State of Wisconsin
2011 - 2012 LEGISLATURE

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2011 SENATE BILL 538

March 1, 2012 - Introduced by Senators ERPENBACH, CARPENTER, S. COGGS, T. CULLEN, HANSEN, HOLPERIN, JAUCH, C. LARSON, LASSA, MILLER, RISSER, SHILLING and WIRCH, cosponsored by Representatives RICHARDS, PASCH, BARCA, BERCEAU, BEWLEY, BILLINGS, D. CULLEN, GRIGSBY, HEBL, HULSEY, KESSLER, MASON, MILROY, POCAN, POPE-ROBERTS, RINGHAND, ROYS, SEIDEL, STASKUNAS, STEINBRINK, C. TAYLOR, TOLES, TURNER, YOUNG, ZAMARRIPA and ZEPNICK. Referred to Joint Committee on Finance.

AN ACT ***to repeal*** 49.45 (23) (d), 49.471 (13), 49.471 (14), 71.255 (6) (bm), 71.26 (4) (b) and 71.45 (4) (b); ***to renumber and amend*** 71.26 (4) (a) and 71.45 (4) (a); ***to amend*** 49.45 (2m) (c) (intro.), 49.45 (23) (a), 49.45 (23) (b) and 71.255 (6) (a); ***to create*** 49.45 (23) (c), 49.45 (23) (d), 49.45 (23) (e), 49.471 (6) (L), 49.471 (14) and 49.471 (15) of the statutes; and ***to affect*** 2011 Wisconsin Act 32, section 9421 (1i), 2011 Wisconsin Act 32, section 1438e, 2011 Wisconsin Act 32, section 1438i and 2011 Wisconsin Act 32, section 1461h; **relating to:** changes to BadgerCare Plus and BadgerCare Plus Core programs by the department of health services and by waiver, disallowing certain carry-forward amounts for combined reporting purposes, and making an appropriation.

Analysis by the Legislative Reference Bureau

Currently, the Department of Health Services (DHS) administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws, including services provided through the BadgerCare Plus (BC+) and BadgerCare

Plus Core (BC+ Core) programs. Current law requires DHS to study potential changes to MA for certain purposes. If DHS determines that revision of existing statutes or rules would be necessary to advance any of the purposes for which the study was conducted, DHS may propose a policy to take certain actions including: modifying existing benefits and offering different benefits packages to different groups of MA recipients, restricting or eliminating presumptive eligibility, setting standards for establishing and verifying eligibility requirements; developing standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility, and reducing income levels for purposes of determining eligibility. Before implementing a policy that conflicts with a state statute, DHS must submit to the Joint Committee on Finance (JCF), under the committee's passive review process, the proposed amendment to the state MA plan or proposed waiver of federal Medicaid law. If JCF does not reject the proposed plan amendment or waiver request, DHS must submit the amendment or waiver request to the federal government, if necessary, to the extent necessary to implement the policy. If the federal government does not allow the amendment or does not grant the waiver, DHS may not implement the policy.

Under current law, BC+ provides health and medical services to eligible recipients and has a standard plan with a larger set of benefits and a Benchmark plan with fewer benefits. Recipients of standard BC+ benefits may be required to pay certain copayments for services. BC+ recipients under the standard plan, with some exceptions, are also required to pay premiums. Recipients of BC+ under the Benchmark plan have increased copayments and coinsurance for certain services and higher premiums compared to recipients under the standard plan.

Under current law, the following individuals, among others, are eligible for benefits under the BC+ standard plan: a pregnant women whose family income does not exceed 200% of the federal poverty line (FPL); a child meeting certain criteria whose family income does not exceed 200% of the FPL; a child meeting certain criteria whose family income exceeds 150% of the FPL but the difference between the actual family income and 150% of the FPL is expended on behalf of a member of the child's family or the child for certain medical or health reasons; a parent or caretaker relative of a child whose family income does not exceed 200% of the FPL; and an individual who qualifies for a transitional extension of MA benefits even though his or her income increases above the poverty line. Except for pregnant women and certain children and other individuals, individuals who are otherwise eligible for BC+ and are also eligible for a group health plan must apply for the group health plan. Those individuals are not eligible for BC+ if their family income exceeds 150% of the FPL and they have, or have had access in the previous 12 months to, health coverage that is either provided by an employer that pays at least 80% of the premium or is the state employee health plan. A child whose family income does not exceed 150% of the FPL, a pregnant woman, and certain others are retroactively eligible for benefits under BC+ for the three months before applying for BC+. A child whose family income does not exceed 150% is also presumptively eligible for BC+. The following individuals, among others, are eligible for benefits under the BC+ Benchmark plan, under current law: a pregnant woman whose family income

exceeds 200%, but does not exceed 300%, of the FPL; a pregnant woman and everyone in her family if her family income exceeds 300% of the FPL but the difference between her actual family income and 300% of the FPL is expended for any family member's or her medical or health care; a child whose family income exceeds 200%, but does not exceed 300%, of the FPL; and a parent or caretaker of a child whose income includes self–employment income but does not exceed 200% of the FPL after depreciation is deducted. A child whose family income exceeds 300% of the FPL and an adult who meets certain criteria are eligible to purchase benefits at the full per member per month cost of coverage through the BC+ Benchmark plan. A pregnant woman whose family income does not exceed 200% of the FPL is presumptively eligible for ambulatory prenatal care benefits under the BC+ standard plan. A pregnant woman whose family income exceeds 200%, but does not exceed 300%, of the FPL is presumptively eligible for ambulatory prenatal care benefits under the BC+ Benchmark plan.

Under current law, DHS also administers BC+ Core, which provides basic primary and preventive care to eligible individuals. Adults who are under age 65, who have family incomes that do not exceed 200% of the FPL, and who are not otherwise eligible for MA, including BC+, are eligible for benefits under BC+ Core.

This bill eliminates the authority of DHS to modify aspects of the BC+ and BC+ Core programs through a policy. If DHS seeks to verify the residency in the state of an applicant for BC+ or BC+ Core as a condition of eligibility, the bill requires that DHS accept any document or other source that reasonably verifies residency in the state. DHS may not require a specific source of verification of residency and may not require as the sole method of verification a government–issued identification card containing a photograph. The bill prohibits DHS from requesting or implementing a waiver of federal Medicaid laws or an amendment to the state MA plan to do any of the following: disqualify from eligibility for BC+ or BC+ Core any individual who has access to employer–sponsored health insurance that does not require a premium exceeding 9.5% of the individual's household income; disqualify from eligibility for BC+ or BC+ Core an adult who has not attained the age of 26 and who has access to coverage under a parent's employer–sponsored health insurance; apply premiums and copayment contributions for BC+ or BC+ Core that are different from or in addition to those required under current law; discontinue transitional MA benefits for those who exceed the income eligibility threshold; restrict eligibility for BC+ or BC+ Core for 12 months to anyone who has refused to pay or has been terminated for nonpayment of a premium for BC+ or BC+ Core; eliminate retroactive or presumptive eligibility; consider the income of all adults living in the household, except for grandparents not receiving MA, for purposes of eligibility for BC+ or BC+ Core; terminate or reduce eligibility within 10 days of a notice to the recipient of BC+ or BC+ Core benefits; reduce the benefits under the BC+ Benchmark plan; or require all non–pregnant individuals who have incomes exceeding 100% of the FPL to enroll in the BC+ Benchmark plan instead of the standard plan. The bill also prohibits DHS from reducing income levels for the purposes of determining eligibility for BC+ or BC+ Core to 133% of the FPL for adults who are not pregnant and not disabled.

Under current law, for each taxable year that a corporation that is a member of a combined group has net business loss carry–forward from a taxable year beginning before January 1, 2009, the corporation may, for 20 taxable years, use up to five percent of the net business loss carry–forward to offset the income of all other members of the combined group. The bill eliminates this provision.

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:

SECTION 1. 49.45 (2m) (c) (intro.) of the statutes, as affected by 2011 Wisconsin Act 32, section 1423k, is amended to read:

49.45 **(2m)** (c) (intro.) Subject to par. (d), if the department determines, as a result of the study under par. (b), that revision of existing statutes or rules would be necessary to advance a purpose described in par. (b) 1. to 7., the department may propose a policy that makes any of the following changes related to Medical Assistance programs, except for the programs under sub. (23) or s. 49.471:

SECTION 2. 49.45 (23) (a) of the statutes, as affected by 2011 Wisconsin Act 32, section 1438d, is amended to read:

49.45 **(23)** (a) The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to conduct a demonstration project to provide health care coverage for basic primary and preventive care to adults who are under the age of 65, who have family incomes not to exceed 200 percent of the poverty line, and who are not otherwise eligible for medical assistance under this subchapter, the Badger Care health care program under s. 49.665, or Medicare under 42 USC 1395 et seq. ~~If the department creates a policy under sub. (2m) (c) 10., this paragraph does not apply to the extent that it conflicts with the policy.~~

SECTION 3. 49.45 (23) (b) of the statutes, as affected by 2011 Wisconsin Act 32, 1438h, is amended to read:

49.45 **(23)** (b) If the waiver is granted and in effect, the department may promulgate rules defining the health care benefit plan, including more specific eligibility requirements and cost–sharing requirements. ~~Unless otherwise provided by the department by a policy created under sub. (2m) (c), cost~~ Cost sharing may include an annual enrollment fee, which may not exceed $75 per year. Notwithstanding s. 227.24 (3), the plan details under this subsection may be promulgated as an emergency rule under s. 227.24 without a finding of emergency. If the waiver is granted and in effect, the demonstration project under this subsection shall begin on January 1, 2009, or on the effective date of the waiver, whichever is later.

SECTION 4. 49.45 (23) (c) of the statutes is created to read:

49.45 **(23)** (c) If the department elects to request verification of residency in this state as a condition of eligibility for the demonstration project under this subsection, the department shall accept any document or other source that reasonably verifies residency in this state. The department may not require a specific source of verification of residency. The department may not require as the sole method of verification of residency a government–issued identification card with a photograph of the individual.

SECTION 5. 49.45 (23) (d) of the statutes is created to read:

49.45 **(23)** (d) The department may not create a policy under sub. (2m) (c) that alters the requirements or provisions under the demonstration project described in this subsection.

SECTION 6. 49.45 (23) (d) of the statutes, as created by 2011 Wisconsin Act .... (this act), is repealed.

SECTION 7. 49.45 (23) (e) of the statutes is created to read:

49.45 **(23)** (e) The department may not request or implement a waiver of federal Medicaid laws to do any of the actions described in s. 49.471 (15) (a) 1. to 8. or (b) with respect to the demonstration project described in this subsection.

SECTION 8. 49.471 (6) (L) of the statutes is created to read:

49.471 **(6)** (L) If the department elects to request verification of residency in the state as a condition of eligibility for the program under this section, the department shall accept any document or other source that reasonably verifies residency in the state. The department may not require a specific source of verification of residency. The department may not require as the sole method of verification of residency a government–issued identification card with a photograph of the individual.

SECTION 9. 49.471 (13) of the statutes, as affected by 2011 Wisconsin Act 32, section 1461g, is repealed.

SECTION 10. 49.471 (14) of the statutes is created to read:

49.471 **(14)** PROGRAM CHANGES. The department may not create a policy under s. 49.45 (2m) (c) that alters the requirements or provisions under this section.

SECTION 11. 49.471 (14) of the statutes, as created by 2011 Wisconsin Act .... (this act), is repealed.

SECTION 12. 49.471 (15) of the statutes is created to read:

49.471 **(15)** PROHIBITED ACTIONS. (a) The department may not request or implement a waiver of federal Medicaid laws or an amendment to the state Medical Assistance plan to do any of the following:

1. Disqualify from eligibility for the program under this section any individuals who have access to employer–sponsored health insurance that does not require a premium exceeding 9.5 percent of the individual's household income.

2. Disqualify from eligibility an adult who has not attained the age of 26 and who has access to coverage under a parent's employer–sponsored health insurance.

3. Apply premiums and copayment contributions to receipt of benefits different from or in addition to premiums and copayment contributions required or allowed under this section.

4. Discontinue transitional Medical Assistance benefits for recipients who exceed the income eligibility threshold.

5. Restrict eligibility for Medical Assistance for 12 months to anyone who has refused to pay or has been terminated for nonpayment of a premium for the program under this section.

6. Eliminate retroactive or presumptive eligibility.

7. Consider for eligibility purposes the income of all adults, except grandparents not receiving Medical Assistance benefits, living in a household.

8. Terminate or reduce eligibility within 10 days of a notice to the recipient of a termination or reduction.

9. Reduce the benefits of the plan under sub. (11).

10. Require all non–pregnant individuals who have incomes above 100 percent of the federal poverty line to enroll in the plan under sub. (11).

(b) The department may not reduce income levels for the purposes of determining eligibility for the program under this section to 133 percent of the federal poverty line for adults who are not pregnant and not disabled.

SECTION 13. 71.255 (6) (a) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.255 **(6)** (a) Except as provided in pars. (b)~~, (bm),~~ and (c) no tax credit, Wisconsin net business loss carry–forward, or other post–apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. A member of a combined group may use a carry–forward of a credit, Wisconsin net business loss carry–forward, or other post–apportionment deduction otherwise allowable under s. 71.26 or 71.45, that was incurred by that same member in a taxable year beginning before January 1, 2009.

SECTION 14. 71.255 (6) (bm) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

SECTION 15. 71.26 (4) (a) of the statutes, as affected by 2011 Wisconsin Act 32, is renumbered 71.26 (4) and amended to read:

71.26 **(4)** ~~Except as provided in par. (b), a~~ A corporation, except a tax–option corporation or an insurer to which s. 71.45 (4) applies, may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years, if the corporation was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed. For purposes of this subsection Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions in computing net

income. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.25 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this subsection.

SECTION 16. 71.26 (4) (b) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

SECTION 17. 71.45 (4) (a) of the statutes, as affected by 2011 Wisconsin Act 32, is renumbered 71.45 (4) and amended to read:

71.45 **(4)** ~~Except as provided in par. (b), insurers~~ Insurers computing tax under this subchapter may subtract from Wisconsin net income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years to the extent not offset by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9. and this subsection and limited to the amount of net income, but no loss incurred for a taxable year before taxable year 1987 by a nonprofit service plan of sickness care under ch. 148, or dental care under s. 447.13 may be treated as a net business loss of the successor service insurer under ch. 613 operating by virtue of s. 148.03 or 447.13.

SECTION 18. 71.45 (4) (b) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

SECTION 19. 2011 Wisconsin Act 32, section 9421 (1i) is amended to read:

[2011 Wisconsin Act 32] Section 9421 (1i) MEDICAL ASSISTANCE PROGRAM CHANGES. The treatment of sections 49.45 (8) (b) (by SECTION 1436b), (8) (c) (by SECTION 1436i), (8r) (by SECTION 1437b), (8v) (by SECTION 1437f), (18) (ac) (by SECTION 1437k), (18) (ag) (intro.) (by SECTION 1437o), (18) (b) (intro.) (by SECTION 1437r), (18) (d) (by SECTION 1437u), ~~(23) (a) (by SECTION 1438e), (23) (b) (by SECTION 1438i),~~ (24g) (c) (by SECTION 1438m), (24s) (a) (by SECTION 1441bg), (25g) (c) (by SECTION 1441d), (27) (by SECTION 1441g), and (39) (b) 1. (by SECTION 1442h), 49.46 (2) (a) (intro.) (by SECTION 1453i) and (2) (b) (intro.) (by SECTION 1453L), 49.465 (2) (intro.) (by SECTION 1453s), 49.47 (4) (a) (intro.) (by SECTION 1457q) and (6) (a) (intro.) (by SECTION 1459o), 49.472 (3) (intro.) (by SECTION 1461q) and (4) (b) (intro.) (by SECTION 1462h), 49.473 (2) (intro.) (by SECTION 1465p) and (5) (by SECTION 1470b) of the statutes and the repeal of sections 49.45 (2m), (3) (n), and (6m) (n), 49.46 (1) (n), and 49.47 (5) (c)~~, and 49.471 (13)~~ of the statutes take effect on January 1, 2015.

SECTION 20. 2011 Wisconsin Act 32, section 1438e is repealed.

SECTION 21. 2011 Wisconsin Act 32, section 1438i is repealed.

SECTION 22. 2011 Wisconsin Act 32, section 1461h is repealed.

SECTION 23. Nonstatutory provisions.

(1) If the department of health services is taking any of the actions specified under sections 49.45 (23) (e) and 49.471 (15) of the statutes, as created by this act, the department shall discontinue the action. If a waiver of federal Medicaid law, or an amendment to a waiver, or an amendment to the state Medical Assistance plan is required to discontinue the action, the department shall request the waiver or amendment before the 30th day after the effective date of this subsection.

SECTION 24. Fiscal changes.

(1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health services under section 20.435 (4) (b) of the statutes, as affected by the acts of 2011, the dollar amount is increased by $17,100,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect to increase funding for the purposes for which the appropriation is made.

SECTION 25. Initial applicability.

(1) COMBINED REPORTING. The treatment of sections 71.255 (6) (a) and (bm), 71.26 (4) (a) and (b), and 71.45 (4) (a) and (b) of the statutes first applies to taxable years beginning on January 1, 2013.

SECTION 26. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The repeal of sections 49.45 (23) (d) and 49.471 (14) of the statutes takes effect on January 1, 2015.

(END)