

**1999 DRAFTING REQUEST**

**Bill**

Received: 02/22/2000

Received By: isagerro

Wanted: As time permits

Identical to LRB:

For: Kevin Shibilski (608) 266-3123

By/Representing: Aaron Nuutine

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Alt. Drafters:

Subject: **Health - social services**  
**Public Assistance - misc**

Extra Copies: **DAK**

**Pre Topic:**

No specific pre topic given

**Topic:**

Badger care HMO contracts, requiring audit of Badger care and providing increase in funding

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	isagerro 02/23/2000	jgeller 02/23/2000		_____			State
/1			martykr 02/23/2000	_____	lrb_docadmin 02/23/2000	lrb_docadmin 02/25/2000	

FE Sent For:

03-03-00

<END>

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/1			martykr 02/23/2000	_____	lrb_docadmin 02/23/2000		

for  
Senate  
per  
ISR

FE Sent For:

<END>

\* 2/22/00 Haven, aide to Sen. Schusterki

- same as FRB-4457

-> funding in 2000-01 fiscal year by \$20 million

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1?	isagerro	1 2/23 jlg	km 2/23	km 2/23			

FE Sent For:

<END>



State of Wisconsin  
1999 - 2000 LEGISLATURE

AC02/1  
LRB-44712  
ISR/plg/hmh

RM not  
run

1999 BILL

NOTES  
Today by 6:00 pm  
2/23/09

Regen

1 AN ACT to create 49.665 (3m) and 49.665 (5m) of the statutes; relating to:  
2 contracts to provide health care services under the badger care health care  
3 program, reimbursement rates paid to health maintenance organizations  
4 under the badger care health care program, ~~and~~ requiring the legislative audit  
5 bureau to conduct an audit of the badger care health care program, <sup>and making</sup> an appropriation

**Analysis by the Legislative Reference Bureau**

Under current law, the department of health and family services (DHFS) administers the badger care health care program that provides health care coverage to certain low-income individuals. Currently, DHFS contracts with health care providers, including health maintenance organizations (HMOs), to provide health care services to eligible individuals under the badger care health care program.

This bill requires DHFS to contract with an independent actuarial firm to determine whether the rates paid to HMOs as reimbursement for health care services under the badger care health care program are actuarially sound and, if the firm determines the rates are not actuarially sound, to specify actuarially sound rates of reimbursement. The rates specified by the independent firm apply to health care services provided by an HMO from July 1, 1999, (the date on which the badger care health care program began) to December 31, 2001. In addition, if the rates of reimbursement are determined to be actuarially unsound, an HMO that has a contract with DHFS ending no later than December 31, 2001, may cancel the contract after providing DHFS with 30 days' notice.

**BILL**

This bill also requires that any contract to provide health care services under the badger care health care program that is entered into by DHFS and an HMO be separate from any contract DHFS may have with the HMO to provide health care services under the medical assistance program. ~~bill~~

\* ~~NO~~ ~~PR~~ ~~MISS~~ under this bill, if an HMO provides health care services to an individual who DHFS determines is eligible for the badger care health care program at the time the services are provided by the HMO but who DHFS later determines was ineligible at the time the services were provided, DHFS is required to reimburse the HMO on a fee-for-service basis. ~~also~~

\* ~~PR~~ ~~MISS~~ this bill ~~also~~ requires the legislative audit bureau to conduct an audit of the badger care health care program. Specifically, the audit must examine whether the program is operated under sound insurance principles and whether ineligible individuals are allowed to enroll in the program. The legislative audit bureau is required to submit an audit report to the legislature no later than January 1, 2001.

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

~~PR~~ ~~MISS~~ Finally, this bill increases funding for the badger care health care program for the 2000-01 fiscal year.

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

1           **SECTION 1.** 49.665 (3m) of the statutes is created to read:

2           **49.665 (3m) CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS.** If the  
3 department contracts with a health maintenance organization to provide health care  
4 services to individuals under this section, the contract shall be separate from any  
5 contract the health maintenance organization has with the department to provide  
6 health care services under subch. IV.

7           **SECTION 2.** 49.665 (5m) of the statutes is created to read:

8           **49.665 (5m) HEALTH CARE SERVICES PROVIDED TO INELIGIBLE INDIVIDUALS.** The  
9 department shall reimburse a health maintenance organization on a fee-for-service  
10 basis for any health care services that are provided to an individual who, at the time  
11 the health care services are provided, the department determines is eligible for  
12 health care coverage under this section but who the department later determines

**BILL**

1 was ineligible to receive health care coverage under this section at the time the  
2 health care services were provided.

**SECTION 3. Nonstatutory provisions.**

3  
4 (1) **BADGER CARE REIMBURSEMENT RATES.** The department of health and family  
5 services shall contract with an independent actuarial firm to determine whether the  
6 rates of reimbursement paid to health maintenance organizations for health care  
7 services provided from July 1, 1999, to December 31, 2001, under section 49.665 of  
8 the statutes, as affected by 1999 Wisconsin Acts 9 and this act, are actuarially sound  
9 and, if the rates of reimbursement are not actuarially sound, to specify rates that are  
10 actuarially sound. If the firm specifies new rates of reimbursement, the new rates  
11 shall apply to health care services provided from July 1, 1999, to December 31, 2001.

12 (2) **RIGHT TO CANCEL.** If an independent actuarial firm determines under  
13 subsection (1) that the rates of reimbursement paid to health maintenance  
14 organizations for health care services provided under section 49.665 of the statutes,  
15 as affected by 1999 Wisconsin Acts 9 and this act, are not actuarially sound, a health  
16 maintenance organization that has a contract ending no later than December 31,  
17 2001, to provide health care services under section 49.665 of the statutes, as affected  
18 by 1999 Wisconsin Acts 9 and this act, may, after providing the department of health  
19 and family services with 30 days' notice, cancel the contract.

20 (3) **AUDIT.** The legislative audit bureau shall conduct both a financial audit and  
21 performance evaluation audit of the badger care health care program to examine  
22 whether the program is operated under sound insurance principles and whether  
23 ineligible individuals are allowed to enroll. No later than January 1, 2001, the  
24 legislative audit bureau shall file its report as described under section 13.94 (1) (b)  
25 of the statutes.

✓  
Insert  
3-25 →





Inset 3-25

~~1999 - 2000 LEGISLATURE~~

LRB-4419/1

ISR:jlg:km

~~1999 BILL~~

1 **AN ACT relating to:** funding for the badger care health care program and making  
2 an appropriation.

---

***Analysis by the Legislative Reference Bureau***

Under current law, the department of health and family services administers the badger care health care program. This program provides health care coverage to certain low-income families and certain low-income children who do not reside at home. Low-income is generally defined as having an income at or below 185% of the federal poverty line.

This bill increases funding for the badger care health care program for the 1999-2001 fiscal biennium.

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:***

3 **SECTION 1. Appropriation changes.**

4 (1) BADGER CARE HEALTH CARE PROGRAM. In the schedule under section 20.005  
5 (3) of the statutes for the appropriation to the department of health and family  
6 services under section 20.435 (4) (bc) of the statutes, as affected by the acts of 1999,

↓

**BILL**

MS 3-25  
cont

1 the dollar amount is increased by ~~\$5,500,000~~ for fiscal year 1999-00 and the dollar  
2 ~~amount~~ is increased by ~~\$4,000,000~~ <sup>20,000,000</sup> for fiscal year 2000-01 for the badger care health  
3 care program.

4

(END) (end ins)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4602/1dn

ISR:.....

*JG*

February 23, 2000

Senator Shibilski:

*in this bill*  
~~This bill's~~ *the* provisions that require new rates specified by the independent actuarial firm to be retroactive to July 1, 1999, and that allow one party to unilaterally cancel a contract may be subject to a court challenge on the grounds that *they* both violate the Contracts Clauses of the United State Constitution and the Wisconsin Constitution. The Contracts Clause prohibits the state from passing any law that substantially impairs an existing contractual obligation. For example, in this case, the provision that applies the rates specified by an independent firm retroactively to July 1, 1999, could be viewed as impairing the contractual obligations of the parties because the provision modifies the original contractual rights of the parties (the right of DHFS to pay the rates specified in the original contract and the right of an HMO to receive the rates specified in the original contract). If a court were to find that this impairment is substantial, the provision may violate the Contracts Clause.

If you have any questions or would like to discuss a redraft of this bill to eliminate the Contracts Clause issues, please feel free to contact me.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4602/1dn  
ISR:jlg:km

February 23, 2000

Senator Shibilski:

The provisions in this bill that require new rates specified by the independent actuarial firm to be retroactive to July 1, 1999, and that allow one party to unilaterally cancel a contract may be subject to a court challenge on the grounds that they both violate the Contracts Clauses of the United State Constitution and the Wisconsin Constitution. The Contracts Clause prohibits the state from passing any law that substantially impairs an existing contractual obligation. For example, in this case, the provision that applies the rates specified by an independent firm retroactively to July 1, 1999, could be viewed as impairing the contractual obligations of the parties because the provision modifies the original contractual rights of the parties (the right of DHFS to pay the rates specified in the original contract and the right of an IIMO to receive the rates specified in the original contract). If a court were to find that this impairment is substantial, the provision may violate the Contracts Clause.

If you have any questions or would like to discuss a redraft of this bill to eliminate the Contracts Clause issues, please feel free to contact me.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: [Ivy.Sager-Rosenthal@legis.state.wi.us](mailto:Ivy.Sager-Rosenthal@legis.state.wi.us)

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/23/2000

To: Senator Shibilski

Relating to LRB drafting number: LRB-4602

**Topic**

Badger care HMO contracts, requiring audit of Badger care and providing increase in funding

**Subject(s)**

Health - social services, Public Assistance - misc

1. **JACKET** the draft for introduction \_\_\_\_\_

in the Senate or the Assembly \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Ivy G. Sager-Rosenthal, Legislative Attorney  
Telephone: (608) 261-4455