



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6182/1
TJD:amn

2021 SENATE BILL 1089

March 10, 2022 - Introduced by Senators JOHNSON, LARSON, AGARD, BEWLEY, CARPENTER, ROYS, SMITH and L. TAYLOR, cosponsored by Representatives SHELTON, MOORE OMOKUNDE, ANDERSON, BALDEH, BILLINGS, BROSTOFF, CABRERA, CONLEY, DRAKE, EMERSON, GOYKE, HAYWOOD, HEBL, HESSELBEIN, HONG, B. MEYERS, OHNSTAD, POPE, RIEMER, SINICKI, SNODGRASS, SPREITZER, STUBBS, SUBECK, VINING and VRUWINK. Referred to Committee on Insurance, Licensing and Forestry.

1 **AN ACT to create** 49.45 (59m), 49.471 (4m) and 601.59 of the statutes; **relating**
2 **to:** BadgerCare purchase option, basic plan, state-based insurance exchange,
3 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Health Services to request federal approval to permit certain individuals whose income is greater than the income eligibility limit for the BadgerCare program, but who otherwise meet the eligibility requirements, to purchase coverage through BadgerCare through a separate purchase option that meets criteria specified in the bill, including having a premium rate similar to the average rate paid by the state to managed care plan contractors and a minimum actuarial value of 87 percent. The bill also requires DHS to include an option for small groups of 50 employees or fewer to purchase coverage for group members under the purchase program under the bill. The bill requires DHS to submit a report providing information on the status of receiving a federal waiver and the results from actuarial and economic analyses that are necessary for a waiver proposal. If any necessary waiver or state plan amendments are approved, DHS must implement the program. The bill also requires DHS to seek any federal waiver and state Medical Assistance plan amendments necessary to allow qualified individuals who choose to purchase the BadgerCare option to use advanced tax credits and cost-sharing credits, if eligible, to purchase one of these options.

Currently, DHS administers the Medical Assistance program, which is a joint federal and state program that provides health services to individuals who have

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limited financial resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws, including services provided through the BadgerCare program. Under current law, certain parents and caretaker relatives with incomes of not more than 100 percent of the federal poverty line, before a 5 percent income disregard is applied, are eligible for BadgerCare benefits. Under current law, childless adults who 1) are under age 65; 2) have family incomes that do not exceed 100 percent of the FPL, before a 5 percent income disregard is applied; and 3) are not otherwise eligible for Medical Assistance, are eligible, under a demonstration project, for BadgerCare benefits.

The bill requires DHS to develop a plan and request federal approval to create a basic health plan that complies with the federal Patient Protection and Affordable Care Act. The basic health plan must cover individuals whose household income does not exceed 200 percent of the federal poverty line. The ACA allows states to create such a basic health program.

This bill directs the Office of the Commissioner of Insurance to establish and operate a state-based health insurance exchange, which must also include access to the ability to enroll in the purchase option for BadgerCare. Under current law, the ACA requires that an exchange be established in each state to facilitate the purchase of qualified health insurance coverage by individuals and small employers. Under the ACA, a state must operate its own state-based exchange, use the federally facilitated exchange operated by the U.S. Department of Health and Human Services, or adopt a hybrid approach under which the state operates a state-based exchange but uses the federal platform, known as HealthCare.gov, to handle eligibility and enrollment functions. Wisconsin currently uses the federally facilitated exchange. The bill authorizes OCI to enter into any agreement with the federal government necessary to implement the state-based exchange provisions.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.45 (59m) of the statutes is created to read:
2 49.45 (**59m**) BASIC HEALTH PLAN. The department shall develop a plan and
3 request a waiver, state plan amendment, or other federal approval to create a basic
4 health plan that complies with section 1331 of the federal Patient Protection and
5 Affordable Care Act, P.L. 111-148. A basic health plan under this subsection shall
6 provide coverage for individuals whose household income does not exceed 200
7 percent of the poverty line.

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1 **SECTION 2.** 49.471 (4m) of the statutes is created to read:

2 49.471 **(4m)** PURCHASE OPTIONS FOR BADGERCARE. (a) 1. The department shall
3 request from the secretary of the federal department of health and human services
4 any necessary waiver or amendment to the state Medical Assistance plan to
5 establish a program that allows individuals with income above the maximum income
6 eligibility limit applicable under this section or under s. 49.45 (23), and who
7 otherwise meet the eligibility requirements under this section or under s. 49.45 (23),
8 the option of purchasing coverage through this section or through the demonstration
9 project under s. 49.45 (23) instead of purchasing an individual health plan through
10 private insurance.

11 2. The department shall also seek any federal waiver and state Medical
12 Assistance plan amendments necessary to allow individuals who qualify under subd.
13 1. to use advanced tax credits and cost-sharing credits, if eligible, to purchase one
14 of the options described under subd. 1.

15 (b) 1. The department shall coordinate the administration of the purchase
16 options under this subsection with the programs under this section and s. 49.45 (23)
17 to maximize efficiency and improve the continuity of care, consistent with the
18 requirements of this section and s. 49.45 (23). The department shall seek to
19 implement mechanisms to ensure the long-term financial sustainability of the
20 programs under this section and s. 49.45 (23). These mechanisms must address
21 issues related to minimizing adverse selection, the state financial risk and
22 contribution, and negative impacts to premiums in the individual and group
23 insurance markets.

24 2. The purchase option program shall include, at a minimum, all of the
25 following attributes:

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1 a. Establishment of an annual per enrollee premium rate similar to the average
2 rate paid by the state to managed care plan contractors.

3 b. Establishment of a benefit set equal to the benefits covered under this section
4 and s. 49.45 (23).

5 c. Annual enrollment that is limited to the same annual open enrollment
6 periods established for the programs under this section and s. 49.45 (23).

7 d. The ability for the department to adjust the purchase option's actuarial value
8 to a value no lower than 87 percent.

9 e. Reimbursement mechanisms for addressing potential increased costs to the
10 programs under this section and s. 49.45 (23).

11 (c) By March 1, 2023, the department of health services shall submit to the
12 appropriate standing committee in each house of the legislature under s. 13.172 (3)
13 a report that provides information on the status of the request for a federal waiver
14 and the results from actuarial and economic analyses that are necessary for a waiver
15 proposal.

16 (d) The department shall include, in collaboration with the commissioner of
17 insurance if necessary, an option for small groups of 50 employees or fewer to
18 purchase coverage for group members under the program under this subsection.

19 (e) If any necessary waiver or amendments to the state plan described under
20 par. (a) 1. are approved, the department shall implement the program. If the
21 department is authorized to implement the program, and if any waiver or state plan
22 amendment described under par. (a) 2. is necessary and is approved, or if the
23 department determines neither a waiver nor state plan amendment is necessary, the
24 department shall allow the purchase options described under par. (a) 2.

25 **SECTION 3.** 601.59 of the statutes is created to read:

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1 **601.59 State-based exchange. (1) DEFINITIONS.** In this section:

2 (a) “Exchange” has the meaning given in 45 CFR 155.20.

3 (b) “State-based exchange” means an exchange that is described in and meets
4 the requirements of 45 CFR 155.200 (f) and is approved by the federal secretary of
5 health and human services under 45 CFR 155.106.

6 **(2) ESTABLISHMENT AND OPERATION OF STATE-BASED EXCHANGE.** The commissioner
7 shall develop a plan to establish and operate a state-based exchange. The
8 commissioner, in collaboration, as necessary, with the department of health services,
9 shall ensure that individuals may access the ability to enroll in the purchase option
10 program under s. 49.471 (4m) through the state-based exchange.

11 **(3) AGREEMENT WITH FEDERAL GOVERNMENT.** The commissioner may enter into
12 any agreement with the federal government necessary to facilitate the
13 implementation of this section.

14 **(4) RULES.** The commissioner may promulgate rules necessary to implement
15 this section.

16 **(END)**