois Large Business Attraction Fund disbursements, \$0. (30 ILCS 750/9-9 and 750/10-9; Dec. 2011, 4 pp.)

Employment Opportunities Grant Program, FY 2011

Program's goal is to help people in historically underrepresented populations enter and finish building trade apprentice programs. Funding was reduced from \$3 million in FY 2010 to \$1.28 million in FY 2011. Lists eight grantees. For FY 2010 grantees, 458 persons were accepted, 194 graduated, and 142 were placed in jobs. (20 ILCS 605/605-812(f); Dec. 2011, 4 pp.)

High Impact Business designation

Minonk Wind, LLC is designated for up to 20 years as a High Impact and Wind Energy business in Livingston and Woodford counties, qualifying for building materials sales tax exemption

there. (20 ILCS 655/5.5(h); Dec. 2011, 2 pp.)

Corrections Dept.

Quarterly report, July 1, 2011

On May 31, 2011, adult facilities had 48,781 residents—45% over rated capacity of 33,701 but 5% below operational capacity of 51,226. Population was projected to rise to 49,468 by June 2012. Adult transition center population was 1,197 (117 over rated capacity). Average ratio of inmates to security staff was 6.0. Unduplicated enrollment in education and vocational programs was 7,578. Nearly all inmates were double-celled (67%) or multi-celled (25%), with about 34 square feet of actual living area each. No capital projects were funded. (730 ILCS 5/3-5-3.1; July 2011, 15 pages)

Education, State Board of

Annual report, 2011

Total public school spending in 2010-11 was \$28.09 billion: \$15.34 billion (54.6%) local; \$9.28 billion (33.1%) state; and \$3.46 billion (12.3%) federal. Enrollment rose a bit from 2.06 million in 2009-2010 to 2.07 million in 2010-2011; the number of districts stayed at 868. The chronic truancy rate was 3.2%; dropout rate 2.7%; statewide operating spending per pupil \$11,375 (in FY 2010); and elementary pupil-teacher ratio, 18.8:1. Nearly half of students (48.1%) were low-income. (105 ILCS 5/1A-4(e); Jan. 2012, 58 pp.)

Charter school biennial report, school years 2009-2010 and 2010-2011

Illinois' 52 charter schools served over 49,000 students. Low-income students were a majority in 21

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Abstracts *(continued from p. 13)*

schools, and over 90% in 19. Schools suggested 20 statutory changes, including allocating additional operating funds to charter schools; providing state grants to all schools; and increasing amount of startup grants per student. (105 ILCS 5/27A-12; Jan. 2012, 52 pp.)

Complaints against private business and vocational schools, 2011

Lists names and addresses of 24 institutions investigated on 28 complaints (15 assigned to staff, 7 resolved, and 6 still open). Board did on-site inspections at 37 institutions. (105 ILCS 425/14.2; Jan. 2012, 8 pp.)

Illinois Advisory Council on Bilingual Education report, 2011

Public Act 97-305 amended the School Code to require Advisory Council on Bilingual Education to report on whether and how (1) the minimum of 20 children in bilingual education per school should be modified; (2) educator certification requirements should be modified; (3) bilingual education requirements and ISBE rules should be modified; and (4) whether and how to allow school districts to offer alternative instead of transitional bilingual education programs. Gives Council's answers to those four questions and recommendations for implementation. (105 ILCS 5/14C-13; Dec. 2011, 23 pp.)

Electric Vehicle Advisory Council

Final Report

Lists statewide objectives and recommendations in five areas:

infrastructure, incentives, electricity use, education, and economic development. Council set a goal of 100,000+ electric vehicles on Illinois roads by 2015. (P.A. 97-89 [2011]; Dec. 2011, 38 pp.)

Higher Education, Board of Public university tuition and fee waivers, FYs 2010 and 2011

Public universities granted 47,331 waivers worth \$390.3 million in FY 2010, and 49,157 waivers worth \$415 million in FY 2011. By value, 23.8% of waivers went to undergraduate and 76.2% to graduate students; 87.8% of the total were "discretionary" waivers. Those waivers go to undergraduates with academic, athletic, or other achievements, and to graduates for teaching and research assistantships. Lists number and value of waivers by university, and purpose, goals, and eligibility criteria for each waiver. (110 ILCS 205/9.29; Dec. 2011, 3 pp. + 3 tables and 2 appendices)

Human Services Dept.

Autism program report

Describes progress of DHS Autism Task Force in addressing early intervention for children with autism; improving family support so people with autism can remain at home; transition services from public schools; and feasibility of getting federal financial support. Actions include (1) issuing "Charting the System for Persons with Autism and ASD;" (2) compiling a catalog of autism training and education programs in Illinois; and (3) creating Autism Information Clearinghouse and live content on the

Web. (20 ILCS 1705/57.5; Jan. 2012, 14 pp.)

Biennial report on TANF program by racial or ethnic group, 2011

In December 2011, 120,005 persons were getting Temporary Assistance to Needy Families (TANF) benefits (up from 94,058 in December 2010); 9,889 had exemptions from work requirements; and 1,723 participated in post-secondary education. During calendar 2011, 2,661 people reached their 60-month limit on assistance; 19,908 became ineligible due to earned income; and 28,589 left due to noncompliance with program rules. In a typical month, over 10,000 others were getting reduced benefits due to noncompliance. Also reports these numbers by racial or ethnic group as identified by applicants. (305 ILCS 5/4-23; Dec. 2011, 20 pp.)

Homeless Prevention Program, FY 2011

The Program was allocated \$2.4 million in FY 2011 — \$8.46 million less than in FY 2009. The 21 organizations getting Homeless Prevention Program money served 2,559 households (down from 11,635 in FY 2009), comprised of 3,522 adults and 3,092 children. Among aided households, 90.2% kept their housing with Program assistance. Average cost per household was \$938. (310 ILCS 70/13; rec'd Jan. 2012, 26 pp.)

Inspector General's report on abuse and neglect of adults with disabilities, FY 2011

Office of the Inspector General (OIG) received 3,010 allegations of abuse and neglect at agencies

(1,543), facilities (712), and domestic settings (755). Reports rose due to expanded definitions of abuse and neglect, and greater awareness of the issue. Of the acts alleged, 1,258 were physical, 502 mental, 142 sexual, 122 financial, and 986 neglect. OIG cited 242 cases of late reporting. It completed 3,070 investigations, averaging 52 days per case. It closed 2,710 investigations with 409 substantiated (256 in community agencies, 32 in facilities, and 15 in domestic settings). It visited all 17 DHS facilities unannounced, and made 30 recommendations. Training on reporting and investigating abuse and neglect occurred in 70 sessions with 1,275 participants. (20 ILCS 2435/60; Nov. 2011, 27 pp.)

Management Improvement Initiative report, 2011

First progress report by Department on Aging and Departments of Human Services, Healthcare and Family Services, Children and Family Services, and Public Health on plans to avoid duplication and prioritize operating efforts in contracting, auditing, monitoring, and reporting requirements. Six teams were formed to recommend solutions and process changes to Management Improvement Initiative Committee. Next report will be in May 2012. (20 ILCS 1305/1-37a(b)(2); Nov. 2011, 31 pp.)

Social Services Block Grant Fund report, September-December 2011

Fund received \$46.7 million in federal funds. Transfers were \$26.5 million to General Revenue Fund, \$8.2 million to Special

Purpose Trust Fund, and \$6.2 million to Local Initiative Fund. (305 ILCS 5/12-5; Feb. 2012, 1 p.)

Williams consent decree first annual report, 2011

Reports DHS efforts under the *Williams v. Quinn* consent decree to move institutionalized persons with mental illness to community settings. Over 800 people were notified of their rights; a projected 640 will be offered opportunities to move by mid-2013; and 49 got services to help with moves, costing an average of \$17,071 each. A compliance report was submitted to the court monitor and plaintiffs in 2011. Also contains Implementation Plan. Gives details on patients, services, costs, budget, and implementation task and timeline. (20 ILCS 1705/73; Dec. 2011, 130 pp. + tables and appendices)

Illinois Housing Development Authority

Housing plan, 2012

Focus areas for 2012 include (1) addressing integrated and supportive housing settings, (2) revitalizing neighborhoods hit by foreclosure and expanding homeownership opportunities, (3) expanding affordable housing opportunities statewide, and (4) fostering leadership. Lists strategies and implementation activities for each focus area. (30 ILCS 345/7.5 and 310 ILCS 110/15(c); undated, rec'd Jan. 2012, 57 pp. + 6 appendices)

Investment, State Board of

Report on Emerging Money Managers, FY 2011

In June 2011 the Board adopted a revised asset allocation plan that eliminated the large-cap growth allocation from its portfolio. Thus

the Board terminated Profit Investment Management, a large-cap growth manager in its emerging manager portfolio. On September 30, 2011, emerging and/or minority-owned firms managed \$2.7 billion (26.7% of the Board's assets). The Board sets its minimum brokerage goal in emerging managers at 20%; each manager with less than 20% usage must provide a written explanation. (40 ILCS 5/1-109.1(4); Dec. 2011, 11 pp.)

Juvenile Justice Dept.

Quarterly report, Oct. 1, 2011

On August 31, 2011, there were 1,113 youth in all juvenile facilities, below rated capacity of 1,754 and bed capacity of 2,100. Population was projected to reach 1,188 by September 2012. Ratio of security staff to youth was 0.686. Most youth were single-celled (63%) or double-celled (31%), with about 102 square feet of living area each. Enrollment (unduplicated) in educational and vocational programs was 925. No capital projects were being funded. (730 ILCS 5/3-5-3.1; Oct. 2011, 10 pp.)

Legislative Reference Bureau

Report of the Illinois delegation to the National Conference of Commissioners on Uniform State Laws, 2011

NCCUSL proposed four new laws: (1) Certificate of Title for Vessels Act would standardize certificates of title for boats (similar to land vehicles); (2) Uniform Electronic Legal Materials Act proposes standards for preserving state government electronic legal materials; (3) Model Protection of Charitable Assets Act would

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First Reading

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Abstracts *(continued from p. 15)*

affirm state Attorney General's role in protecting charitable assets, and require registration and annual reports from some charities; and (4) Harmonized Uniform Business Organizations Code would standardize uniform

unincorporated entity acts into a single code. (25 ILCS 135/5.07; Dec. 2011, 21 pp.)

Secretary of State

Public Library Capital Needs Assessment, 2011

Public libraries that responded to a survey (383—a 60% response rate) reported total needs of \$647.4 million for the next 2 years: \$341.4 million for new construction, \$179.2 million for building additions, and \$126.8 million for general repairs. Sixty-two library buildings are over 100 years old, and 88 others are over 50 years old. (30 ILCS 767/15-60; Dec. 2011, 4 pp.)

Transportation Dept.

Small Business Annual Report, FY 2011 and Small Business Spend Compliance Plan, FY 2012
IDOT spent \$2.7 billion on contracts in FY 2011; \$76.0 million (2.8%) went to small businesses. The total included almost \$2.5 billion for construction and related services; \$61.9 million (2.3%) went to small businesses. IDOT projected \$2.4 billion of construction and related services contracts in FY 2012, including \$66 million (2.75%) for small businesses. (Small businesses' reported amounts and percentages would be much higher if IDOT could include subcontractors in its count.) (30 ILCS 500/45-45(f); Nov. 2011, 4 pp.)