



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2017 Wisconsin Act 370**  
[2017 Senate Bill 886]

**Requests for and Implementation  
of Certain Federal Approvals,  
Modifications to Certain Public  
Assistance Programs, Allocation  
of TANF Funds, and Funding for  
the Fast Forward Program**

2017 Wisconsin Act 370 relates to the following: (1) legislative authorization and oversight of certain agency requests to the federal government; (2) adjustment of funds for programs supported by the federal Temporary Assistance for Needy Families (TANF) block grant; (3) legislative approval of certain actions related to the Medicaid program; (4) implementation of amendments to BadgerCare Reform, as approved by the federal Department of Health and Human Services (HHS) on October 31, 2018; (5) codification of the Department of Health Services' (DHS) rules relating to drug screening, testing, and treatment requirements under the FoodShare program; (6) Department of Workforce Development (DWD) appropriations for various workforce training programs, commonly referred to as the Fast Forward program; (7) codification of certain DWD rules relating to unemployment insurance; and (8) implementation of the Wisconsin Healthcare Stability Plan (WIHSP).

### AUTHORIZATION AND OVERSIGHT OF DHS REQUESTS TO THE FEDERAL GOVERNMENT

The act creates a number of requirements related to legislative authorization and oversight of requests made to the federal government by DHS. Under the act, DHS is prohibited from submitting any of the following requests to a federal agency, unless legislation has been enacted specifically directing submission of the request: (1) a request to a federal agency for a waiver or a renewal, modification, withdrawal, suspension, or termination of a waiver of federal law or rules; or (2) a request to a federal agency for authorization to implement a pilot program or demonstration project.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

In addition, the act creates a process for legislative oversight that applies if legislation enacted on or after January 1, 2011 requires DHS to make such a request. The major provisions of that process include the following:

- Beginning 60 days after enactment of the legislation or March 1, 2019, whichever is later, DHS must submit a plan to the Joint Committee on Finance (JCF) describing its plan for submitting the request to the federal agency. The plan must also include an expected timeline for submitting the request within the next 90 days. JCF may grant up to three 90-day extensions to DHS's expected timeline.
- DHS must obtain JCF approval before submitting the request to the federal agency. While the request is pending, DHS must contact the federal agency at least biweekly to continue negotiations, submit monthly progress reports to JCF regarding the status of negotiations, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.
- Before final approval by the federal agency, DHS must submit the proposed approval as negotiated to JCF. JCF may approve or disapprove the proposal, but may not modify it. If JCF disapproves, DHS must withdraw the request, or renegotiate with the federal agency and resubmit the proposed approval, as renegotiated, to JCF for approval or disapproval.
- DHS must obtain JCF approval before implementing approved portions of a request, and must submit to JCF an implementation plan for the approved portions beginning 60 days after the date of approval or March 1, 2019, whichever is later. Until an approval is fully implemented, DHS must submit monthly progress reports to JCF regarding implementation of approved portions of the request, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.

The JCF co-chairs may delegate any of the responsibilities in the bullet points above to a standing committee of appropriate subject matter jurisdiction, under terms specified by the JCF co-chairs. The JCF co-chairs determine what constitutes an approval by a standing committee.

The act also requires DHS to notify JCF in writing no later than nine months before the expiration of an approved waiver of federal law, pilot program, or demonstration project for which no legislation has been enacted specifying that the waiver, pilot program, or demonstration project must be suspended or terminated. If DHS intends to request substantive changes to the waiver, pilot program, or demonstration project in its request to the federal agency, DHS must comply with the process of legislative oversight outlined in the bullet points above. If DHS intends to renew the approval without substantive changes, it must submit a proposed renewal request to JCF before submitting the renewal request to the federal agency, to be reviewed under JCF's 14-day passive review process.

In addition, the act authorizes JCF to take certain actions if JCF determines that DHS: (1) has not made sufficient progress in submitting the request, negotiating with the federal agency, or implementing an approved portion of the request; or (2) is not acting in accordance with the enacted legislation requiring the submission of the request. In any of those circumstances, JCF may reduce from moneys allocated for state operations or administrative functions DHS's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time

equivalent positions for DHS related to the program for which the request is required to be submitted.

## **FUNDING ADJUSTMENTS FOR TANF-FUNDED PROGRAMS**

The act modifies the process for making certain adjustments to funding for programs supported by the TANF block grant. Prior law allowed the Department of Children and Families (DCF) to reallocate funding between TANF-funded programs if approved by the secretary of administration. Prior law also provided that if Wisconsin received less TANF funds than budgeted, DCF was required to submit a plan to reduce the money allocated for the TANF-funded programs to the secretary of administration, and DCF could reduce funding for the programs only as approved by the secretary of administration. The act removes the role of the secretary of administration and replaces it with JCF review of each of the above actions under JCF's 14-day passive review process.

## **JCF REVIEW OF CERTAIN ACTIONS RELATED TO THE MEDICAID PROGRAM**

The act generally requires DHS to submit any of the following proposed actions to JCF for review, if the expected fiscal effect of the proposed action is \$7.5 million or more from all revenue sources over a 12-month period following the implementation date: (1) submitting a Medicaid state plan amendment to HHS; (2) implementing a change to the Medicaid reimbursement rate for a provider; or (3) making a supplemental payment to a provider under the Medicaid program. If the \$7.5 million threshold is met, the proposed action is reviewed under JCF's 14-day passive review process.

The act does not require DHS to submit a proposal to JCF if the expected fiscal effect of the proposed action is below the \$7.5 million threshold, or if explicit expenditure authority or funding for the specific change or supplemental payment is included in enacted legislation.

## **IMPLEMENTATION OF BADGERCARE REFORM AMENDMENTS**

### **Background**

Provisions in the 2015-17 and 2017-19 biennial budget acts required DHS to request an amendment to the state's BadgerCare Reform demonstration project, through which Wisconsin provides Medicaid coverage to childless adults whose family income does not exceed 100 percent of the federal poverty limit (FPL). The statutes require that the amendment request authority for DHS to do all of the following with regard to the childless adult population: (1) impose monthly premiums as determined by DHS; (2) impose higher premiums for enrollees who engage in behaviors that increase their health risks, as determined by DHS; (3) require a health risk assessment; (4) limit eligibility to no more than 48 months, under an eligibility formula determined by DHS; (5) require as a condition of eligibility a drug screening and, if indicated, a drug test, as specified by DHS; and (6) provide employment and training services to childless adults receiving Medicaid.<sup>1</sup> Pursuant to DHS's request, HHS approved an amendment to BadgerCare Reform in each of the above categories, except for the drug screening and testing category, on October 31, 2018. HHS's

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<sup>1</sup> s. 49.45 (23) (g), Stats. The sixth category was added as part of the 2017-19 biennial budget act.

approval is subject to a list of special terms and conditions, all of which DHS must comply with to implement the waiver.

### **The Act**

The act requires DHS to comply with the requirements imposed by HHS in its October 31, 2018 approval by no later than November 1, 2019. Upon DHS's request, JCF may grant an unlimited number of extensions to the November 1, 2019 deadline, not to exceed 90 days each. Each request for an extension is reviewed under JCF's 14-day passive review process.

The act also specifies that DHS must do all of the following, ending no sooner than December 31, 2023:

- Require persons, except exempt individuals, who are at least 19 years old but have not attained the age of 50 to participate in, document, and report 80 hours per calendar month of qualifying community engagement activities. If a person does not participate for 48 aggregate months in a required community engagement activity, DHS must disenroll him or her from the Medicaid program for six months. This requirement begins no sooner than October 31, 2019, or no sooner than the first month of a person's eligibility, if all affected beneficiaries have been adequately notified.
- Require persons with incomes of at least 50 percent FPL, except for persons eligible to receive services from an Indian health care provider, to pay a premium of \$8 per month as a condition of Medicaid eligibility. DHS may reduce the premium by up to one-half if a person avoids certain behaviors that increase health risks or attests to actively managing certain unhealthy behaviors. A person who fails to pay a required premium must generally be disenrolled from Medicaid for six months. This must occur at an annual eligibility redetermination, and after the person has received notice and a reasonable opportunity to pay the premium. This requirement begins as soon as practicable after October 31, 2018.
- Require completion of a health risk assessment as a condition of Medicaid eligibility. This requirement begins no sooner than October 31, 2019.
- Charge Medicaid recipients an \$8 copayment for nonemergency use of the emergency department, in accordance with federal law. This requirement begins as soon as practicable after October 31, 2018.

The act also prohibits DHS from withdrawing, suspending, or terminating the above demonstration project requirements before December 31, 2023, unless legislation has been enacted specifically allowing for the withdrawal, suspension, or termination.

Finally, the act authorizes JCF to reduce from moneys allocated for state operations or administrative functions DHS's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time equivalent positions for DHS related to the Medicaid program, if JCF determines that DHS has not complied with: (1) the deadline to implement the reforms by November 1, 2019 (or a later date pursuant to an extension); or (2) provisions related to legislative oversight of implementation of a demonstration project, as described generally in the fourth bullet point on page 2, above.

## **DRUG SCREENING, TESTING, AND TREATMENT POLICY FOR PARTICIPANTS IN THE FOODSHARE EMPLOYMENT AND TRAINING PROGRAM (FSET)**

### **Background**

Pursuant to requirements in the 2015-17 biennial budget act, DHS promulgated rules, effective June 1, 2018, to develop and implement a drug screening, testing, and treatment policy for FoodShare recipients who participate in FSET, Wisconsin's employment and training program for FoodShare recipients. [ch. DHS 38, Wis. Adm. Code; s. 49.79 (9) (d), Stats.]

Work requirements related to the FoodShare program come from both state and federal law. Federal law generally limits food stamp eligibility for able-bodied adults without dependents (often referred to as "ABAWDs") to three months of benefits during any three-year period. After the three-month time limit is met, ABAWDs must generally complete 80 hours of qualifying work per month to remain eligible for food stamps. An ABAWD is generally defined under federal law to mean an individual between ages 18 and 50 who is physically and mentally fit for employment, not pregnant, not a parent of or residing in a household with a child under 18, and not otherwise exempt under federal law.<sup>2</sup> ABAWDs can use FSET participation hours to satisfy the work requirement. [7 C.F.R. s. 273.24.]

Under DHS's rules, the drug screening, testing, and treatment policy applies to ABAWDs who are subject to federal work requirements for FoodShare eligibility and who seek to complete work requirements by participating in FSET.

### **The Act**

The act codifies DHS's rules, requiring ABAWDs who receive FoodShare benefits to comply with drug screening, testing, and treatment requirements as a condition of eligibility to participate in the FSET program. The major aspects of each component are as follows.

#### **Screening**

At the time of application and at annual redetermination for FoodShare eligibility, each agency that administers FoodShare benefits is required to administer a controlled substance abuse screening questionnaire, specified by DHS, to ABAWDs who intend on meeting required work hours through FSET participation. A person who is administered a questionnaire but fails to answer all questions, sign and date the questionnaire, or submit the questionnaire to the administering agency is ineligible to participate in FSET.

#### **Testing**

If the administering agency determines the answers to the questionnaire indicate possible use of a controlled substance without a valid prescription, the person must undergo a drug test, unless the person indicates readiness to enter treatment for controlled substance abuse. Testing must be done in a manner specified by DHS that is consistent with HHS guidelines and by a qualified drug

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<sup>2</sup> Additional exemptions under federal law exist for food stamp recipients who are receiving unemployment compensation, regularly participating in a drug addiction or alcoholic treatment and rehabilitation program, employed or self-employed for 30 or more hours per week, or enrolled in school at least half-time. [7 C.F.R. ss. 273.24 (c) (5) and 273.7 (b).]

testing vendor or a provider approved by DHS. In some circumstances, an administering agency can also use results of a drug test that it performed for the purpose of eligibility for another state program. The testing service must analyze the specimen for the presence of controlled substances specified by DHS. If a person tests positive for the use of a controlled substance, the vendor must perform a confirmation test using the same specimen.

A person who is required to undergo drug testing is ineligible to participate in FSET if the person fails or refuses to do any of the following: (1) appear for a scheduled drug test without good cause; (2) complete a form or release of information required for testing; (3) provide a valid specimen for testing; or (4) provide verification of identity to the testing vendor. An administering agency may direct a person who initially fails or refuses to do any of these things but subsequently agrees to submit to a test to undergo drug testing on a random basis at any time within 10 business days after the person agrees to submit to a test.

### **Treatment**

A person who, pursuant to the above testing requirements, tests positive for use of a controlled substance and does not provide evidence of a prescription must participate in treatment to be eligible to participate in FSET. If treatment is required, the person may participate in any treatment program that is certified by DHS to provide treatment for controlled substance abuse as a medically managed inpatient service, a medically monitored treatment service, a day treatment service, or a narcotic treatment service for opiate addiction or, as approved by DHS, psychosocial rehabilitation services. The treatment provider must do an initial evaluation and assessment to determine whether treatment is necessary and, if so, refer the person to an appropriate treatment program. If there is a waiting list, the person must continue to take all necessary steps to continue seeking enrollment. The person is considered to have successfully completed treatment when all applicable components identified in the initial evaluation and assessment are satisfied.

A person is ineligible to participate in FSET during any period of time in which he or she refuses to participate in treatment by failing or refusing to do any of the following: (1) complete a form or release required for treatment program administration; (2) participate in a controlled substance test required by the treatment provider or administering agency during the course of required treatment, which can include random drug testing; (3) meet attendance or participation requirements established by the treatment provider; or (4) complete a substance abuse assessment.

DHS is required to pay all costs related to screening and drug testing, as well as the costs of treatment to the extent that treatment is not covered by Medicaid or another insurance plan. In addition, the act provides that a person who is participating in FSET is exempt from work requirements that would otherwise apply as a condition of FoodShare eligibility while he or she is participating in treatment as described above.

### **DWD WORKFORCE TRAINING PROGRAMS**

The act converts the DWD continuing appropriation for various workforce training programs, commonly referred to as the Fast Forward program, into a separate appropriation for each program. The act appropriates the following amounts for each of the following programs for fiscal year 2018-19: (1) \$3,500,000 for career and technical education incentive grants; (2) \$500,000 for technical education equipment grants; (3) \$0 for teacher development program grants; (4) \$225,000 for apprenticeship programs; (5) \$2,233,700 for local youth apprenticeship grants; (6) \$464,800 for

employment transit assistance grants; and (7) \$422,400 for youth summer jobs programs in 1st class cities.

Under the act, DWD may request that the JCF transfer moneys from the Fast Forward appropriation account to the appropriation accounts for the teacher development program grants and local youth apprenticeship grants to fund those grant programs. The act also converts the Fast Forward appropriation from a continuing appropriation to an annual appropriation.

The act also provides that any moneys encumbered under the Fast Forward appropriation before December 16, 2018 do not lapse and may be expended pursuant to the terms of the encumbrance.

## **UNEMPLOYMENT INSURANCE**

### **Background**

Under current law, with certain exceptions, a person who is claiming unemployment insurance benefits is generally required to register for work with Wisconsin Job Service and to make at least four work searches per week. Prior law allowed DWD to define, by rule, any conditions under which a waiver from those requirements could be granted. DWD's administrative rules waived the registration and work search requirements for any of the following: (1) a person who has a reasonable expectation of returning to work with the same employer within eight weeks, which may be extended an additional four weeks; (2) a person who has an anticipated start date with a new employer within four weeks; (3) a person who is a trades worker who routinely obtains work through a qualifying union hiring hall; and (4) additional identified circumstances, such as a person who has been called to jury service.

### **The Act**

The act codifies the waivers from DWD's administrative rules and specifies that DWD may modify or establish additional waivers from the registration and work search requirements only if necessary to comply with federal law or as specifically allowed under federal law.

## **WIHSP**

### **Background**

Current law directs the Office of the Commissioner of Insurance (OCI) to administer a reinsurance program for the state individual insurance market, pursuant to 2017 Wisconsin Act 138, known as WIHSP. Total annual funding for WIHSP is capped at \$200 million; however, on July 29, 2018, the federal government approved a Section 1332 waiver under the Affordable Care Act (ACA), which will allow the state to receive federal funds offsetting approximately three-fourths of the cost of WIHSP, based on expected savings to federal premium tax credits under the ACA.

### **The Act**

The act requires OCI to administer WIHSP in accordance with the specific terms and conditions of the federal approval dated July 29, 2018, and to ensure that sufficient funds are available for the plan to operate as described in the approval. The act expressly requires OCI to

complete and submit any reports, provide any information, and participate in any oversight activities required by the federal government to implement and maintain WIHSP.

Under both the act and the provisions enacted in 2017 Act 138, WIHSP must make reinsurance payments to carriers to offset a portion of the cost associated with certain claims. For the 2019 benefit year, WIHSP must provide a 50 percent coinsurance rate for claims between \$50,000 and \$250,000 for an enrolled individual's covered benefits for that year. However, the act prohibits OCI from adjusting the payment parameters for the 2019 benefit year. The provisions enacted in 2017 Act 138 authorize OCI to adjust the payment parameters for the 2019 benefit year if necessary to secure federal approval of the Section 1332 waiver on which WIHSP is based.

Under both the act and the provisions enacted in 2017 Act 138, OCI is authorized to adjust the payment parameters in future benefit years, using a process described in the statute. Also, under both the act and current law, OCI is authorized to promulgate rules related to WIHSP, as specified in the statute, which may be promulgated as emergency rules without a finding of an emergency. However, the act specifically requires any such rule to comply with the terms of the federal approval dated July 29, 2018, and the act provides that an emergency rule related to WIHSP promulgated before January 1, 2019, will remain in effect until it is superseded by a subsequent permanent rule.

The act specifies that, before December 31, 2023, OCI may request a renewal - without substantive change - of the Section 1332 waiver upon which WIHSP is based. However, as provided under the act, no modification, suspension, withdrawal, or termination of the waiver may be requested by OCI before that date, unless legislation has been enacted specifically directing the modification, suspension, withdrawal, or termination.

The act also repeals a provision that had been enacted in 2017 Act 138 requiring OCI to submit a report by December 31, 2018, with recommendations regarding the implementation of the Section 1332 waiver on which WIHSP is based. The effective date of the act's repeal of this reporting requirement is December 31, 2018.

*Effective date:* December 16, 2018, except as provided above.

*Prepared by:* Andrea Brauer and Steve McCarthy, Staff Attorneys, and December 17, 2018  
Margit Kelley and Brian Larson, Senior Staff Attorneys

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