

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

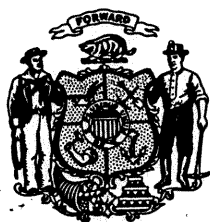
AUG 09 REC'D

AUG 09 1999

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-106

AN ORDER to renumber HFS 101.03 (1); to amend HFS 101.01, 101.03 (95), 102.01 (intro.), 102.02, 102.03 (1) and 102.04 (2) and (3) (c), 103.01 (1) (a), 103.03 (1) (intro.), (a) and (b) 3., 103.04 (3) (a), 103.08 (1), (2) (a) 2., (b) and (c) and 108.03 (1); and to create HFS 101.03 (17r), (22g), (52m), (67m), (69m), (114p), (125m), (170m) and (172m), 102.01 (5) (h), 103.03 (1) (f), 103.04 (6) and (7), 103.08 (5), 103.085 and 108.02 (13), relating to providing eligibility under the BadgerCare program to families with incomes up to 185% of the federal poverty level that are not covered by health insurance, do not have access to an employer-subsidized family health care plan which is 80% or more subsidized and are not otherwise eligible for the medical assistance program under AFDC-related or SSI-related criteria.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

07-09-99 RECEIVED BY LEGISLATIVE COUNCIL.
08-04-99 REPORT SENT TO AGENCY.

.l;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-106

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In ss. HFS 101.01 and 102.01 (intro.), the parentheses should be deleted and either "medical assistance" or "MA" should be used. Both are defined in s. HFS 101.03 (95).
- b. Section HFS 103.03 (1) (f) 2. d. refers to "COBRA continuation coverage." Either this term should be defined or the acronym should be deleted.
- c. In s. HFS 103.085 (5), the second sentence should define "cooperate" since that is the term used in the other sentences.
- d. In s. HFS 108.02 (13) (b) 1., "the department shall not" should be changed to "the department may not." This is the correct way to express a prohibition. [See s. 1.01 (2), Manual.]
- e. In s. HFS 108.02 (13) (c) 3., the word "otherwise" should be deleted and instead a cross-reference to subs. 1. and 2. should be inserted.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The correct U.S. Code reference in s. HFS 101.03 (67m) should be 42 USC 300gg-91 (a) (1); the correct reference to s. HFS 101.03 (69m) should be 42 USC 300gg-91 (b) (1).

- b. In s. HFS 103.03 (1) (f) 6., “this chapter” should replace “ch. HFS 103.”
- c. In s. HFS 103.04 (6) (b), the “applicable law” should be specifically cited.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. HFS 101.03 (170m), “employes” should replace the first “employees”.
- b. In s. HFS 102.03 (1), the added language should state that “a refusal or failure by an applicant for MA to verify assets does not affect the eligibility for BadgerCare under s. 49.665, Stats.”
- c. Section HFS 103.03 (title) should not be shown since it is not affected by the rule.
- d. The following sections of the rule should be reviewed and consistent terms selected to refer to the health insurance coverage being referred to: ss. HFS 103.03 (1) (f) 2. c. (“health plan coverage”); 103.03 (1) (f) 5. (intro.) (“employer-subsidized plan”); 103.03 (1) (f) 5. c. (“private health insurance”); 108.02 (13) (a) (“family coverage”); 108.02 (13) (b) 1. (“employer insurance”); 2. (“health care coverage”) and 3. (“coverage”).
- e. In s. HFS 103.03 (1) (f) 4. (intro.) should “at least” be inserted before “80%”?
- f. In s. HFS 103.03 (1) (f) 5. d., “a” should be inserted before “good” and a period is needed at the end.
- g. In s. HFS 103.04 (7) (c), “income” should be inserted after “BadgerCare.”
- h. In s. HFS 103.085 (table), should the monthly premium amount that must be linked to the family income’s percentage of the poverty level also be linked to the family’s size? For example, a family with a monthly income of \$1,000 to \$1,499.99 with a family size of two will be at a different percentage of the poverty level than a family with the same income with a family size of four.
- i. In s. HFS 103.085 (1) (d), is the group otherwise eligible for BadgerCare required to pay a monthly premium amount in full to the agency prior to being certified for eligibility? If so, the word “monthly” should be inserted prior to “premium amount.”
- j. In s. HFS 103.085 (2) (b) 4., “is now” should be replaced by “has become.”
- k. In s. HFS 108.02 (13) (b) 3., will the department pick up the remaining 20% of the coverage not paid by the employer if the employer pays 60%? If so, this should be clarified.

Also, in this subdivision and elsewhere in sub. (13), reference is made to “cost of the coverage” or a similar term. Is this referring only to the premium or does it also include deductibles and copayments? See s. 49.665 (1) (c), Stats., which excludes deductibles and copayments from the cost portion of the definition of “employer-subsidized health care coverage.”

Finally, subd. 3. seems to say that the department will not buy employer insurance if the employer pays, for example, 90% of the cost. Is this intended?

7-7-99

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING AND CREATING RULES

To renumber HFS 101.03(1); to amend HFS 101.01, 101.03 (95), 102.01 (intro.), 102.02, 102.03 (1) and 102.04 (2) and (3) (c), 103.01 (1) (a), 103.03 (1) (intro.), (a) and (b) 3., 103.04 (3) (a), 103.08 (1), (2) (a) 2., (b) and (c) and 108.03 (1); and to create HFS 101.03 (17r), (22g), (52m), (67m), (69m), (114p), (125m), (170m) and (172m), 102.01 (5) (h), 103.03 (1) (f), 103.04 (6) and (7), 103.08 (5) and 103.085 and 108.02 (13), relating to providing eligibility under the BadgerCare program to families with incomes up to 185% of the federal poverty level that are not covered by health insurance, do not have access to an employer-subsidized family health care plan which is 80% or more subsidized and are not otherwise eligible for the medical assistance program under AFDC-related or SSI-related criteria.

Analysis Prepared by the Department of Health and Family Services

This order creates rules relating to how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. This order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 108, the Department's rules for operation of the MA Program.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by MA. The existing Wisconsin MA HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

The rules included in this order modify chs. HFS 101 to 108 to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; require a BadgerCare group with monthly income above 150% of the federal poverty level to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing MA coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing MA coverage.

The Department obtained approval for BadgerCare from the federal Health Care Financing Administration (HCFA) on January 22, 1999, effective July 1, 1999.

The Department's authority to renumber, amend and create these rules is found in ss. 49.45 (10) and 49.665 (3), (4) and (5), Stats. The rules interpret ss. 49.43 to 49.497 and 49.665, Stats.

SECTION 1. HFS 101.01 is amended to read:

paren
HFS 101.01 Authority and purpose. This chapter and chs. HFS 102 to 108 are promulgated pursuant to ~~ss.~~ ss. 49.45 (10) and 49.665 (3), (4) and (5), Stats., for the purpose of administering the medical assistance (MA) program ~~(MA)~~ in Wisconsin which finances necessary health care services for qualified persons whose financial resources are inadequate to provide for their health care needs.

SECTION 2. HFS 101.03(1) is renumbered HFS 101.03(1m).

SECTION 3. HFS 101.03 (1), (17r), (17t), (17w), (22g), (52m), (67m) and (69m) are created to read:

HFS 101.03 (1) "Access," for purposes of BadgerCare, means a family member living in the household has the ability to sign up and be covered by an employer's group health plan in the current month, or had the ability to sign up and be covered in any or all of the 18 months prior to the application or redetermination of BadgerCare eligibility.

(17r) "BadgerCare" means the MA-related program established under s. 49.665, Stats.

(17t) "BadgerCare fiscal test group" means all members of the BadgerCare group and all persons who are financially responsible for all members of the BadgerCare group who live in the same household as the person for whom they are legally responsible and who are not SSI recipients.

(17w) "BadgerCare group" means all persons listed on an application for BadgerCare who meet nonfinancial eligibility requirements.

(22g) "Caretaker relative" means a person listed in s. 49.19 (1) (a) 2.a., Stats.

(52m) "Employer-subsidized health care coverage" means family coverage under a group health insurance plan offered by an employer for which the employer pays at least 80% of the cost, excluding any deductibles or copayments that may be required under the plan.

(67m) "Group health insurance plan" means a plan that meets the definition of a group health plan in 42 USC 300gg-91(a).

(69m) "Health insurance coverage" has the meaning provided in 42 USC 300gg-91(b).

SECTION 4. HFS 101.03 (95) is amended to read:

HFS 101.03 (95) "Medical assistance" or "MA" means the assistance program operated by the department under ss. 49.43 to 49.497 and 49.665, Stats., any services or items under ss. 49.45 to ~~49.47 and 49.49~~ to 49.497, Stats., and this chapter and chs. HFS 102 to 108, or any payment or reimbursement made for these services or items.

SECTION 5. HFS 101.03 (114p) and (125m) are created to read:

HFS 101.03 (114p) "Parent" means any of the following:

(a) A biological parent.

(b) A person who has consented to the artificial insemination of his wife under s. 891.40, Stats.

(c) A parent by adoption.

(d) A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently marry each other under s. 767.60, Stats.

(e) A man who has signed and filed with the state registrar under s. 69.15 (3) (b) 3., Stats., a statement acknowledging paternity.

(125m) "Poverty line" means the federal poverty guidelines by family size updated annually under 42 USC 9902 (2).

Note: The federal poverty guidelines for 1999 were published in the *Federal Register*, March 18, 1999, pp. 13428-13430.

SECTION 6. HFS 101.03(132) is amended to read:

HFS 101.03(132) "Primary person" means the person ~~whose name is listed first on the application form as the person~~ applying for MA.

SECTION 7. HFS 101.03(170m) and (172m) are created to read:

HFS 101.03(170m) "State employees' health plan" means family or individual coverage under a group health insurance plan offered by a unit of state government to its employees.

(172m) "Subscriber" means the person through whom health insurance benefits are made available, who either owns a health insurance policy or is the policyholder of a health insurance policy provided by his or her employer.

SECTION 8. HFS 102.01 (intro.) is amended to read:

parents

HFS 102.01 Application. (intro.) Application for medical assistance (MA) shall be made pursuant to s. 49.47 (3), Stats., for medically indigent persons, ~~and~~ s. 49.46, Stats., for categorically needy persons and s. 49.665, Stats., for persons under BadgerCare, and this chapter. Applications shall be made and reviewed in accordance with the following provisions:

SECTION 9. HFS 102.01 (5) (h) is created to read:

HFS 102.01 (5) (h) In cases where a minor child is residing with a non-legally responsible relative and no eligibility exists for the child under s. 49.46 or 49.47, Stats., the agency shall determine the eligibility of that child for BadgerCare under s. 49.665, Stats., on a separate application.

SECTION 10. HFS 102.03 (1) is amended to read:

HFS 102.03 (1) An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so, except that a refusal or failure by an applicant for MA to verify assets does not affect the family's eligibility for MA under s. 49.665, Stats. If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.

SECTION 11. HFS 102.04 (2) and (3) (c) are amended to read:

HFS 102.04 (2) NOTICE OF DECISION. The agency shall send timely and adequate notice to applicants and recipients to indicate that MA has been authorized or that it has been reduced, denied or terminated. In this subsection, "timely" means in accordance with ~~s. 49.19 (13), Stats.~~ 42 CFR 431.211, and "adequate notice" means a written notice that contains a statement of the action taken, the reasons for and specific regulations supporting the action, and an explanation of the individual's right under ~~ss. s. 49.45 (5) and 49.50 (8), Stats.~~ to request a hearing and the circumstances under which aid benefits will be continued if a hearing is requested.

(3) REVIEW OF ELIGIBILITY. (c) Within 6 12 months after the date initial eligibility is determined for AFDC-related persons and persons eligible for BadgerCare;

SECTION 12. HFS 103.01 (1) (a) is amended to read:

HFS 103.01 (1) PERSONS ELIGIBLE. (a) Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.455, 49.46 (1) ~~and~~ 49.47 (4) and 49.665, Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving ~~AFDC or~~ SSI.

SECTION 13. HFS 103.03 (1) (title), (a) and (b) 3. are amended to read:

HFS 103.03 Nonfinancial conditions for eligibility. (1) (title) AFDC-RELATEDNESS ~~OR~~, SSI-RELATEDNESS OR BADGERCARE ELIGIBILITY.

(a) *Requirement.* To be non-financially eligible for MA, ~~applicants~~ an applicant shall be AFDC-related ~~or~~, SSI-related or meet the non-financial requirements under par. (f) for BadgerCare.

(b) 3. The person is a caretaker relative as ~~defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.;~~ or

SECTION 14. HFS 103.03(1)(f) is created to read:

HFS 103.03(1)(f) *BadgerCare eligibility.* To be non-financially eligible for BadgerCare, a person shall meet all of the following conditions:

1. The person is under age 19, a custodial parent living with his or her child who is under age 19 or the spouse of a custodial parent if the spouse resides with the custodial parent's child who is under the age of 19.

2. The person does not have health insurance coverage and has not been covered at any time in the previous 3 calendar months. The 3 calendar month period does not apply if the coverage ended for a good cause reason. A good cause reason is any of the following:

a. The person was covered by insurance that was provided by a subscriber through his or her employer, and the subscriber's employment ended for a reason other than voluntary termination.

b. The person was covered by insurance that was provided by a subscriber through his or her employer, and the subscriber changed to a new employer who does not offer family coverage.

c. The person was covered by insurance that was provided by a subscriber through his or her employer, and the subscriber's employer discontinued health plan coverage for all employees.

d. COBRA continuation coverage was exhausted in accordance with 29 CFR 2590.701-2(4).

e. Any other reason determined by the department to be a good cause reason.

3. The person does not have access to family coverage under a group health insurance plan offered by an employer for which the employer pays 80% of the cost, excluding any deductibles or co-payments that may be required under the plan, or to a state employe health plan through any of the following:

- a. The person's employer.
- b. The employer of the person's spouse when the spouse is residing with the person.
- c. The employer of the person's parent, step-parent or other caretaker relative residing with the person, when the person is under 19 years of age.

4. Except as provided in subd. 5., the applicant for BadgerCare did not at any time in the 18 months immediately preceding application for BadgerCare have access to family coverage under a group health insurance plan offered by an employer for which the employer pays 80% of the cost, excluding any deductibles or co-payments that may be required under the plan, or a state employee's health plan. The applicant is ineligible for BadgerCare the first day of the month that the employer's plan would have provided coverage for the recipient if the family had been enrolled in the plan. The applicant remains ineligible for each month that coverage would have been available up to 18 months from the month the failure to enroll in the plan occurred. The insurance the applicant had access to shall have been available only through one of the following:

- a. The person's employer.
- b. The employer of the person's spouse when the spouse is residing with the person.
- c. The employer of the person's parent, step-parent or other caretaker relative residing with the person, when the person is under 19 years of age.

5. The 18 month period in subd. 4. does not apply if one of the following statements is true about access to coverage under an employer-subsidized plan:

- a. The employment ended.
- b. The person's employer discontinued health plan coverage for all employees.
- c. A member or members of the family were eligible for other private health insurance or MA at the time the employe failed to enroll in the employer-subsidized plan and no member of the group was eligible for BadgerCare at that time.

d. Any other reason determined by the department to be ^a good cause reason .

6. The person is not eligible for MA under AFDC-related or SSI-related criteria in ch. HFS 103.

7. A person required to pay a premium under s. HFS 103.085(1) has made the first payment.

8. A person has not chosen to receive AFDC-related or SSI-related MA through a spend-down, as described in s. HFS 103.08(2)(a), or has chosen to end a spend-down period at any time prior to the date at which the expenditure or obligation of excess income has been achieved.

SECTION 15. HFS 103.04(3)(a) is amended to read:


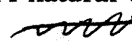
HFS 103.04(3) EXCESS INCOME CASES. (a) In this subsection, "spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining AFDC-related or SSI-related MA eligibility, as described under s. HFS 103.08 (2) (a).

SECTION 16. HFS 103.04(6) and (7) are created to read:

HFS 103.04(6) BADGERCARE. (a) A group that meets the requirements of s. HFS 103.03(1)(f) and (2) to (9) and the income limits in this subsection or in s. HFS 103.085(6) is eligible for BadgerCare.

(b) For all applicant BadgerCare fiscal test groups, the income limit is 185% of the poverty line, or a lower percentage of the poverty line established by the department in accordance with applicable law.

(7) SPECIAL BADGERCARE BUDGETING PROCEDURES. (a) *BadgerCare group*. The following persons who reside in the home with the primary person shall be included in the BadgerCare group if otherwise non-financially eligible and applying for BadgerCare:

1. The primary person.
2. The primary person's spouse. 
3. A natural or adoptive child under age 19 of the primary person. 
4. A parent of a child under subd. 3.
5. The spouse of a parent under subd. 4.
6. The natural or adoptive child of the primary person's child under subd. 3.
7. The spouse of the child in subd. 3., if that child is a parent.

(b) *BadgerCare fiscal test group*. 1. The income of the following persons shall be included when determining the eligibility of the BadgerCare group:

- a. Any person listed in par. (a).

b. Except for SSI recipients, any person residing with members of the BadgerCare group who is legally responsible for any member.

2. Except for SSI recipients, the needs of the following persons shall be used to determine the eligibility of the BadgerCare group:

a. Any person listed in par. (a).

b. Children under age 19 of the primary person who are eligible for AFDC-related or SSI-related MA.

c. Any person residing with members of the BadgerCare group, and who is legally responsible for any member.

(c) *Non-legally responsible relative (NLRR) case.* The income of a minor child residing with an NLRR caretaker shall be measured against the BadgerCare limits for one person.

(d) *18 year old case.* An 18 year old who resides with his or her parent or parents may have his or her BadgerCare eligibility determined either with the parent or parents or separately.

SECTION 17. HFS 103.08(1) and (2)(a)2., (b) and (c) are amended to read:

HFS 103.08 (1) DATE. Except as provided in subs. (2) to ~~(4)~~ (5), eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application. Retroactive eligibility of up to 3 months may occur even though the applicant is found ineligible in the month of application.

(2)(a)2. The AFDC-related or SSI-related MA group shall be eligible as of the date within the spend-down period on which the expenditure of excess income or the obligation to expend excess income is achieved.

(b) If the amount of the monthly excess income changes before the expenditure or obligation of excess income is achieved, the expenditure or obligation of excess income for the remainder of the 6-month period shall be recalculated. When the size of the AFDC-related or SSI-related MA group changes, the monthly income limit shall be adjusted appropriately to the size of the new group, and the amount of excess income to be expended or obligated shall be adjusted accordingly. If any change is reported that may affect eligibility, the eligibility of the entire AFDC-related or SSI-related MA group may be redetermined and, if there is determined to be excess income, a new spend-down period shall be established.

(c) 1. Once the expenditure or obligation of excess income has been achieved, the AFDC-related or SSI-related MA group shall be eligible for the balance of the 6-month spend-down period, unless it is determined that assets have increased enough to make the MA group

ineligible, or that a change in circumstances has caused someone in the MA group to become ineligible for non-financial reasons.

2. If the entire group is determined ineligible, the MA benefits shall be discontinued with proper notice. If only one person in the MA group is determined ineligible for non-financial reasons, only that person's AFDC-related or SSI-related MA benefits shall, with proper notice, be discontinued. The other person or persons in the MA group continue their eligibility until the end of the 6-month period.

3. If the size of the MA group increases due to the addition of a child, that child is eligible for benefits during the rest of the spend-down period. An adult caretaker who enters the AFDC-related or SSI-related MA group, except a woman who is medically verified as pregnant or a person who is SSI-related, is not eligible for benefits during the remainder of the spend-down period.

SECTION 18. HFS 103.08(5) is created to read:

HFS 103.08(5) BADGERCARE CASES. Eligibility for BadgerCare shall begin on the first day of the month in which all eligibility requirements are met, but no earlier than the first day of the month of application.

SECTION 19. HFS 103.085 is created to read:

HFS 103.085 Conditions for continuation of eligibility for BadgerCare. (1)
PREMIUMS. (a) *Authority.* Subject to s. 49.665(5), Stats., and this section, a group eligible for BadgerCare may be required to pay a premium.

(b) *Applicability.* 1. A group eligible for BadgerCare with budgetable income at or below 150% of the poverty line is not required to pay a premium toward the cost of the health care coverage.

2. Except as provided in subd. 3. or 4., a group eligible for BadgerCare with budgetable income above 150% of the poverty line shall pay a premium toward the cost of the health care coverage.

3. A BadgerCare applicant group does not owe a premium for the first month of BadgerCare unless a member of the BadgerCare fiscal test group was an MA recipient in the previous month.

4. A BadgerCare applicant group does not owe a premium for the first month of BadgerCare unless a member of the BadgerCare fiscal test group was a BadgerCare recipient in the previous 12 months.

(c) *Amounts.* A group eligible for BadgerCare required under this subsection to pay a premium shall pay the amount indicated in the schedule provided in Table 103.085. Income shall be determined according to s. HFS 103.07.

Table 103.085		
BadgerCare Premium Schedule		
Monthly Income		Monthly Premium
From	To	
\$1,000	\$1,499.99	\$30
\$1,500	\$1,999.99	\$45
\$2,000	\$2,499.99	\$60
\$2,500	\$2,999.99	\$75
\$3,000	\$3,499.99	\$90
\$3,500	\$3,999.99	\$105
\$4,000	\$4,499.99	\$120
\$4,500	\$4,999.99	\$135
\$5,000	\$5,499.99	\$150
\$5,500	\$5,999.99	\$165
\$6,000	\$6,499.99	\$180
\$6,500	\$6,999.99	\$195
\$7,000	\$7,499.99	\$210
\$7,500	\$7,999.99	\$225
\$8,000	\$8,499.99	\$240
\$8,500	\$8,999.99	\$255
\$9,000	\$9,499.99	\$270
\$9,500	\$9,999.99	\$285
\$10,000	\$10,499.99	\$300
\$10,500	\$10,999.99	\$315

(d) *Payment.* 1. A group otherwise eligible for BadgerCare that owes a premium under this section shall pay the premium amount in full to the agency before the agency may certify the group's initial eligibility for BadgerCare.

2. Premiums are due by the 10th of the month prior to the month for which the premium is owed.

3. If no payment is received by the end of the month for which the premium is owed, the department shall terminate the group's eligibility for BadgerCare, effective at the end of the month.

4. The department shall allow a variety of premium payment methods. A group may choose one of the following methods for premium payment:

a. Wage withholding.

Jarena
b. Electronic funds transfer (EFT).

c. Direct payment by check or money order.

5. A group may pay premiums in advance for more than one month, but only for months in the group's BadgerCare eligibility period.

(e) *Refunds*. The department shall issue a refund for a premium which has been paid in advance when the premium is for one of the following:

1. A month that the group is ineligible for BadgerCare.

2. A month that the group's budgetable income drops to or below 150% of the poverty line and the change in income that brought the group's budgetable income to or below 150% of the poverty line was reported within 10 days of the date the change occurred.

3. A month which requires a lower premium amount due to a change in circumstances which was in effect for the entire month so long as the change was reported within 10 days of the date it occurred. In a case where the change was not reported within 10 days of the date it occurred, the effective date of the lower premium amount due is the first day of the month in which the change was reported.

(f) *Consequence of failure to pay BadgerCare premiums*. A group required to pay a premium shall be ineligible for re-enrollment for the period specified in sub. (3) when the group fails to pay its premium within the time specified in par. (d).

(2) QUITTING BADGERCARE. (a) *Termination of benefits*. Except as provided in par. (b), a group eligible for BadgerCare and required under sub. (1) to pay a premium shall be subject to re-enrollment restrictions under sub. (3) when that group voluntarily terminates BadgerCare eligibility.

(b) *Reasons for quitting BadgerCare*. A group that quits BadgerCare shall not be subject to a restrictive re-enrollment period if the group requests termination of BadgerCare for one of the following reasons:

1. The BadgerCare group is moving out of Wisconsin.

2. No one in the BadgerCare group remains non-financially eligible for BadgerCare.

3. A member of the BadgerCare group is starting employment that provides health care benefits.

4. Other health insurance coverage is now available to the BadgerCare group.

5. Any other reason, as determined by the department, not related to payment of the premium.

(3) RE-ENROLLMENT RESTRICTION. (a) *Period of ineligibility.* A BadgerCare group that fails to make a premium payment under sub. (1) or quits BadgerCare under sub. (2) is not eligible for BadgerCare for a period of at least 6 consecutive calendar months following the date that BadgerCare eligibility ends, unless one of the circumstances in par. (b) applies. Eligibility is restored as described in par. (c). After 6 calendar months, the group shall be eligible for BadgerCare only if all past premiums due are paid in full or 12 calendar months have passed after the expiration of BadgerCare eligibility, whichever is sooner.

(b) *Reasons restriction on re-enrollment may not apply.* The restriction on re-enrollment under this section does not apply for either of the following reasons:

1. The failure to pay premiums was due to a circumstance beyond the group's control, provided that all past due premiums have been paid in full. A circumstance beyond the group's control includes any of the following:

a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.

b. A problem with an employer's wage withholding.

c. An administrative error in processing the premium.

d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

2. A significant change in household composition occurred. A significant change occurs when one of the following events occurs:

a. A parent or a parent's spouse in the group eligible for BadgerCare no longer resides in the home and has not resided in the home for at least 30 consecutive days.

b. A person not in the group eligible for BadgerCare, but who is legally responsible for a group member, no longer resides in the home and has not resided in the home for at least 30 consecutive days.

c. A caretaker relative of a minor in a group eligible for BadgerCare, or the caretaker relative's spouse, no longer resides in the home and has not resided in the home for at least 30 consecutive days.

(c) *Resuming BadgerCare eligibility.* Eligibility for BadgerCare shall resume in the following manner for persons with a re-enrollment restriction that ended due to a reason described in par. (b):

1. For a BadgerCare group with a reason under par. (b)1: for the re-enrollment restriction not to apply, BadgerCare eligibility shall be restored for any months that the group had been closed during the restriction period, provided that payment of any outstanding premiums owed is made and the group was otherwise eligible for BadgerCare in those months.

2. For a BadgerCare group with a reason under par. (b)2 for the re-enrollment restriction not to apply, the restriction on re-enrollment shall not apply to the remainder of the 6-month period. Beginning the first of the month after the adult has been out of the home for 30 days, the group may again be eligible for BadgerCare, provided that payment of any outstanding premiums owed is made and the group is otherwise eligible. The BadgerCare group remains ineligible for any prior months when the restriction on re-enrollment was in effect.

(4) ENROLL IN AVAILABLE EMPLOYER-SUBSIDIZED HEALTH PLAN. (a) A BadgerCare recipient is ineligible for BadgerCare when one of the following fail to enroll in an available employer-subsidized health care plan:

1. The recipient.
2. The recipient's spouse when the spouse is residing with the recipient.
3. The recipient's parent, step-parent or other caretaker relative residing with the recipient, when the recipient is under 19 years of age.

(b) Except as provided in par. (c), the recipient is ineligible for BadgerCare effective on the first day of the month that the employer's plan would have provided coverage for the recipient if the family had been enrolled in the plan. The individual remains ineligible for each month that coverage would have been available up to 19 months from the month the failure to enroll in the plan occurred.

(c) Paragraph (b) does not apply if there was coverage and it ended for a good cause reason. A good cause reason is any of the following:

1. The employment ended for a reason other than voluntary termination.
2. The person changed to a new employer that does not offer family coverage.
3. The person's employer discontinued health plan coverage for all employees.
4. Any other reason determined by the department to be a good cause reason.

(5) COOPERATION WITH BUY-IN TO EMPLOYER-PROVIDED HEALTH CARE COVERAGE. An adult in a group eligible for BadgerCare shall cooperate when the department determines whether it is cost-effective to purchase coverage under the employer-

provided health care plan for the group under s. HFS 108.02(13). In this subsection, "cooperation" means providing necessary information in order to determine cost effectiveness, signing up with the plan when requested by the department and cooperating with any other requirements of the health care plan. A person who fails or refuses to cooperate with buy-in is not eligible for BadgerCare.

(6) **MAXIMUM INCOME.** A BadgerCare group remains eligible for BadgerCare while the fiscal test group's income is at or below 200% of the poverty line and the group is otherwise eligible for BadgerCare.

SECTION 20. HFS 108.02(13) is created to read:

HFS 108.02(13) BADGERCARE BUY-IN TO EMPLOYER-PROVIDED HEALTH CARE COVERAGE. (a) *Authority.* The department may purchase family coverage offered by the employer of a member of an eligible family if the department determines that purchasing that coverage would not be more costly than providing coverage under BadgerCare.

(b) *General.* 1. The department shall not buy in to employer insurance when any member of a family has been covered by health care coverage offered by the employer of a member of an eligible family in the 6 months prior to the buy-in decision.

2. Children in a family are not eligible for buy-in to health care coverage offered by the employer of an eligible family if the family had health care coverage through the employer of a member of the family for these children within the previous 6 months.

3. The employer shall pay at least 60% of the cost of the coverage, but not more than 80% of the cost of the coverage, for the department to purchase the coverage.

(c) *Buy-in method.* The department shall purchase coverage by making payment to one of the following:

1. The employer of the recipient.

2. The insurance company that provides the health care coverage offered by the employer.

3. If it is not practical or feasible to do otherwise, and if requested by the employer or the insurance company offering the employer-subsidized coverage, directly to the employe as reimbursement for premiums paid by the employe.

SECTION 21. HFS 108.03(1) is amended to read:

HFS 108.03(1) DETERMINATION OF ELIGIBILITY. Agencies shall be responsible for determination of eligibility for MA. These determinations shall comply with standards for eligibility found in ss. 49.46(1) ~~and~~ 49.47(4) and 49.665(4) Stats., and ch. HFS 103.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL:

DEC 02 1999



OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

Tommy G. Thompson
Governor

Joe Leean
Secretary

State of Wisconsin

Department of Health and Family Services

TELEPHONE: (608) 266-8428
FAX: (608) 267-1434
www.dhfs.state.wi.us

December 2, 1999

The Honorable Fred Risser, President
Wisconsin State Senate
1 East Main, Suite 402
Madison, WI 53702

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 99-106
HFS 101 to 103 and 108, relating to the BadgerCare health insurance program.

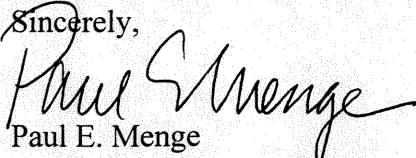
Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about these rules, please contact Alfred Matano at 267-6848.

Sincerely,


Paul E. Menge
Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
Mary Laughlin, Division of Health Care Financing
Alfred Matano, Division of Health Care Financing
Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES - HFS 101-103 & 108
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

This order creates permanent rules relating to how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. This order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 108, the Department's rules for operation of the MA Program.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by MA. The existing Wisconsin MA HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

The rules included in this order modify the current Medical Assistance rules to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; exempt a BadgerCare group with monthly income at or below 150% of the federal poverty level from being obliged to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing MA coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing MA coverage.

The Department obtained approval for BadgerCare from the federal Health Care Financing Administration (HCFA) on January 22, 1999, effective July 1, 1999, and published emergency rules on July 1, 1999, so that the program could begin on that date. These are the permanent rules to replace the emergency rules.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted, except the following:

2.a. Comment: In HFS 101.01 and 102.01 (intro.), the parentheses should be deleted and either "medical assistance" or "MA" should be used. Both are defined in HFS 101.03 (95).

Response: No change. At the beginning of each chapter in the Medical Assistance series of the Wisconsin Administrative Code, the term "medical assistance" is used with "MA" in parentheses, and then "MA" is used throughout the chapter. This serves as a reader's aid.

2.c. Comment: In HFS 103.085 (5), the second sentence should define "cooperate" since that is the term used in the other sentences.

Response: No change. "Cooperate" is the verb form of "cooperation" (noun). They are essentially the same word.

4.c. Comment: In s. HFS 103.04 (6) (b), the "applicable law" should be specifically cited.

Response: A reference has been added to s. 49.665(4)(at), Stats. This language was created by 1999 Wisconsin Act 9. It authorizes the Department to establish a lower maximum income level for the initial eligibility determination if funding is insufficient to accommodate projected enrollment levels for BadgerCare.

5.a. Comment: In s. HFS 101.03 (170m), "employes'" should replace the first "employes".

Response: The comment suggests that the word "employes" in the phrase "state employes health plan" should be followed by an apostrophe. This is not the correct drafting standard. The LRB Bill Drafting Manual shows the same word used in the same way in a phrase without the apostrophe. The deputy director of the Clearinghouse agrees that no change is required.

5.d. Comment: The following sections of the rule should be reviewed and consistent terms selected to refer to the health insurance coverage being referred to: HFS 103.03 (1) (f) 2. c. ("health plan coverage"); 103.03 (1) (f) 5. (intro.) ("employer-subsidized plan"); 103.03 (1) (f) 5. c. ("private health insurance"); 108.02 (13) (a) ("family coverage"); 108.02 (13) (b) 1. ("employer insurance"); 2. ("health care coverage") and 3. ("coverage").

Response: Changes have been made to use terms more consistently. "Group health insurance plan" is now used throughout HFS 103.03 (1) (f) 2. and 108.02 (13). This term is defined in HFS 101.03 (67m). In HFS 103.03 (1) (f) 4. and 5. and 103.085 (4), the term "employer-subsidized health care coverage" is employed. This term is defined in HFS 101.03 (52m).

5.h. Comment: In HFS 103.085 (table), should the monthly premium amount that must be linked to the family income's percentage of the poverty level also be linked to the family's size? For example, a family with a monthly income of \$1,000 to \$1,499.99 with a family size of two will be at a different percentage of the poverty level than a family with the same income with a family size of four.

Response: The premium will be 3% of family income, regardless of family size. Family size will determine whether or not the family is required to pay a premium at all. If the family has an income which is at or below 150% of the federal poverty level, the family is not required to pay a premium. As the comment notes, how the family's income compares to the federal poverty level will depend upon the number of members of the family.

5.i. In s. HFS 103.085 (1) (d) 1., is the group otherwise eligible for BadgerCare required to pay a monthly premium amount in full to the agency prior to being certified for eligibility? If so, the word "monthly" should be inserted prior to "premium amount."

Response: No change as suggested. The applicability of the premium requirement is explained in par. (b). By inserting the word "monthly" as suggested, the language might be interpreted to restrict the Department to collect a single month's premium from an applicant. See also HFS 103.03(1)(f), which lists among non-financial eligibility criteria that "a person required to pay a premium under s. HFS 103.085(1) has made the first payment." For clarification and consistency, "a group... that is required to pay a premium" has been substituted for "a group...that owes a premium" in subd. 1., and "is required" has been substituted for "is owed" in subds. 2. and 3.

5.k. Comment: In HFS 108.02 (13) (b) 3., will the Department pick up the remaining 20% of the coverage not paid by the employer if the employer pays 60%? If so, this should be clarified.

Also, in this subdivision and elsewhere in sub. (13), reference is made to "cost of the coverage" or a similar term. Is this referring only to the premium or does it also include deductibles and copayments? See s. 49.665 (1) (c), Stats., which excludes deductibles and copayments from the cost portion of the definition of "employer-subsidized health care coverage."

Finally, subd. 3. seems to say that the Department will not buy employer insurance if the employer pays, for instance, 90% of the cost. Is this intended?

Response: HFS 108.02(13) puts the department in the shoes of an employe whose employer offers coverage which falls short of "employer-subsidized health care coverage," as that term is defined in HFS 101.03(52m). Therefore, the Department will pay the employe share of the insurance ("buy in" to the coverage)

if the insurance meets the conditions specified in HFS 108.02(13). If the employer pays at least 60% of the cost of the coverage, the Department will pay the remainder, up to 40% of the cost of the coverage. However, if the employer pays 80% or more of the coverage, the employee is not eligible for BadgerCare. See HFS 103.03(1)(f)3. "Cost of coverage" as used in the rules has the same meaning as in the statute.

Public Hearings

The Department held 4 public hearings on the proposed rules. The hearings were in Milwaukee on August 26, 1999; in Green Bay on August 27, 1999; in Eau Claire on August 30, 1999; and in Madison on August 31, 1999. No one attended the hearings in Milwaukee and Eau Claire; one person testified at the hearing in Green Bay; 2 persons attended the hearing in Madison but neither one testified. Written comments were received during the public review period ending September 3, 1999, from 4 persons. A list of the public review participants and a summary of their comments, with the Department's responses, are included in an attachment to this document.

In response to comments from the public, the Department made one change in the proposed rules. That change was to specify, under eligibility for BadgerCare, two other "good cause" reasons for having health care coverage in the 3 months preceding determination of eligibility for BadgerCare.

Final Regulatory Flexibility Analysis

The rules for the BadgerCare program apply to the Department, to families that are applicants or recipients of the health care coverage provided by BadgerCare and to county social service or human service departments that take applications and determine eligibility for BadgerCare. The rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

PUBLIC HEARING COMMENTS & DHFS RESPONSES

Existing Emergency Rules and Proposed Permanent Rules for the BadgerCare Program, Amendments to Chs. HFS 101-103 & 108

Public hearings were held in Milwaukee on August 26, 1999, Green Bay on August 27, 1999, Eau Claire on August 30, 1999, and Madison on August 31, 1999.

Three persons attended the hearings, one of whom presented testimony on the rules. Four other persons submitted comments in writing during the public review period that ended on September 3, 1999.

The following Department staff conducted the hearings:

- In Milwaukee, Kevin Lewis, the DHFS Legislative Liaison, and John LaPhilliph from the Division of Health Care Financing;
- In Green Bay, Kevin Lewis;
- In Eau Claire, Kevin Lewis, and Fred Heffling from the Division of Supportive Living; and
- In Madison, Mary Laughlin, John LaPhilliph and Randy McElhose, all from the Division of Health Care Financing.

Public review participants and observers were the following:

- | | |
|---|----------------------------|
| 1. Shirin Cabral
Legal Aid of Wisconsin (LAW)
Milwaukee, WI | Written comments |
| 2. Carroll Carlson
Association of Wisconsin HMOs
Eau Claire, WI | Written comments |
| 3. Julie Daggett
Association of Wisconsin HMOs
Madison, WI | Observation at a hearing |
| 4. Jennifer Grondin
American Federation of State,
County and Municipal Employees
(AFSCME)
Madison, WI | Written comments |
| 5. Karen Kohlbeck
Green Bay, WI | Oral comments at a hearing |

6. Carol Medaris
Wisconsin Council on Children &
Families (WCCF)
Madison, WI

Written comments

7. John Peacock
Wisconsin Council on Children &
Families (WCCF)
Madison, WI

Observation at a hearing

Suggestions of public hearing participants for changes in the proposed permanent rules for operation of BadgerCare are shown in the following pages along with the Department's responses to those comments.

Comments on BadgerCare Administrative Rules

POLICY AREA	COMMENT	RESPONSE
<p>1. Definition of "access" - HFS 101.03(1).</p>	<p>Change the definition of "access" to refer only to current access and not include the language relating to the 18 month look-back period. "Access" as "current month access" is the way it is used later in the rules in section HFS 103.03(1)(f)3 and 4. - WCCF</p> <p>Revise the definition to state that "access" means a family member has the ability to sign up and be covered by an employer's group health plan, where the employer pays at least 80% of the cost, excluding deductibles or copayments.</p> <p>LAW</p>	<p>No change. The substantive provision relating to access appears at s. HFS 103.03 (1) (f). Rule drafting standards prohibit the inclusion of substantive provisions in the definitions.</p>
<p>2. 18-month lookback period - HFS 101.03(1); 103.03(1)(f)4; 103.085(4).</p>	<p>The 18-month lookback period is harsh and not authorized by federal law, nor has Wisconsin obtained a waiver to apply this limitation in the BC program. The 18-month lookback is onerous to administer, error-prone, and unfair to potential applicants who, for various reasons, may not have signed up for an employer's insurance and who may now be foreclosed from doing so. LAW, WCCF, AFSCME</p>	<p>No change. HCFA was aware of the 18-month 'look back' for access to health insurance when the waiver was approved.</p> <p>The 18-month lookback period is authorized by s.49.665(4)(a)3, Stats. The intent of the Legislature in this provision is to create disincentives for employees to drop employer-based health care coverage and apply for BadgerCare instead. There must be an 80% employer contribution towards the premium for family coverage for the applicant to be considered to have access.</p>
<p>3. 3-month lookback period - HFS 103.03(1)(f)2</p>	<p>A condition of BC eligibility is that a person does not have health insurance coverage or has not been covered any time in the previous 3</p>	<p>No change. Section 2110(b)(1)(C) of the Social Security Act states in part that a "targeted low-income child" means a child ... who is not</p>

	<p>calendar months, unless the coverage ended for a good cause reason. This overreaches the federal mandate because both federal and state statutes intended that families with employer-sponsored insurance should be disqualified from participating in the CHIP plan. Congress did not intend to penalize responsible individuals who purchase insurance on their own, especially not individuals with serious medical conditions who often can barely make the payments for these high risk policies. LAW, WCCF</p>	<p>found to be eligible for medical assistance under title XIX or covered under a group health plan or under health insurance coverage (as such terms are defined in section 2791 of the Public Health Service Act). "</p> <p>The 3-month look-back period is described in Wisconsin's 1115 waiver. The intent of Congress was broad - to avoid having insurance provided under the CHIP program supplant private health insurance. Other states have longer lookback periods.</p> <p>The applicant is considered to have access to coverage if the employer pays 80% or more of the premium for family coverage. This threshold is used to determine whether there is access to coverage, and it is not relevant to the three month lookback.</p>
<p>4. Good cause reasons – HFS 103.03(1)(f)2.a.</p>	<p>This section provides a good cause exception to the ending of health insurance coverage for a person whose employment ended for a reason other than voluntary termination, when sometimes voluntary termination is for good reasons. Examples: employee or family illness, unacceptable working conditions, other constructive discharge reasons. LAW</p>	<p>Agreed that a voluntary termination could be for a good cause reason. Additional good cause reasons have been added. In addition, the 'other as approved by the Department' reason has been retained. Since the rules cannot be written to encompass every conceivable scenario, this provision allows for "any other reason determined by the department to be a good cause reason." HFS 103.03 (1)(f)2.e</p>
<p>5. BC Fiscal Test Group – HFS 103.04(7)(b).</p>	<p>Medicaid regulations prohibit the counting of the income of non-legally responsible relatives, when computing eligibility. Income of step parents towards their stepchildren or siblings for siblings is prohibited in the Medicaid program.</p>	<p>No change. Wisconsin asked for and HCFA granted the State a waiver of Title 19 budgeting requirements under s. 1902 (a)(17) of the Social Security Act. This is the provision that allows only the individual's financial resources and</p>

	LAW	<p>those financial resources of a person legally responsible for that individual to be counted in determining Medicaid eligibility. This section was waived under guidance from HCFA so that parents and step-parents who are ineligible for Medicaid can be considered for BadgerCare eligibility, allowing coverage for the whole family.</p>
<p>6. Premium refunds – HFS 103.085(1)(e)2.</p>	<p>This rule authorizes a refund of a premium in excess of the premium owed if the change in circumstance was in effect for the entire month and a report of the change was made within 10 days. This section is too restrictive and makes no allowance for fluctuating and unpredictable income nor for delays due to a recipient's inability to contact a caseworker. LAW</p>	<p>No change The 10-day timely report of change requirement is standard for all of the public assistance programs administered with Medicaid/BadgerCare. A change in economic circumstances triggers an obligation on the part of the recipient to notify the department. The recipient can leave a telephone message, send a letter, or contact someone else in the agency. All the Department needs is documentation that a contact was made. By averaging the economic circumstances of the recipient out over a month, the recipient already has a month to determine if there has been a change in economic circumstances. The 10-day period to notify the Department is current Department policy. See s. HFS 104.02(6), "Notification of Personal or Financial Status Changes" under "Recipient Duties."</p>
<p>7. Re-enrollment restriction – HFS 103.085(3).</p>	<p>The re-enrollment sanction of six months is too harsh. The Department should stagger the sanctions: one month for the first non-payment, two months for the second, three months for the third, etc. LAW</p>	<p>No change. The six month re-enrollment restriction was selected for the following reasons:</p> <ul style="list-style-type: none"> • The Department needs a long enough period to prevent recipients from going on and off the program. This would likely create a

<p>scenario of adverse selection, where only sick people were on the system, resulting in an increase in the capitation rate and an increase in costs for the program.</p> <ul style="list-style-type: none"> HMOs object to a program that allows recipients to go on and off the program. Recipients are given time to pay the premium. For example, the September premium is due on August 10; the recipient would not be off the program until the end of September. The recipient could pay the past due premium any time during the month of October and be reinstated without incurring the re-enrollment restriction. 		
<p>No change. The Department's policies as set out in the rules provide considerable leeway for late payment of premiums. The Department will only withdraw eligibility for non-payment of premiums after a full calendar month has passed following the payment due date. There will be a significant disruption of the program if recipients are allowed to drop coverage and pick it up again at will.</p>	<p>This rule provides that eligibility will end if payment is not received by the end of the month for which the premium is owed. Provide an extra month grace period for the family to catch up on their payments and continue to receive coverage. WCCF, AFSCME</p>	<p>8. Failure to pay premiums – HFS 103.085(1)(d)3.</p>
<p>No change. NLRR children cases are usually handled within the same case because they are usually eligible for Medicaid under AFDC-related or Healthy Start rules. The only time that the NLRR child is put into a separate case is when that child is ineligible for Medicaid. This would mean that a child has income greater than 100% FPL (approximately \$8,500 annual income), but less than BadgerCare's 185% FPL. We are unaware of any such cases</p>	<p>Any child who is living with someone other than his or her parent is considered separately from other children in the household. These so-called non-legally responsible relative (NLRR) children cases (who may also be eligible for Kinship Care) require the eligibility worker to handle them as a separate case, increasing eligibility worker caseloads. This could increase the possibility of worker-error in these cases, raising the MA error rate, subjecting Wisconsin to HCFA sanctions. AFSCME</p>	<p>9. Treatment of each child as a separate case in kinship care.</p>

		<p>in our current caseload.</p> <p>In addition, HCFA has waived Medicaid quality control requirements. Instead of establishing a statewide error rate based on a sample of case reviews, the state designs and implements a variety of special projects to improve the Wisconsin Medicaid program.</p>
<p>10. Limited term employees (LTE) - HFS 103.03(1)(f)3.</p>	<p>LTEs do not have access to state health insurance plans. These people will be harmed by the provision which excludes state employees from coverage under BC. Kohlbeck</p>	<p>No change Although it is true that limited term employees usually do not have access to state health insurance programs, this does not create the problem envisioned. Section HFS 103.03(1)(f) 3. indicates that the person would not be eligible for BadgerCare if that person has access to a state employee health plan. Therefore, if an individual were a state employee, but did not have access to a state employee health plan, this provision would not restrict the person's eligibility for BadgerCare.</p>
<p>11. Farmers</p>	<p>The rule will create problems for farmers, who will not likely be eligible, due to the methodology used to calculate income and due to the fact that they may have paid for expensive health insurance with no help from an employer, since most farmers are self-employed. Kohlbeck</p>	<p>No change There are two issues in question. First, self-employment income for BadgerCare is calculated in the same manner as for Medicaid in accordance with 42 CFR 233.20(a).</p> <p>Second, because farmers are self-employed, they do not have access to employer-provided coverage, and thus often pay large sums of money to purchase insurance. The intent of Congress was to avoid having insurance provided under the CHIP program supplant private health insurance. Federal law anticipates that the State will look to see if an applicant for insurance under the CHIP</p>

<p>12. 80% employer contribution -- HFS 103.03 (1)(f)3.</p>	<p>The employer contribution of 80% of cost is set too high. Set it at 50% of cost. Association of Wisconsin HMOs.</p>	<p>program has health insurance from any source, not just from employers.</p> <p>No change The threshold of an 80% employer contribution for employer-subsidized health care coverage is found in s. 49.665(1)(c), Stats. The intent of the Legislature in creating this threshold was to create a program that supplied affordable health insurance to Wisconsin workers. If the Legislature were to reduce the threshold to 50%, as the commenter suggests, the result would be to force lower income employees to pay a high price for their health care coverage.</p> <p>In addition to the requirement that an employee purchase employer-subsidized health insurance if the employer pays at least 80% of the premium, the state will purchase employer-based health care coverage for an applicant if the employer pays at least 60% of the cost of that coverage. See s. HFS 108.02(13). If the employer pays less than 60% of the cost of that health insurance, it is deemed to be more cost-effective for the state to enroll the applicant in the BadgerCare program without using the employer-provided coverage.</p> <p>A letter from HCFA to State Health Officials dated February 13, 1998 states in part, that: "States only will be permitted to make subsidies available for the purchase of dependent coverage through employer-sponsored group health plans in cases where the employer contributes at least 60 percent of the cost of</p>
---	--	---

<p>family coverage, which is the median employer contribution nationwide." Therefore, there is a strong factual and legal basis to state that the 50% employer contribution that the commenter suggests is contrary to federal and Wisconsin law and policy.</p>		
<p>No change. The State does not have the statutory or federal waiver authority to discontinue coverage for employees if the employer discontinues coverage for all employees. This proposal would subject low-income working families to a lack of health care coverage for 6 months based upon an action by an employer over which the employee had no control. While the State is concerned about the possibility of employers discontinuing health insurance for employees in anticipation of the State filling the gap in coverage through BadgerCare, the suggested remedy is not the desired solution. The Department would be happy to discuss possible legislative remedies if this turns out to be a significant problem as BadgerCare is implemented.</p>	<p>Provide that the applicant be ineligible for BadgerCare if the employer has discontinued health plan coverage for all employees within the six months prior to the application month. Association of Wisconsin HMOs</p>	<p>13. Discontinuation of health care coverage by employer for all employees – HFS 103.03(1)(f)5.b.</p>

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING AND CREATING RULES

To renumber HFS 101.03(1); to amend HFS 101.01, 101.03 (95), 102.01 (intro.), 102.02, 102.03 (1) and 102.04 (2) and (3) (c), 103.01 (1) (a), 103.03 (1) (intro.), (a) and (b) 3., 103.04 (3) (a), 103.08 (1), (2) (a) 2., (b) and (c) and 108.03 (1); and to create HFS 101.03 (17r), (22g), (27g), (52m), (67m), (69m), (78s), (114p), (125m), (170m) and (172m), 102.01 (5) (h), 103.03 (1) (f), 103.04 (6) and (7), 103.08 (5) and 103.085 and 108.02 (13), relating to providing eligibility under the BadgerCare program to families with incomes up to 185% of the federal poverty level that are not covered by health insurance, do not have access to an employer-subsidized family health care plan which is 80% or more subsidized and are not otherwise eligible for the medical assistance program under AFDC-related or SSI-related criteria.

Analysis Prepared by the Department of Health and Family Services

This order creates rules relating to how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. This order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 108, the Department's rules for operation of the MA Program.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by MA. The existing Wisconsin MA HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

The rules included in this order modify chs. HFS 101 to 108 to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; require a BadgerCare group with monthly income above 150% of the federal poverty level to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing MA coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing MA coverage.

The Department obtained approval for BadgerCare from the federal Health Care Financing Administration (HCFA) on January 22, 1999, effective July 1, 1999.

The Department's authority to renumber, amend and create these rules is found in ss. 49.45 (10) and 49.665 (3), (4) and (5), Stats. The rules interpret ss. 49.43 to 49.497 and 49.665, Stats., as amended by 1999 Wisconsin Act 9.

SECTION 1. HFS 101.01 is amended to read:

HFS 101.01 Authority and purpose. This chapter and chs. HFS 102 to 108 are promulgated pursuant to ~~ss.~~ ss. 49.45 (10) and 49.665 (3), (4) and (5), Stats., for the purpose of administering the medical assistance (MA) program ~~(MA)~~ in Wisconsin which finances necessary health care services for qualified persons whose financial resources are inadequate to provide for their health care needs.

SECTION 2. HFS 101.03(1) is renumbered HFS 101.03(1m).

SECTION 3. HFS 101.03 (1), (17r), (17t), (17w), (22g), (27g), (52m), (67m), (69m) and (78s) are created to read:

HFS 101.03 (1) "Access," for purposes of BadgerCare, means a family member living in the household has the ability to sign up and be covered by an employer's group health plan in the current month, or had the ability to sign up and be covered in any or all of the 18 months prior to the application or redetermination of BadgerCare eligibility.

(17r) "BadgerCare" means the MA-related program established under s. 49.665, Stats.

(17t) "BadgerCare fiscal test group" means all members of the BadgerCare group and all persons who are financially responsible for all members of the BadgerCare group who live in the same household as the person for whom they are legally responsible and who are not SSI recipients.

(17w) "BadgerCare group" means all persons listed on an application for BadgerCare who meet nonfinancial eligibility requirements.

(22g) "Caretaker relative" means a person listed in s. 49.19 (1) (a) 2.a., Stats.

(27g) "COBRA continuation coverage" has the meaning under 29 CFR 2590.701-2(2).

(52m) "Employer-subsidized health care coverage" means family coverage under a group health insurance plan offered by an employer for which the employer pays at least 80% of the cost, excluding any deductibles or copayments that may be required under the plan.

(67m) "Group health insurance plan" means a plan that meets the definition of a group health plan in 42 USC 300gg-91(a)(1).

(69m) "Health insurance coverage" has the meaning provided in 42 USC 300gg-91(b)(1) and also includes any arrangement in which a third party agrees to pay for the health care costs of the individual.

(78s) "Incapacitation". For purposes of BadgerCare, means that there has been a finding that the individual's physical or mental incapacity to provide proper parental care. The incapacitation shall be expected to last for a period of at least 30 days. The agency director shall make the incapacitation decision or a designee based on competent medical testimony. The incapacitation shall be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support care for the child.

SECTION 4. HFS 101.03 (95) is amended to read:

HFS 101.03 (95) "Medical assistance" or "MA" means the assistance program operated by the department under ss. 49.43 to 49.497 and 49.665, Stats., any services or items under ss. 49.45 to ~~49.47 and 49.49~~ to 49.497, Stats., and this chapter and chs. HFS 102 to 108, or any payment or reimbursement made for these services or items.

SECTION 5. HFS 101.03 (114p) and (125m) are created to read:

HFS 101.03 (114p) "Parent" means any of the following:

- (a) A biological parent.
- (b) A person who has consented to the artificial insemination of his wife under s. 891.40, Stats.
- (c) A parent by adoption.
- (d) A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently marry each other under s. 767.60, Stats.
- (e) A man who has signed and filed with the state registrar under s. 69.15 (3) (b) 3., Stats., a statement acknowledging paternity.

(125m) "Poverty line" means the federal poverty guidelines by family size updated annually under 42 USC 9902 (2).

Note: The federal poverty guidelines for 1999 were published in the *Federal Register*, March 18, 1999, pp. 13428-13430.

SECTION 6. HFS 101.03(132) is amended to read:

HFS 101.03(132) "Primary person" means the person ~~whose name is listed first on the application form as the person~~ applying for MA.

SECTION 7. HFS 101.03(170m) and (172m) are created to read:

HFS 101.03(170m) "State employees health plan" means family or individual coverage under a group health insurance plan offered by a unit of state government to its employees.

(172m) "Subscriber" means the person through whom health insurance benefits are made available, who either owns a health insurance policy or is the policyholder of a health insurance policy provided by his or her employer.

SECTION 8. HFS 102.01 (intro.) is amended to read:

HFS 102.01 Application. (intro.) Application for medical assistance (MA) shall be made pursuant to s. 49.47 (3), Stats., for medically indigent persons, ~~and~~ s. 49.46, Stats., for categorically needy persons and s. 49.665, Stats., for persons under BadgerCare, and this chapter. Applications shall be made and reviewed in accordance with the following provisions:

SECTION 9. HFS 102.01 (5) (h) is created to read:

HFS 102.01 (5) (h) In cases where a minor child is residing with a non-legally responsible relative and no eligibility exists for the child under s. 49.46 or 49.47, Stats., the agency shall determine the eligibility of that child for BadgerCare under s. 49.665, Stats., on a separate application.

SECTION 10. HFS 102.03 (1) is amended to read:

HFS 102.03 (1) An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so, except that a refusal or failure by an applicant for MA to verify assets does not affect eligibility for BadgerCare under s. 49.665, Stats. If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.

SECTION 11. HFS 102.04 (2) and (3) (c) are amended to read:

HFS 102.04 (2) NOTICE OF DECISION. The agency shall send timely and adequate notice to applicants and recipients to indicate that MA has been authorized or that it has been reduced, denied or terminated. In this subsection, "timely" means in accordance with ~~s. 49.19 (13), Stats.~~ 42 CFR 431.211, and "adequate notice" means a written notice that contains a statement of the action taken, the reasons for and specific regulations supporting the action, and an explanation of the individual's right under ~~ss. s. 49.45 (5) and 49.50 (8), Stats.,~~ to request a hearing and the circumstances under which aid benefits will be continued if a hearing is requested.

(3) REVIEW OF ELIGIBILITY. (c) Within ~~6~~ 12 months after the date initial eligibility is determined for AFDC-related persons and persons eligible for BadgerCare;

SECTION 12. HFS 103.01 (1) (a) is amended to read:

HFS 103.01 (1) PERSONS ELIGIBLE. (a) Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.455, 49.46 (1) ~~and~~ , 49.47 (4) and 49.665, Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving ~~AFDC or~~ SSI.

SECTION 13. HFS 103.03 (1) (title), (a) and (b) 3. are amended to read:

HFS 103.03(1) (title) AFDC-RELATEDNESS ~~OR~~ SSI-RELATEDNESS OR BADGERCARE ELIGIBILITY.

(a) *Requirement.* To be non-financially eligible for MA, ~~applicants~~ an applicant shall be AFDC-related ~~or~~ , SSI-related or meet the non-financial requirements under par. (f) for BadgerCare.

(b) 3. The person is a caretaker relative ~~as defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.;~~ or

SECTION 14. HFS 103.03(1)(f) is created to read:

HFS 103.03(1)(f) *BadgerCare eligibility.* To be non-financially eligible for BadgerCare, a person shall meet all of the following conditions:

1. The person is under age 19, a custodial parent living with his or her child who is under age 19 or the spouse of a custodial parent if the spouse resides with the custodial parent's child who is under the age of 19.

2. The person does not have health insurance coverage and has not been covered at any time in the previous 3 calendar months. The 3 calendar month period does not apply if the coverage ended for a good cause reason. A good cause reason is any of the following:

a. The person was covered by a group health insurance plan that was provided by a subscriber through his or her employer, and the subscriber's employment ended for a reason other than voluntary termination, except for cases in which the voluntary termination was a result of the incapacitation of the subscriber.

b. The person was covered by a group health insurance plan that was provided by a subscriber through his or her employer, and the subscriber changed to a new employer who does not offer family coverage.

c. The person was covered by a group health insurance plan that was provided by a subscriber through his or her employer, and the subscriber's employer discontinued health plan coverage for all employees.

d. COBRA continuation coverage was exhausted in accordance with 29 CFR 2590.701-2(4).

e. The person was covered by insurance that has ended due to the death or change in marital status of the subscriber.

f. Any other reason determined by the department to be a good cause reason.

3. The person does not have access to family coverage under a group health insurance plan offered by an employer for which the employer pays 80% of the cost, excluding any deductibles or co-payments that may be required under the plan, or to a state employee health plan through any of the following:

a. The person's employer.

b. The employer of the person's spouse when the spouse is residing with the person.

c. The employer of the person's parent, step-parent or other caretaker relative residing with the person, when the person is under 19 years of age.

4. Except as provided in subd. 5., the applicant for BadgerCare did not at any time in the 18 months immediately preceding application for BadgerCare have access to employer-subsidized health care coverage, or a state employee's health plan. The applicant is ineligible for BadgerCare the first day of the month that the employer's plan would have provided coverage for the recipient if the family had been enrolled in the plan. The applicant remains ineligible for each month that coverage would have been available up to 18 months from the month the failure to enroll in the plan occurred. The insurance the applicant had access to shall have been available only through one of the following:

a. The person's employer.

b. The employer of the person's spouse when the spouse is residing with the person.

c. The employer of the person's parent, step-parent or other caretaker relative residing with the person, when the person is under 19 years of age.

5. The 18 month period in subd. 4. does not apply if one of the following statements is true about access to employer-subsidized health care coverage:

a. The employment ended.

b. The person's employer discontinued health care coverage for all employees.

c. A member or members of the family were eligible for other health insurance coverage or MA at the time the employee failed to enroll in the employer-subsidized health care coverage and no member of the group was eligible for BadgerCare at that time.

d. The person was covered by insurance that has ended due to the death or change in marital status of the subscriber.

e. Any other reason determined by the department to be a good cause reason.

6. The person is not eligible for MA under AFDC-related or SSI-related criteria in this chapter.

7. A person required to pay a premium under s. HFS 103.085(1) has made the first payment.

8. A person has not chosen to receive AFDC-related or SSI-related MA through a spend-down, as described in s. HFS 103.08(2)(a), or has chosen to end a spend-down period at any time prior to the date at which the expenditure or obligation of excess income has been achieved.

SECTION 15. HFS 103.04(3)(a) is amended to read:

HFS 103.04(3) EXCESS INCOME CASES. (a) In this subsection, "spend-down period" means the period during which excess income may be expended or obligations to expend excess income may be incurred for the purpose of obtaining AFDC-related or SSI-related MA eligibility, as described under s. HFS 103.08 (2) (a).

SECTION 16. HFS 103.04(6) and (7) are created to read:

HFS 103.04(6) BADGERCARE. (a) A group that meets the requirements of s. HFS 103.03(1)(f) and (2) to (9) and the income limits in this subsection or in s. HFS 103.085(6) is eligible for BadgerCare.

(b) For all applicant BadgerCare fiscal test groups, the income limit is 185% of the poverty line, or a lower percentage of the poverty line established by the department in accordance with s. 49.665 (4) (at), Stats.

(7) SPECIAL BADGERCARE BUDGETING PROCEDURES. (a) *BadgerCare group*. The following persons who reside in the home with the primary person shall be included in the BadgerCare group if otherwise non-financially eligible and applying for BadgerCare:

1. The primary person.
2. The primary person's spouse.
3. A natural or adoptive child under age 19 of the primary person.

4. A parent of a child under subd. 3.
5. The spouse of a parent under subd. 4.
6. The natural or adoptive child of the primary person's child under subd. 3.
7. The spouse of the child in subd. 3., if that child is a parent.

(b) *BadgerCare fiscal test group*. 1. The income of the following persons shall be included when determining the eligibility of the BadgerCare group:

a. Any person listed in par. (a).

b. Except for SSI recipients, any person residing with members of the BadgerCare group who is legally responsible for any member.

2. Except for SSI recipients, the needs of the following persons shall be used to determine the eligibility of the BadgerCare group:

a. Any person listed in par. (a).

b. Children under age 19 of the primary person who are eligible for AFDC-related or SSI-related MA.

c. Any person residing with members of the BadgerCare group, and who is legally responsible for any member.

(c) *Non-legally responsible relative (NLRR) case*. The income of a minor child residing with an NLRR caretaker shall be measured against the BadgerCare income limits for one person.

(d) *18 year old case*. An 18 year old who resides with his or her parent or parents may have his or her BadgerCare eligibility determined either with the parent or parents or separately.

SECTION 17. HFS 103.08(1) and (2)(a)2., (b) and (c) are amended to read:

HFS 103.08 (1) DATE. Except as provided in subs. (2) to ~~(4)~~ (5), eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application. Retroactive eligibility of up to 3 months may occur even though the applicant is found ineligible in the month of application.

(2)(a)2. The AFDC-related or SSI-related MA group shall be eligible as of the date within the spend-down period on which the expenditure of excess income or the obligation to expend excess income is achieved.

(b) If the amount of the monthly excess income changes before the expenditure or obligation of excess income is achieved, the expenditure or obligation of excess income for the remainder of the 6-month period shall be recalculated. When the size of the AFDC-related or SSI-related MA group changes, the monthly income limit shall be adjusted appropriately to the size of the new group, and the amount of excess income to be expended or obligated shall be adjusted accordingly. If any change is reported that may affect eligibility, the eligibility of the entire AFDC-related or SSI-related MA group may be redetermined and, if there is determined to be excess income, a new spend-down period shall be established.

(c) 1. Once the expenditure or obligation of excess income has been achieved, the AFDC-related or SSI-related MA group shall be eligible for the balance of the 6-month spend-down period, unless it is determined that assets have increased enough to make the MA group ineligible, or that a change in circumstances has caused someone in the MA group to become ineligible for non-financial reasons.

2. If the entire group is determined ineligible, the MA benefits shall be discontinued with proper notice. If only one person in the MA group is determined ineligible for non-financial reasons, only that person's AFDC-related or SSI-related MA benefits shall, with proper notice, be discontinued. The other person or persons in the MA group continue their eligibility until the end of the 6-month period.

3. If the size of the MA group increases due to the addition of a child, that child is eligible for benefits during the rest of the spend-down period. An adult caretaker who enters the AFDC-related or SSI-related MA group, except a woman who is medically verified as pregnant or a person who is SSI-related, is not eligible for benefits during the remainder of the spend-down period.

SECTION 18. HFS 103.08(5) is created to read:

HFS 103.08(5) BADGERCARE CASES. Eligibility for BadgerCare shall begin on the first day of the month in which all eligibility requirements are met, but no earlier than the first day of the month of application.

SECTION 19. HFS 103.085 is created to read:

HFS 103.085 Conditions for continuation of eligibility for BadgerCare. (1) PREMIUMS. (a) *Authority.* Subject to s. 49.665(5), Stats., and this section, a group eligible for BadgerCare may be required to pay a premium.

(b) *Applicability.* 1. A group eligible for BadgerCare with budgetable income at or below 150% of the poverty line is not required to pay a premium toward the cost of the health care coverage.

2. Except as provided in subd. 3. or 4., a group eligible for BadgerCare with budgetable income above 150% of the poverty line shall pay a premium toward the cost of the health care coverage.

3. A BadgerCare applicant group does not owe a premium for the first month of BadgerCare unless a member of the BadgerCare fiscal test group was an MA recipient in the previous month.

4. A BadgerCare applicant group does not owe a premium for the first month of BadgerCare unless a member of the BadgerCare fiscal test group was a BadgerCare recipient in the previous 12 months.

(c) *Amounts.* A group eligible for BadgerCare required under this subsection to pay a premium shall pay the amount indicated in the schedule provided in Table 103.085. Income shall be determined according to s. HFS 103.07.

Table 103.085		
BadgerCare Premium Schedule		
Monthly Income		Monthly Premium
From	To	
\$1,000	\$1,499.99	\$30
\$1,500	\$1,999.99	\$45
\$2,000	\$2,499.99	\$60
\$2,500	\$2,999.99	\$75
\$3,000	\$3,499.99	\$90
\$3,500	\$3,999.99	\$105
\$4,000	\$4,499.99	\$120
\$4,500	\$4,999.99	\$135
\$5,000	\$5,499.99	\$150
\$5,500	\$5,999.99	\$165
\$6,000	\$6,499.99	\$180
\$6,500	\$6,999.99	\$195
\$7,000	\$7,499.99	\$210
\$7,500	\$7,999.99	\$225
\$8,000	\$8,499.99	\$240
\$8,500	\$8,999.99	\$255
\$9,000	\$9,499.99	\$270
\$9,500	\$9,999.99	\$285
\$10,000	\$10,499.99	\$300
\$10,500	\$10,999.99	\$315

(d) *Payment.* 1. A group otherwise eligible for BadgerCare that is required to pay a premium under this section shall pay the premium amount in full to the agency before the agency may certify the group's initial eligibility for BadgerCare.

2. Premiums are due by the 10th of the month prior to the month for which the premium is required.

3. If no payment is received by the end of the month for which the premium is required, the department shall terminate the group's eligibility for BadgerCare, effective at the end of the month.

4. The department shall allow a variety of premium payment methods. A group may choose one of the following methods for premium payment:

- a. Wage withholding.
- b. Electronic funds transfer (EFT).
- c. Direct payment by check or money order.

5. A group may pay premiums in advance for more than one month, but only for months in the group's BadgerCare eligibility period.

(e) *Refunds*. The department shall issue a refund for a premium which has been paid in advance when the premium is for one of the following:

1. A month that the group is ineligible for BadgerCare.
2. A month that the group's budgetable income drops to or below 150% of the poverty line and the change in income that brought the group's budgetable income to or below 150% of the poverty line was reported within 10 days of the date the change occurred.
3. A month which requires a lower premium amount due to a change in circumstances which was in effect for the entire month so long as the change was reported within 10 days of the date it occurred. In a case where the change was not reported within 10 days of the date it occurred, the effective date of the lower premium amount due is the first day of the month in which the change was reported.

(f) *Consequence of failure to pay BadgerCare premiums*. A group required to pay a premium shall be ineligible for re-enrollment for the period specified in sub. (3) when the group fails to pay its premium within the time specified in par. (d).

(2) **QUITTING BADGERCARE**. (a) *Termination of benefits*. Except as provided in par. (b), a group eligible for BadgerCare and required under sub. (1) to pay a premium shall be subject to re-enrollment restrictions under sub. (3) when that group voluntarily terminates BadgerCare eligibility.

(b) *Reasons for quitting BadgerCare*. A group that quits BadgerCare shall not be subject to a restrictive re-enrollment period if the group requests termination of BadgerCare for one of the following reasons:

1. The BadgerCare group is moving out of Wisconsin.
2. No one in the BadgerCare group remains non-financially eligible for BadgerCare.
3. A member of the BadgerCare group is starting employment that provides health care benefits.
4. Other health insurance coverage has become available to the BadgerCare group.
5. Any other reason, as determined by the department, not related to payment of the premium.

(3) RE-ENROLLMENT RESTRICTION. (a) *Period of ineligibility.* A BadgerCare group that fails to make a premium payment under sub. (1) or quits BadgerCare under sub. (2) is not eligible for BadgerCare for a period of at least 6 consecutive calendar months following the date that BadgerCare eligibility ends, unless one of the circumstances in par. (b) applies. Eligibility is restored as described in par. (c). After 6 calendar months, the group shall be eligible for BadgerCare only if all past premiums due are paid in full or 12 calendar months have passed after the expiration of BadgerCare eligibility, whichever is sooner.

(b) *Reasons restriction on re-enrollment may not apply.* The restriction on re-enrollment under this section does not apply for either of the following reasons:

1. The failure to pay premiums was due to a circumstance beyond the group's control, provided that all past due premiums have been paid in full. A circumstance beyond the group's control includes any of the following:

a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.

b. A problem with an employer's wage withholding.

c. An administrative error in processing the premium.

d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

2. A significant change in household composition occurred. A significant change occurs when one of the following events occurs:

a. A parent or a parent's spouse in the group eligible for BadgerCare no longer resides in the home and has not resided in the home for at least 30 consecutive days.

b. A person not in the group eligible for BadgerCare, but who is legally responsible for a group member, no longer resides in the home and has not resided in the home for at least 30 consecutive days.

c. A caretaker relative of a minor in a group eligible for BadgerCare, or the caretaker relative's spouse, no longer resides in the home and has not resided in the home for at least 30 consecutive days.

(c) *Resuming BadgerCare eligibility.* Eligibility for BadgerCare shall resume in the following manner for persons with a re-enrollment restriction that ended due to a reason described in par. (b):

1. For a BadgerCare group with a reason under par. (b)1. for the re-enrollment restriction not to apply, BadgerCare eligibility shall be restored for any months that the group had been closed during the restriction period, provided that payment of any outstanding premiums owed is made and the group was otherwise eligible for BadgerCare in those months.

2. For a BadgerCare group with a reason under par. (b)2 for the re-enrollment restriction not to apply, the restriction on re-enrollment shall not apply to the remainder of the 6-month period. Beginning the first of the month after the adult has been out of the home for 30 days, the group may again be eligible for BadgerCare, provided that payment of any outstanding premiums owed is made and the group is otherwise eligible. The BadgerCare group remains ineligible for any prior months when the restriction on re-enrollment was in effect.

(4) ENROLL IN AVAILABLE EMPLOYER-SUBSIDIZED HEALTH PLAN. (a) A BadgerCare recipient is ineligible for BadgerCare when one of the following fail to enroll in an available employer-subsidized health care coverage:

1. The recipient.
2. The recipient's spouse when the spouse is residing with the recipient.
3. The recipient's parent, step-parent or other caretaker relative residing with the recipient, when the recipient is under 19 years of age.

(b) Except as provided in par. (c), the recipient is ineligible for BadgerCare effective on the first day of the month that the employer-subsidized health care coverage would have been in effect for the recipient if the family had been enrolled in the plan. The individual remains ineligible for each month that coverage would have been available up to 19 months from the month the failure to enroll in the plan occurred.

(c) Paragraph (b) does not apply if there was coverage and it ended for a good cause reason. A good cause reason is any of the following:

1. The employment ended for a reason other than voluntary termination.

2. The person changed to a new employer that does not offer family coverage.
3. The person's employer discontinued health plan coverage for all employees.
4. Any other reason determined by the department to be a good cause reason.

(5) COOPERATION WITH BUY-IN TO A GROUP HEALTH INSURANCE PLAN.

An adult in a group eligible for BadgerCare shall cooperate when the department determines whether it is cost-effective to purchase coverage for the group in an employer's group health insurance plan under s. HFS 108.02(13). In this subsection, "cooperation" means providing necessary information in order to determine cost effectiveness, signing up with the plan when requested by the department and cooperating with any other requirements of the health insurance plan. A person who fails or refuses to cooperate with buy-in is not eligible for BadgerCare.

(6) MAXIMUM INCOME. A BadgerCare group remains eligible for BadgerCare while the fiscal test group's income is at or below 200% of the poverty line and the group is otherwise eligible for BadgerCare.

SECTION 20. HFS 108.02(13) is created to read:

HFS 108.02(13) BADGERCARE BUY-IN TO EMPLOYER-PROVIDED HEALTH CARE COVERAGE. (a) *Authority*. The department may purchase coverage under a group health insurance plan offered by the employer of a member of an eligible family if the department determines that purchasing that coverage would not be more costly than providing coverage under BadgerCare.

(b) *General*. 1. The department may not buy in to a group health insurance plan when any member of a family has been covered by a group health insurance plan offered by the employer of a member of an eligible family in the 6 months prior to the buy-in decision.

2. Children in a family are not eligible for buy-in to a group health insurance plan if the family had health care coverage through the employer of a member of the family for these children within the previous 6 months.

3. The employer shall pay at least 60% of the cost of the premiums for the group health insurance plan, but not more than 80% of the cost, for the department to purchase coverage under a group health insurance plan.

(c) *Buy-in method*. The department shall purchase coverage by making payment to one of the following:

1. The employer of the recipient.

2. The insurance company that provides the group health insurance plan offered by the employer.

3. If it is not practical or feasible for the department to purchase coverage by making payment to those specified in subd. 1. or 2., and if requested by the employer or the insurance company offering the group health insurance plan, directly to the employe as reimbursement for premiums paid by the employe.

SECTION 21. HFS 108.03(1) is amended to read:

HFS 108.03(1) DETERMINATION OF ELIGIBILITY. Agencies shall be responsible for determination of eligibility for MA. These determinations shall comply with standards for eligibility found in ss. 49.46(1) ~~and~~, 49.47(4) and 49.665(4) Stats., and ch. HFS 103.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL:



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lcean, Secretary

December 29, 1999

The Honorable Judy Robson, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin

Dear Senator Robson:

The Department of Health and Family Services has two emergency rulemaking orders in effect that will expire before the emergency rules are replaced by permanent rules unless the effective periods of the emergency orders are extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective periods of the emergency orders by the number of days indicated below. The emergency rules are as follows:

1. **Operation of BadgerCare.** These emergency rules, amendments to HFS 101 to 103 and 108, will expire on January 26, 2000, unless extended. The order creates rules for the operation of the BadgerCare program under s. 49.665, Stats. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. Benefits under BadgerCare are identical to the comprehensive package of benefits provided by MA. The order modifies the Department's MA rules to incorporate rules for the BadgerCare program. The Joint Committee on November 18, 1999 extended the effective period of the emergency rules by 60 days, through January 25, 2000. Replacement permanent rules were sent to the Legislature for review on December 2, 1999, but the Department will not be able to file them until mid-January 2000 for a March 1, 2000 effective date. Therefore I request an extension of the effective period of the emergency rules by 35 days, through February 29, 2000. If the effective period of the emergency rules is not extended, in the interim the Department will not have the authority to operate BadgerCare.

2. **Operation of the Health Insurance Risk-Sharing Plan (HIRSP).** These emergency rules, amendments to HFS 119, will expire on January 26, 2000, unless extended. The order increases premium rates for both unsubsidized and subsidized policies that provide supplemental coverage for persons eligible for Medicare and adjusts total insurer assessments and provider payment rates for the last 6 months of 1999 and again for the first 6 months of 2000. The Department is authorized by s. 149.143 (4), Stats., to promulgate these rule changes by using emergency rulemaking procedures but without having to make a finding of emergency. The Joint Committee on November 18, 1999 extended the effective period of the emergency rules by 60 days, through January 25, 2000. Identical replacement permanent rules were sent to the Legislature for review