State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

DEC 2 9 1999
50-18a

December 29, 1999

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin

Dear Representative Grothman:

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

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,

Joe Leean
Secretary

Attachments

cc Senator Robson

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats. by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on April 30, 1999 on the proposed rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a $500 deductible. Approximately 17% of the 7,291 HIRSP policies in effect on March 31, 1999 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 2., Stats. The Department is required to set premium rates by rule. These rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

There are separate sets of tables in ch. HFS 119 that show unsubsidized and subsidized Plan 2 premium rates. Both sets of tables are amended by this order to increase the premium rates because Plan 2 costs, which historically have been running about 50% less than Plan 1 costs, began to increase several years ago and now are running at about 67% of Plan 1 costs. The Plan 2 premium rates need to be increased to cover increased costs of treatment for individuals enrolled under Plan 2. The order increases these premium rates by about 18%.

In January 1999, the Department published an emergency rule order to increase HIRSP unsubsidized Plan 2 premium rates by about 10%, with the intention of increasing those rates again in July 1999 to the level provided for in this order. However, in May 1999 the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) refused to extend the effective period of that part of the January 1999 emergency rule order relating to premium rate increases, with the result that effective May 31, 1999, the rates reverted back to the rates in effect before January 1, 1999. Consequently, to increase rates effective July 1, 1999, the Department through this rulemaking order has based the increased rates on the rates in effect prior to January 1, 1999.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats. With the approval of the HIRSP Board of Governors

and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1998. The Board of Governors approved a reconciliation methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula. By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 1999.

The result of this reconciliation process for calendar year 1998 indicated that insurance assessments collected were greater than the 20% of costs (net of the GPR contribution from appropriation s. 20.435(5)(af), Stats.), required of insurers. Also, the calendar year 1998 reconciliation process showed that an insufficient amount was collected from health care providers. As a result of this reconciliation, the insurer assessments for the time periods July 1, 1999 through December 31, 1999 and January 1, 2000 through June 30, 2000, are reduced to offset the overpayment in 1998. The total adjustments to the provider payment rates for the same time periods are sharply increased in order to recoup the provider contribution that was not collected in calendar year 1998. The budget for the plan year ending June 30, 2000 and the calendar year 1998 reconciliation process were approved by the HIRSP Board of Governors in April 1999.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by s. 149.143(2)(a) 2., 3. and 4., (3) and (4), Stats., the Department of Health and Family Services hereby amends rules interpreting s. 149.143, Stats., as follows:

SECTION 1. HFS 119.07 (6) (b) (intro.) and Medicare Plan tables are amended to read:

HFS 119.07(6)(b) (intro.) Annual premiums for major medical plan policies with standard deductible. The schedule of annual premiums beginning ~~July 1, 1998~~ July 1, 1999, for persons not entitled to a premium reduction under s. 149.165, Stats., is as follows:

MEDICARE PLAN – Males

Age Group	Zone 1	Zone 2	Zone 3
0-18	~~$888~~1,008	~~$792~~924	~~$708~~816
19-24	~~888~~1,008	~~792~~924	~~708~~816
25-29	~~888~~1,032	~~792~~936	~~708~~828
30-34	~~1,020~~1,164	~~912~~1,056	~~816~~936
35-39	~~1,140~~1,332	~~1,020~~1,212	~~912~~1,068
40-44	~~1,380~~1,620	~~1,248~~1,440	~~1,092~~1,272
45-49	1~~,716~~2,040	~~1,536~~1,824	~~1,380~~1,632
50-54	~~2,208~~2,700	~~1,992~~2,424	~~1,764~~2,148
55-59	~~2,892~~3,504	~~2,616~~3,156	~~2,316~~2,808
60+	~~3,552~~4,308	~~3,192~~3,876	~~2,832~~3,444

MEDICARE PLAN – Females

Age Group	Zone 1	Zone 2	Zone 3
0-18	~~$888~~1,008	~~$792~~924	~~$708~~816
19-24	~~1,224~~1,392	~~1,116~~1,272	~~972~~1,116
25-29	~~1,284~~1,500	~~1,152~~1,356	~~1,032~~1,188
30-34	~~1,404~~1,644	~~1,272~~1,488	~~1,128~~1,332
35-39	~~1,512~~1,788	~~1,368~~1,620	~~1,212~~1,428
40-44	~~1,680~~1,980	~~1,512~~1,800	~~1,332~~1,584
45-49	~~1,944~~2,340	~~1,752~~2,088	~~1,560~~1,872
50-54	~~2,184~~2,688	~~1,956~~2,400	~~1,752~~2,148
55-59	~~2,496~~3,072	~~2,244~~2,772	~~1,992~~2,436
60+	~~2,940~~3,600	~~2,640~~3,228	~~2,340~~2,880

SECTION 2. HFS 119.07 (6)(c)2. (intro.) and tables are amended to read:

HFS 119.07(6)(c) *Base rates for calculating premium reductions*. 2. (intro.) The annual base rates for calculating premium reductions under s. HFS 119.12 that are applicable to standard risks under individual policies providing substantially the same coverage and deductibles as the plan's medicare plan are as follows beginning ~~July 1, 1998~~ July 1, 1999:

MEDICARE PLAN – Males
(Base for Reduced Rates)

Age Group	Zone 1	Zone 2	Zone 3
0-18	$~~588~~672	$~~528~~612	$~~468~~540
19-24	~~588~~672	~~528~~612	~~468~~540
25-29	~~588~~684	~~528~~624	~~468~~552
30-34	~~684~~780	~~612~~708	~~540~~624
35-39	~~756~~888	~~672~~804	~~600~~708
40-44	~~912~~1,068	~~828~~960	~~732~~852
45-49	1,~~140~~1,356	~~1,020~~1,212	~~912~~1,080
50-54	~~1,464~~1,788	~~1,320~~1,608	~~1,176~~1,428
55-59	~~1,932~~2,340	~~1,740~~2,100	~~1,536~~1,872
60+	~~2,364~~2,868	~~2,124~~2,580	~~1,884~~2,292

MEDICARE PLAN – Females
(Base for Reduced Rates)

Age Group	Zone 1	Zone 2	Zone 3
0-18	$~~588~~672	$~~528~~612	$~~468~~540
19-24	~~816~~924	~~732~~840	~~648~~744
25-29	~~852~~996	~~768~~900	~~684~~792
30-34	~~936~~1,092	~~840~~984	~~744~~876
35-39	~~1,008~~1,188	~~900~~1,068	~~804~~948
40-44	~~1,116~~1,320	~~996~~1,188	~~888~~1,056

45-49	~~1,284~~1,548	~~1,164~~1,392	~~1,032~~1,236
50-54	~~1,452~~1,788	~~1,308~~1,596	~~1,164~~1,428
55-59	~~1,656~~2,040	~~1,488~~1,836	~~1,332~~1,632
60+	~~1,956~~2,400	~~1,764~~2,160	~~1,560~~1,920

SECTION 3. HFS 119.15, as amended by emergency order effective January 1, 1999, is amended to read:

HFS 119.15 INSURER ASSESSMENTS AND PROVIDER PAYMENT RATES.
(1) PURPOSE. This section implements s. 149.143 (2) (a) 3. and 4., Stats.

(2) INSURER ASSESSMENTS. The insurer assessments for the time period ~~January 1, 1999~~ July 1, 1999 through ~~June 30, 1999~~December 31, 1999 total ~~$4,043,589~~$2,975,605. The insurer assessments for the time period January 1, 2000 through June 30, 2000 total $3,055,065.

(3) PROVIDER PAYMENT RATES. The total adjustment to the provider payment rates for the time period ~~January 1, 1999~~July 1, 1999 through ~~June 30, 1999~~ December 31, 1999 is ~~$4,043,589~~$ 4,847,134. The total adjustment to the provider payment rates for the time period January 1, 2000 through June 30, 2000 is $ 4,926,594.

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 16, 1999**

By: _____
Joseph Leean
Secretary

SEAL:

1997 Session

FISCAL ESTIMATE
DOA-2048 N(R10/96)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
HFS 119.07(6)&119.15

Amendment No. if Applicable

Subject

HEALTH INSURANCE RISK-SHARING PLAN (HIRSP)

Fiscal Effect

State: ☐ No State Fiscal Effect

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

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

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

☐ 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 updates Health Insurance Risk-Sharing Plan (HIRSP) premium rates effective July 1, 1999 for both unsubsidized and subsidized HIRSP policies that provide supplemental health insurance coverage for persons eligible for Medicare, and adjusts total HIRSP insurer assessments and the provider payment rate, first for the 6-month period beginning January 1, 1999, and then for the 6-month period beginning January 1, 2000.

To cover Plan costs, the Department is directed by s. 149.143 (2) (a) 2., 3. and 4., Stats., to set premium rates and total insurer assessments for each Plan year and to adjust the provider payment rate for each Plan year. That is being done through this order for the Plan year beginning July 1, 1999.

The rule changes will not by themselves affect the expenditures or revenues of state government or local governments. They adjust premiums, as expected under the program statute, to help offset program costs and adjust the total insurer assessments and the provider payment rate in accordance with a statute-specified methodology, also to offset program costs.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
H&FS/Randy McElhose, 267-7127	John Kiesow, 266-9622	6-16-99

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. $16,700 for a family of 4; about $31,000

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 employes.

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 employe'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 employes.

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 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
From	To	Premium
$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 employes.

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 Leean
Secretary

SEAL:

FISCAL ESTIMATE FORM — 1999 Session

☐ ORIGINAL ☐ UPDATED — LRB #

☐ CORRECTED ☐ SUPPLEMENTAL — 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 Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

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

☐ 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 oblidged 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	Authorized Signature / Telephone No.	Date
DHFS/Alfred Matano, 267-6848	John Kiesow, 266-9622	6-28-99

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 employes.

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 employe'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 employes.

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 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
From	To	Premium
$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 employes.

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 Leean
Secretary

SEAL:

FISCAL ESTIMATE FORM — **1999 Session**

☐ ORIGINAL ☐ UPDATED — **LRB #**

☐ CORRECTED ☐ SUPPLEMENTAL — **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 Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

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

☐ 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 oblidged 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	Authorized Signature / Telephone No.	Date
DHFS/Alfred Matano, 267-6848	John Kiesow, 266-9622	6-28-99

SMDC

St. Mary's/Duluth Clinic
Health System

Duluth Clinic - Ashland

1625 Maple Lane
Ashland, WI 54806
(715) 685-7500
1-800-373-1163
FAX: (715) 682-2481

1/20/00

To Members of the Joint Committee for Review of Administrative Rules for the State of Wisconsin;

I regret that I cannot appear in person to speak with you.

This letter is sent to express my support and satisfaction with the Special Children's Center of Hudson, Wisconsin and the truly amazing work they do for and with the children of our state.

I have worked with Nancy Lawton Shirley, OTR for seven years, have worked more extensively with the Special Children's Center for the last three years. I have sent numerous families with a variety of disabilities to them for a wide variety of services. Despite the distance I am asking these families, many with several special needs children to travel (175 miles), I have not had a single family complain to me that the evaluation and guidance was not worth the trip.

I have found their work nothing but ethical and laudable. Their staff are knowledgeable. They are able to work with a wide variety of families and children with various disabilities; always 'meeting the family where they are' and designing age and culturally appropriate programs individually tailored to the needs of the child and family.

I find the reports from the Special Children's Center to be thorough, readable and informative. The teachers in our schools have often mentioned these notes as helpful and very complete.

Picture yourself a parent of a beautiful child who grows to be 'tactily defensive.' This means she cannot tolerate having her hair brushed, tantrums in the shower, refuses to wear underwear or any tight fitting clothing as they 'hurt' her. You try to send this girl to school, and she fights with the children (they are touching her and it hurts). Your family tells you 'just need to be more firm with her' and you have the feeling that the church members all think you are a rotten parent. You've tried everything that you can read in parenting books and that the psychologists recommend, nothing helps, your life with this beautiful girl, whom you are trying to love is hell. You go to the Special Children's Center for an evaluation. You are taught a program for home care that includes a brushing program and other calming techniques. In two weeks she asks for underwear

"so she can be like the other kids." By six weeks she's taking a shower, behaving at school and church and your family can't believe the miracle.

Imagine you adopted a wonderful little baby. He grows and becomes so active and hyper that he can't sit still to eat. He is a danger to himself and his siblings. The neighbors won't let their children come over to play. He can become irritable and aggressive at nothing, he fails kindergarten. He is miserable because no one will be his friend. You take him to the pediatrician and find that he has fetal alcohol syndrome. The future looks dismal. You are sent to the Special Children's Center for a 10 day intensive. Your child comes home with you a calmer more reasonable person. You continue to work with him at home under the guidance and telephone follow up of the Special Children's Center personnel; they help coordinate his home/school program. Within three months the neighbor kids are playing in your yard, in six months he is bringing home smiley faces on his papers form school. There is still a long way to go, but there is hope.

Senators and Representatives, those are not isolated stories. It is not unusual for me to have parents crying in my rooms they are so happy to have their child back, the child they knew was there, but no one else could see. I have several parents who could not afford to pay for their therapy and received scholarships from the Special Children's Center for a part of their treatment, making their child's success possible.

Beyond the individual care that these providers offer to children and families, they are dedicated to teaching others. Nancy Lawton Shirley has traveled to Ashland to see patients with our local OT and school staff; to teach and share her expertise. She has given talks for physicians and other providers gratis. All of the staff at the Center are approachable and available to families and teachers for telephone consults.

I have utmost respect for the work that these women do for the children of our state that no one else knows what to do with. They help children achieve function and families achieve hope in an ethical and cost effective manner. If we the people of the State of Wisconsin Shut this center down with an audit fine, from an audit which has found, not fraud, but only paperwork problems, it will be a crime against the children with special needs of the State of Wisconsin.

Sincerely;

Grace Heitsch, MD, FAAP
voice mail: 715/685-7582
e-mail: gheitsch@smdc.org

January 20, 2000

TO: Joint Committee for Review of Administrative Rules

FROM: Tim Hartin, General Counsel
Scott Peterson, Director, Legislative Relations

SUBJECT: DHFS Recoupment Discovery
HFS 106.12(9) and HFS 108.02(9)(f)

The Department of Health and Family Services ("DHFS") has promulgated an emergency rule that would protect DHFS from discovery requests in Class 1 and Class 3 contested cases. Class 1 cases are those in which no sanction or penalty is involved, and Class 3 cases are those which are neither Class 1 or Class 2 (in which a penalty is involved). The Department of Administration ("DOA") generally allows some discovery in Class 1 and Class 3 cases, and so the DHFS rule would be an exception to the more general practice in Wisconsin.

DHFS classifies a number of recoupment actions under Medicaid as Class 1 actions, apparently on the theory that a recoupment of money is not the imposition of a sanction or penalty. The emergency rule would place health care providers at a very significant and unfair disadvantage in these cases by denying them any ability to inquire into the basis for a recoupment through discovery.

As a matter of fundamental fairness and due process, health care providers should be allowed some discovery rights when DHFS asserts that they owe the government money. In addition, recent experience with government claims against health care providers demonstrates that the basis of these claims can be questionable and therefore should be examined in the light of day through discovery.

The most striking recent example of a questionable claim brought against health care providers involves the so-called "lab unbundling" enforcement campaign initiated by the federal government against hospitals and other laboratory services providers. As originally constructed, the campaign asserted that nearly every single hospital in the country had engaged in the systematic submission of bad bills for lab services, and early projections forecast billions of dollars in fines and recoupments. When the underlying data for the campaign was made public, it was revealed to be deeply, in fact fatally, flawed. U.S. Attorneys all over the country dropped or dramatically scaled back their lab unbundling campaigns, and the Department of Justice and the Office of the Inspector General were forced

Wisconsin Health &
Hospital Association, Inc.

5721 Odana Road
Madison, WI
53719-1289

608/274-1820

FAX: 608/274-8554

http://www.wha.org

to adopt policies restricting the use of such broad-based campaigns in the future.

Immediately before the lab unbundling campaign, a number of Wisconsin hospitals were able to obtain relief from a similar federal enforcement campaign know as the "three-day window" project. However, they were only able to obtain this relief because they had access to the underlying data used by the government in bringing the claim.

This experience with payment disputes between government payment programs and health care providers illustrates that, given the extreme complexity of the rules and the sheer volume claims being processed, there is ample opportunity for error on both sides. Discovery rights for providers are necessary so that the basis for recoupment actions can be uncovered and evaluated.

While it is true that DHFS brings a number of recoupment actions, not every recoupment action will trigger a full-blown discovery request from providers. Many recoupments are not contested at all and represent technical, administrative adjustments. Many of those that are contested will likely involve amounts that are too small to justify the costs imposed on the provider by a discovery request. Discovery is not free for the providers, who must bear the legal costs of drafting the request and reviewing the information produced in response to the request. Allowing the emergency rule to lapse is unlikely to trigger an avalanche of burdensome discovery.

SENATOR JUDITH B. ROBSON
CO-CHAIR
PO BOX 7882
MADISON, WI 53707-7882
(608) 266-2253

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
PO BOX 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 28, 2000

Joe Leean
Secretary, Department of Health and Family Services
1 West Wilson Street
Madison, WI

Dear Secretary Leean:

We are writing on behalf of the Joint Committee for Review of Administrative rules to inquire into DHFS policies regarding MA audits.

On January 20, 2000, the JCRAR suspended emergency rule HFS 106 & 108, relating to discovery rights in contested case proceedings involving health care providers under the Medical Assistance program. The committee will shortly be introducing legislation to prohibit promulgation of a similar rule.

Based on the testimony received at the January 20 hearing, the committee considered adopting a motion pursuant to section 227.26(2)(b). Under this statutory provision, the JCRAR can order an administrative agency to put in rule form unwritten policies and procedures that the agency follows.

As a preliminary step, the committee instead decided to write to you to clarify some of the policies and procedures that DHFS follows in MA recoupment actions. Can you please provide the committee with the following information?

1. What general criteria trigger a DHFS audit of a MA provider? What criteria and/or priorities does the department use in deciding whether or not to proceed with further investigation and a complete audit?

   Are these criteria applied to all providers or only to a subset of providers. If these criteria are not applied to all providers, why not?

2. Once the department finds problems with the records of a provider, what are the department's priorities for enforcement? For example, what criteria does the department use in deciding whether to forgive and educate the provider about proper bookkeeping methods or to seek recoupment of money already paid to the provider?

Are these criteria applied to all providers or only to a subset of providers. If these criteria are not applied to all providers, why not?

3. Who participates in making the decisions outlined above and what role does each person play?

Thank you for providing this information. It will help the committee determine whether we should require the department to put this information in rule form.

Sincerely,

Senator Judith Robson
Co-chair

Representative Glenn Grothman
Co-chair

SENATOR JUDITH B. ROBSON
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 24, 2000

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 20, 2000 and adopted the following motions:

Emergency Rule HFS 119

Relating to: Health Insurance Risk-Sharing Plan (HIRSP) premium rates. Extension of this emergency rule by 35 days at the request of the Department of Health and Family Services.

Moved by Representative Grothman, seconded by Representative Gunderson that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rules HFS 119 by 35 days, at the request of the Department of Health and Family Services recommended, Ayes 10, Noes 0, Absent 0

Ayes: (10) Representatives Grothman,Gunderson, Seratti, Kreuser, and Black; Senators Robson, Grobschmidt*, Shibilski*, Darling* and Welch.

Noes: (0)

*voted by phone or paper ballot

Emergency Rule HFS 101 to 103 & 108

Relating to: the operation of BadgerCare. Extension of this emergency rule by 60 days at the request of the Department of Health and Family Services.

Moved by Representative Grothman, seconded by Representative Grothman that, pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rules HFS 101 to 103 & 108 by 60 days, at the request of the Department of Health and Family Services recommended, Ayes 10, Noes 0, Absent 0

Ayes: (10) Representatives Grothman,Gunderson, Seratti, Kreuser, and Black; Senators Robson, Grobschmidt*, Shibilski*, Darling* and Welch.

Noes: (0)

*voted by phone or paper ballot

Emergency Rule HFS 106 & 108

Relating to: the discovery rights in contested case proceedings involving health care providers under the Medical Assistance.

Moved by Representative Grothman, seconded by Senator Robson that, pursuant to Section 227.26(2)(d), stats. And for the reason set forth in ss. 227.19(4)(d)1 that the Joint Committee for Review of Administrative Rules suspend HFS 106 and 108.

Ayes: (10) Representatives Grothman,Gunderson, Seratti, Kreuser, and Black; Senators Robson, Grobschmidt*, Shibilski*, Darling* and Welch.

Noes: (0)

*voted by phone or paper ballot

Emergency Rule CVRB 1

Relating to: the rights of crime victims. Extension of the effective period of this emergency rule by 60 days by the Crime Victims Rights Board.

Moved by Representative Grothman, seconded by Representative Gunderson, that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rules CVRB 1 by 60 days, at the request of the Crime Victims Rights Board recommended, Ayes 10, Noes 0, Absent 0

Ayes: (10) Representatives Grothman,Gunderson, Seratti, Kreuser, and Black; Senators Robson, Grobschmidt*, Shibilski*, Darling* and Welch.

Noes: (0)

*voted by phone or paper ballot

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

Senator Judith B. Robson
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

BW:GG:mjg

SENATOR JUDITH B. ROBSON
CO-CHAIRMAN

P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified January 1999

January 20, 2000
225 Northwest, State Capitol

THAT, pursuant to s. 227.26 (2) (d), stats. And for the reason set forth in ss. 227.19(4)(d) 6, stats., the Joint Committee for Review of Administrative Rules suspend emergency rule HFS 106 and 108 in its entirety.

Moved by Grothman, 2nd by Robson

Aye

COMMITTEE MEMBER	~~PRESENT~~	ABSENT	EXCUSED
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT			
3. Senator SHIBILSKI			
4. Senator WELCH	X		
5. Senator DARLING			
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

☐Motion Carried ☐Motion Failed

SENATOR JUDITH B. ROBSON
CO-CHAIR
PO BOX 7882
MADISON, WI 53707-7882
(608) 266-2253

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
PO BOX 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

Last Modified March, 1999

Date 4/28/99 Location Room 411 South

Moved by Robson, Seconded by Gunderson

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes,* the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule HFS 101 to 103 and 108 by 60 days, at the request of the Department of Health and Family Services.

COMMITTEE MEMBER	Aye	No	Absent	
1. Senator ROBSON	X			
2. Senator GROBSCHMIDT	X			
3. Senator SHIBLISKI	X			* polled by phone
4. Senator WELCH			X	
5. Senator DARLING	X			* polled by paper ballot
6. Representative GROTHMAN		X		
7. Representative GUNDERSON	X			
8. Representative SERATTI			X	
9. Representative KREUSER			X	
10. Representative BLACK	X			
Totals	6	1	3	

☐Motion Carried ☐Motion Failed

SENATOR JUDITH B. ROBSON
CO-CHAIR
PO BOX 7882
MADISON, WI 53707-7882
(608) 266-2253

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
PO BOX 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified September 1999

Date 2/24/00 Location 201 Southeast

Moved by Welch, Seconded by Gunderson

THAT, pursuant to § 227.26(2)(f), *Wisconsin State Statutes,* the Joint Committee for the Review of Administrative Rules introduce LRB 4297/2 and LRB 4299/2 to uphold the committee's January 20, 2000 suspension of Emergency Rule HFS 106.12(9) and 108.02(9)(f).

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI			X
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

☒ Motion Carried ☐ Motion Failed

http://www.legis.state.wi.us/assembly/asm59/news/JCRAR.html