

Senator Robson
December 29, 1999
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on November 2, 1999. The Senate Committee on Health, Utilities and Veterans and Military Affairs held a public hearing on them on December 15, 1999, but no action was taken by the committee following the hearing. The Department then filed the rule changes on December 23, 1999 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.

Copies of the two emergency rulemaking orders are attached to this letter. If you have any questions about the emergency rules relating to the operation of HIRSP, you may contact Randy McElhose of the Department's Division of Health Care Financing at 267-7127. If you have any questions about the emergency rules relating to the operation of BadgerCare, you may contact John LaPhillip of the Department's Division of Health Care Financing at 266-6772.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Leean", with a long horizontal flourish extending to the right.

Joe Leean
Secretary

Attachments

cc Representative Grothman



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lekan, Secretary

October 14, 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 three 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, were published on July 1, 1999, and will expire on November 27, 1999, 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 fit in the BadgerCare program. Replacement permanent rules were sent to the Legislative Council for review on July 9, 1999 and taken to public hearings in late August 1999. The Department expects to send them to the Legislature for review in early November 1999 but will not be able to file them until at least mid-December for a February 1, 2000 effective date. Therefore I request an extension of the effective period of the emergency rules by 60 days, through January 25, 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, were published to take effect on July 1, 1999, and will expire on November 27, 1999, 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. Identical replacement permanent rules were sent to the Legislative Council for review on July 14, 1999 and were taken to public hearing on September 9, 1999. The Department expects to send them to the Legislature for review by the end of October 1999

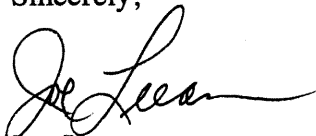
Senator Robson
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but will not be able to file them until at least mid-December 1999 for a February 1, 2000 effective date. Therefore I request an extension of the effective period of the emergency rules by 60 days, through January 25, 2000.

3. Refresher Training in CPR and First Aid for Specialized Medical Vehicle (SMV) Drivers under the Medical Assistance Program. These emergency rules, amendments to HFS 105.39 (4) (b) 3., were published on July 3, 1999, and will expire on November 29, 1999, unless extended. The order updates requirements for refresher training in cardiopulmonary resuscitation (CPR) and first aid for drivers of specialized medical vehicles (SMVs) under the Medical Assistance program. The Department's intention in publishing the rule changes by emergency order was to relieve SMV providers and drivers of the time and expense of training requirements that were in excess of the requirements of the organizations that certified the drivers on the basis of the training. Replacement permanent rule amendments were sent to the Legislative Council for review on July 15, 1999, taken to public hearing on September 1, 1999, and submitted to the Legislature on September 23, 1999, for review by standing committees, but cannot be filed until mid-November 1999 for an expected January 1, 2000 effective date. Therefore, I request an extension of the effective period of the emergency rules by 33 days, through December 31, 1999. If the effective period of the emergency amendments is not extended, in the interim some SMV providers and drivers would be once again needlessly burdened by the requirements in effect before July 3, 1999.

Copies of the three emergency rulemaking orders are attached to this letter. If you have any questions about the emergency rules relating to the operation of HIRSP, you may contact Randy McElhose of the Department's Division of Health Care Financing at 267-7127. If you have any questions about the emergency rules relating to the operation of BadgerCare, you may contact Jim Jones of the Department's Division of Health Care Financing at 266-9435. If you have any questions about the emergency rules relating to refresher training in CPR and first aid for drivers of specialized medical vehicles under the Medical Assistance program, you may contact Alfred Matano at 267-6848.

Sincerely,



Joe Llean
Secretary

Attachments

cc Representative Grothman



AFSCME®

WISCONSIN OFFICE • 8033 Excelsior Drive, Suite A • Madison, Wisconsin 53717-1903 • Telephone 608/836-6666

September 2, 1999

Senator Judy Robson, Representative Glenn Grothman
Co-Chairs, Joint Committee on Administrative Rules
& Members:

Thank you for the opportunity to present this written testimony concerning the emergency administrative rules for the BadgerCare program, offered by the Department of Health and Family Services.

Let me first state that AFSCME is a strong supporter of the BadgerCare program, and took an active role in assisting the state to win approval of the federal waiver allowing the program to move forward. Our members who serve as Economic Support Specialists around the state are helping to implement this very important program, bringing health care insurance to many families who cannot afford it. We applaud the Governor and the Legislature for bringing this program to fruition.

We have several concerns with the rules as proposed, however. We are concerned that the rules are unnecessarily restrictive to families that may wish to apply. According to the rules, a family who has been eligible for employer-sponsored health care within the last 18 months may not apply. Such a lengthy waiting period is not called for in the waiver that was approved by the federal government. Additionally, this rule differs from DHFS' previous position, which stated that BadgerCare eligibility would be limited only for families in which employers paid 80% or more of a family insurance package. The rules as presented are vague on this point and do not address the 80% employer contribution.


We are also concerned with the haste at cutting off families who miss a premium payment. Under the proposed rules, a family missing a premium payment would be cut off at the end of the month in which the premium was due. The family would also be prohibited from re-applying for six months. These measures are not included in the approved waiver and seem unduly harsh and could result in unnecessary disruptions in coverage. We would suggest that there be a grace period of perhaps 30 days in which to make payment of the missed premium, and for those who are cut-off, that re-application be allowed sooner than six months.

in the public service

Our members who determine eligibility for BadgerCare and other safety net programs have raised an additional concern with the proposed rules. The rules call for each child being cared for by a relative in a Kinship Care arrangement to be considered a separate case as far as BadgerCare is concerned. Our members believe this is an error-prone situation, and could lead to an increase in Medicaid errors and potential penalties imposed on the state.

We appreciate your attention to our concerns. If you have any questions or wish further information, please feel free to contact me at 836-6666.

Sincerely,


Jennifer Grondin
AFSCME Legislative Council

Cc:
Secretary Joe Leann

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

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This order creates rules that specify 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. The order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the MA program.

BadgerCare is projected to cover over 40,000 currently uninsured Wisconsin residents, including more than 23,000 children, by the end of 1999.

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

Department rules for the operation of BadgerCare must be in effect before BadgerCare may begin. The program statute, s. 49.665, Stats., was effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement BadgerCare not later than July 1, 1998, or the effective date of the waiver, whichever date was later. The federal waiver letter approving BadgerCare was received on January 22, 1999. It specified that BadgerCare was not to be implemented prior to July 1, 1999. Once the letter was received, the Department began developing the rules. They are now ready. The Department is publishing the rules by emergency order so that they will go into effect on July 1, 1999, rather than at least 9 months later, which is about how long the process of making permanent rules takes, and thereby provide already authorized health care coverage as quickly as possible to families currently not covered by health insurance and unable to pay for needed health care.

The rules created and amended by 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 Medical Assistance 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 Medical Assistance coverage.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 49.45 (10) and 49.665 (3), (4) and (5), Stats., the Department of Health and Family Services hereby renumbers, amends and creates rules interpreting ss. 49.43 to 49.497 and 49.665, Stats., as follows:

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 ~~s.~~ 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 employes health plan" means family or individual coverage under a group health insurance plan offered by a unit of state government to its employes.

(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 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 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 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 employee 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 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.
- 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:

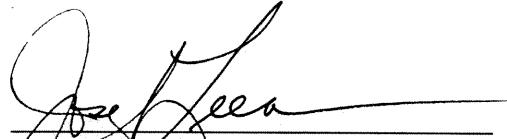
HFS 108.03(1) DETERMINATION OF ELIGIBILITY. Agencies shall be responsible for determination of eligibility for MA. These determinations shall comply with standards for eligibility found in ss. 49.46(1) ~~and~~, 49.47(4) and 49.665(4) Stats., and ch. HFS 103.

The rules contained in this order shall take effect as emergency rules on July 1, 1999.

Wisconsin Department of Health and
Family Services

Dated: June 25, 1999

By:



Joseph Leca
Secretary

SEAL:

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # HFS 101-103 & 108

Subject

BADGERCARE

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This order creates rules that specify how the BadgerCare Program established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes below 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance 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.

The order incorporates the rules for operation of BadgerCare into the Department's current rules for operation of the Medical Assistance (MA) program since BadgerCare benefits will be the same as Medical Assistance benefits and provider certification requirements and provider rights and responsibilities will also be the same.

The order modifies four chapters of the Medical Assistance rules to accommodate BadgerCare and in the process provides more specificity than the program statute about nonfinancial and financial conditions of eligibility for BadgerCare; states who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expands on statutory conditions for continuing eligible for BadgerCare; exempts 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 sets forth how the Department 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 BadgerCare coverage.

These rules will not affect the expenditures or revenues of state government or local governments. Costs of implementing BadgerCare were taken into consideration by the Legislature during development of the 1999-01 biennial budget.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name

DHFS/Alfred Matano, 267-6848

Authorized Signature / Telephone No.

John Kiesow, 266-9622

Date

6-28-99