

1999 DRAFTING REQUEST

Bill

Received: **01/22/99**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget-in**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies: **DAK**

Pre Topic:

DOA:.....Geisler -

Topic:

Badger care for all children under 19 w/ incomes under 185%

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>
/1	yacketa 01/25/99	chanaman 01/26/99	martykr 01/26/99	_____	lrb_docadmin 01/26/99		S&L
/2	yacketa 01/29/99	gilfokm 01/29/99	ismith 01/30/99	_____	lrb_docadmin 01/30/99		S&L
/3	yacketa 02/3/99	chanaman 02/3/99	lrb_wpo	_____			S&L

FE Sent For:

<END>

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/2	yacketa 01/29/99	gilfokm 01/29/99	ismith 01/30/99	_____	lrb_docadmin 01/30/99		S&L

FE Sent For: 2/3 /3
CMM
13 2/3 99

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		2/3/99 GMH					

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FE Sent For:

<END>

Kennedy, Debora

From: Geisler, Jeffrey
Sent: Friday, January 22, 1999 9:08 AM
To: Miller, Steve
Cc: Kennedy, Debora
Subject: Geisler 1999-01 Statutory Language Drafting Request #11



BC_ChildrenNLRR.doc

Steve,

The BadgerCare program under s. 49.665, covers children under age 19 who live with their parent(s), custodial parents of children under age 19, and spouses of such custodial parents. The federal HCFA asked why we are not covered children under age 19 not living with their parents. The DHFS responded that Wisconsin covers such children (referred to as Non-legally responsible relative children or NLRR children) under Medicaid. Furthermore, because these children have little, if any, financial resources, most of these children are Medicaid eligible under the current program. HCFA then asked if BadgerCare would cover a child not living with his/her parents who has income that is above our Medicaid income limits, but below the BadgerCare income limits. The answer seems to be "no, BadgerCare would not cover that child."

This is the problem, because the feds want this child covered under any approved federal waivers that would make BadgerCare possible.

The attached paper details this problem and presents one solution to it. Please draft that, or if you see an alternative, solution.

Thanks

<<BC ChildrenNLRR.doc>>

Jeffrey A. Geisler
267-7980
DOA State Budget Office

BadgerCare and Children Not Living With Their Parents (a/k/a 'NLRR children')

Issue: HCFA is questioning whether Wisconsin, under the BadgerCare waiver and Title 21 State Plan Amendment can neglect to cover children under age 19 not living with a custodial parent(s) and whose family income exceeds current Medicaid income limits, but does not exceed BadgerCare income limits. How does the Department wish to proceed?

References: §49.466(1) and (4), Wisconsin Statutes
§49.141 (1)(b), (c) and (j), Wisconsin Statutes
§2102(b) and 2110(b) and (c) of the Social Security Act

Background: The BadgerCare program, in its current incarnation, covers children under age 19 who live with their parent(s), custodial parents of children under age 19, and spouses of such custodial parents. State law describes who can be covered very specifically and in detail in s.49.466(1) and (4).

HCFA in a conference call with DHCF staff asked why we are not covered children under age 19 not living with their parents. DHCF responded in an electronic mail message, that Wisconsin covers such children (referred to as Non-legally responsible relative children or NLRR children) under Medicaid. Furthermore, because these children have little, if any, financial resources, most of these children are Medicaid eligible under the current program

HCFA has responded to the DHCF e-mail with a 'what if' question about a child not living with his/her parents who has income that is above our Medicaid income limits, but below the BadgerCare income limits.

<p>NOTE: To be in the situation that HCFA describes a child would need to be earning income, receiving child support or social security survivors' benefits in excess of \$8,100 to \$15,000 annually. DHCF staff have estimated the number of affected children to be less than 100 statewide.</p>
--

Discussion: State law is very clear. Only families can be eligible and families consist of children under age 19 living with his/her parent(s), custodial parents of children under age 19 and the spouses of such parents. Because the state law includes specific definitions that are part of the W-2 statutory provisions, there is no flexibility on who is meant by 'family' or 'child'.

Federal law states that a state must submit a Title XXI plan for federal approval that includes a

'Description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. *Such standards may include (to the extent consistent with this title) those relating to the geographic areas to be served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility.* Such standards may not discriminate on the basis of diagnosis.' --(italics added)

Wisconsin has assumed that this provision allowed us to restrict BadgerCare coverage to children living with their parents. However, HCFA may be using another provision to require states to cover all children under age 19, regardless of living arrangement, which states that the Title XXI plan must, 'within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income . . .'

Sources close to the legislative process that resulted in the BadgerCare legislation do not believe that the legislature meant to exclude any child, but unfortunately the state law that was enacted does include the exclusion of such children through its reference to the §49.141(1)(c) definition of a dependent child. A technical amendment would need to be enacted which would eliminate the reference to the definition of 'dependent child' in the W-2 statutory provisions, and could replace this definition with one that includes all children under age 19.

Options: If this issue becomes a 'deal killer', how should Wisconsin proceed?

- **Option #1** – Go forward with the waiver and include children who are not living with their parents who meet all other BadgerCare criteria and assume that the Department will be able to obtain a technical amendment to the statute to provide us with the necessary authority
- **Option #2** – Stop the waiver process until an amendment to the statute can be enacted that would include all children.
- **Option #3** - Proceed with the waiver as is, but under an agreement with HCFA to amend the waiver to include the NLRR children when statutory authority to cover all children is enacted by the legislature and governor.
- **Option #4** - Proceed with the waiver process and implement BadgerCare to include all children without changing existing state law with the understanding that we are following the spirit, if not the letter of the law.

***** References *****

State Law

49.665 Badger care.

(1) Definitions. In this section:

(a) "Custodial parent" has the meaning given in s. 49.141 (1) (b).

(b) "Dependent child" has the meaning given in s. 49.141 (c) [s. 49.141(1) (c)].

(c) "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.

(d) "Family" means a unit that consists of at least one dependent child and his or her custodial parent or parents. "Family" includes the spouse of an individual who is a custodial parent if the spouse resides in the same household as the individual.

(4) Eligibility.

(a) A family is eligible for health care coverage under this section if the family meets all of the following requirements:

1. The family's income does not exceed 185% of the poverty line, except that a family that is already receiving health care coverage under this section may have an income that does not exceed 200% of the poverty line. The department shall establish by rule the criteria to be used to determine income.

2. The family does not have access to employer-subsidized health care coverage.

3. The family has not had access to employer-subsidized health care coverage within the time period established by the department by rule, but not to exceed 18 months, immediately preceding application for health care coverage under this section. The department may establish exceptions to this subdivision by rule.

4. The family meets all other requirements established by the department by rule. In establishing other eligibility criteria, the department may not include any health condition requirements.

(b) Notwithstanding fulfillment of the eligibility requirements under this subsection, a family is not entitled to health care coverage under this section.

(c) No family may be denied health care coverage under this section solely because of a health condition of any family member.

49.141(1)(b)

(b) "Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, "legal custody" has the meaning given in s. 767.001 (2) (a).

49.141(1)(c)

(c) "Dependent child" means a person who resides with a parent and who is under the age of 18 or, if the person is a full-time student at a secondary school or a vocational or technical equivalent and is reasonably expected to complete the program before attaining the age of 19, is under the age of 19.

49.141(1)(j)

(j) "Parent" means any of the following:

1. A biological parent.

2. A person who has consented to the artificial insemination of his wife under s. 891.40.

3. A parent by adoption.

4. 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 intermarry under s. 767.60.

5. A man who has signed and filed with the state registrar under s. 69.15 (3) (b) 3, a statement acknowledging paternity.

Federal Law

§2102(b) GENERAL DESCRIPTION OF ELIGIBILITY STANDARDS AND METHODOLOGY-

(1) ELIGIBILITY STANDARDS-

(A) IN GENERAL- The plan shall include a description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. Such standards may include (to the extent consistent with this title) those relating to the geographic areas to be served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility. Such standards may not discriminate on the basis of diagnosis.

(B) LIMITATIONS ON ELIGIBILITY STANDARDS- Such eligibility standards--

(i) shall, within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income, and

(ii) may not deny eligibility based on a child having a preexisting medical condition.

(2) METHODOLOGY- The plan shall include a description of methods of establishing and continuing eligibility and enrollment.

(3) ELIGIBILITY SCREENING; COORDINATION WITH OTHER HEALTH COVERAGE PROGRAMS- The plan shall include a description of procedures to be used to ensure—

(A) through both intake and follow-up screening, that only targeted low-income children are furnished child health assistance under the State child health plan;

(B) that children found through the screening to be eligible for medical assistance under the State Medicaid plan under title XIX are enrolled for such assistance under such plan;

(C) that the insurance provided under the State child health plan does not substitute for coverage under group health plans;

(D) the provision of child health assistance to targeted low-income children in the State who are Indians (as defined in section 4(c) of the Indian Health Care Improvement Act, 25 U.S.C. 1603(c)); and

(E) coordination with other public and private programs providing creditable coverage for low-income children.

§2110(b) TARGETED LOW-INCOME CHILD DEFINED- For purposes of this title--

(1) IN GENERAL- Subject to paragraph (2), the term 'targeted low-income child' means a child--

(A) who has been determined eligible by the State for child health assistance under the State plan;

(B)(i) who is a low-income child, or

(ii) is a child—

(I) whose family income (as determined under the State child health plan) exceeds the Medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the Medicaid applicable income level;

(II) whose family income (as so determined) does not exceed the Medicaid applicable income level (as defined in paragraph (4) but determined as if 'June 1, 1997' were substituted for 'March 31, 1997'); or

(III) who resides in a State that does not have a Medicaid applicable income level (as defined in paragraph (4)); and

(C) who is not found to be eligible for medical assistance under title XIX or covered under a group health plan or under health insurance coverage (as such terms are defined in section 2791 of the Public Health Service Act).

(2) CHILDREN EXCLUDED- Such term does not include--

(A) a child who is an inmate of a public institution or a patient in an institution for mental diseases; or

(B) a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State.

(3) SPECIAL RULE- A child shall not be considered to be described in paragraph (1)(C) notwithstanding that the child is covered under a health insurance coverage program that has been in operation since before July 1, 1997, and that is offered by a State which receives no Federal funds for the program's operation.

(4) MEDICAID APPLICABLE INCOME LEVEL- The term 'Medicaid applicable income level' means, with respect to a child, the effective income level (expressed as a percent of the poverty line) that has been specified under the State plan under title XIX (including under a waiver authorized by the Secretary or under section 1902(r)(2)), as of March 31, 1997, for the child to be eligible for medical assistance under section 1902(l)(2) or 1905(n)(2) (as selected by a State) for the age of such child.

(c) ADDITIONAL DEFINITIONS- For purposes of this title:

(1) CHILD- The term 'child' means an individual under 19 years of age.

Yacker, Tina

From: Geisler, Jeffrey
Sent: Monday, January 25, 1999 9:32 AM
To: Yacker, Tina
Subject: FW: stat language requests for badgercare

Tina,
The new badgerCare wrinkle ("up to 185% of FPL") is described in the slbcincome.doc.

Jeffrey A. Geisler
267-7980
DOA State Budget Office

-----Original Message-----

From: Agnew-Lyon, Victoria
Sent: Friday, January 22, 1999 11:06 AM
To: Geisler, Jeffrey
Cc: Wood, Susan; Dombrowicki, Angela; Boroniec, Priscilla; Bartels, Peggy; Gebhart, Neil; Bove, Fredi-Ellen
Subject: stat language requests for badgercare

I have attached two statutory language requests for BadgerCare, one regarding the income limit/enrollment trigger and one to make the NLRR children eligible. Please call if you have any further questions. Thank you for your help with this.



slbcincome.doc



slbcnlrr.doc

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
January 25, 1999

Topic: BadgerCare and Children not Living with their Parents

Current Language

Current BadgerCare statutory language, s.49.665(1) and (4), excludes from the program children under age 19 not living with a custodial parent(s) whose family income exceeds current Medicaid income limits, but does not exceed BadgerCare income limits.

Proposed Change

Eliminate the reference to the definition of 'dependent child' in the W-2 statutory provisions, and replace this definition with one that includes all children under age 19.

Effect of the Change

Children under age 19 not living with a custodial parent(s) whose family income exceeds current Medicaid income limits, but does not exceed BadgerCare income limits would be eligible for the BadgerCare program.

Rationale for the Change

1. Current BadgerCare statutes establish eligibility for children under age 19 who live with their parent(s), custodial parents of children under age 19, and spouses of such custodial parents. State law describes in detail who can be covered in s.49.466(1) and (4). Only families can be eligible and families consist of children under age 19 living with his/her parent(s), custodial parents of children under age 19 and the spouses of such parents. The state law includes specific definitions that are part of the W-2 statutory provisions, and consequently there is no flexibility on who is included in the terms 'family' and 'child'.
2. Federal law states that a state must submit a Title XXI plan for federal approval that includes a "description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. Such standards may include (to the extent consistent with this title) those relating to the geographic areas to be served by the plan, age, income and resources (including any

standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility. Such standards may not discriminate on the basis of diagnosis." In designing Wisconsin's Title XXI program, BadgerCare, the Department had assumed that this provision allowed us to restrict BadgerCare coverage to children living with their parents. However, the federal Health Care Financing Administration (HCFA) has challenged this assumption and is requiring that we cover all children under 19, regardless of living arrangement. It is believed that they are basing this requirement on another federal requirement which states that the Title XXI plan must, "within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income." HCFA will not approve a BadgerCare program that excludes children not living with their parent(s).

3. The current Wisconsin Medicaid program covers children under age 19 not living with a custodial parent(s) (referred to as Non-legally responsible relative children or NLRR children) whose income does not exceed current Medicaid income limits. Given that NLRR children have little, if any, financial resources, most NLRR children are Medicaid eligible. For an NLRR child to be ineligible for Medicaid, s/he would need to be earning income (receiving child support or social security survivors' benefits) in excess of \$8,100 to \$15,000 annually. Department staff has estimated the number of NLRR children with that level of income to be less than 100 statewide.
4. A technical amendment is needed that would eliminate the reference in 49.665 to the definition of 'dependent child' in the W-2 statutory provisions, and replace this definition with one that includes all children under age 19.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Victoria Agnew-Lyon
Phone: 266-5422

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
January 25, 1999

Topic: BadgerCare

Current Language

Under the current s. 49.665 (4)(a)1., families qualify for BadgerCare if their income does not exceed 185% of the federal poverty level.

Proposed Change

Amend s. 49.665(4)(a)1. to allow the Department to decrease the BadgerCare income eligibility limit when the State enrollment projections exceed budgeted thresholds and increase the BadgerCare income eligibility limit to a maximum of 185% of the federal poverty level when projections show sufficient funding, after a passive review by the Joint Committee on Finance.

Effect of the Change

The Department will be able to adjust the BadgerCare income eligibility limit to reflect State enrollment projections, after a passive review by the Joint Committee on Finance.

Rationale for the Change

1. Current statutes do not allow the Department to run the program as authorized by our agreement with federal authorities. The BadgerCare program will be implemented under a federal waiver granted by the Health Care Financing Administration. The program outlined in the waiver authorizing BadgerCare includes the provision that the state will be able to adjust the income eligibility limit when the State enrollment projections exceed budgeted thresholds.
2. The provision to allow the adjustment in the income limit is intended to enable the Department to manage the program so that program costs stay within the budgeted level. If at any point after the income limit has been lowered, projections indicate that there is

sufficient funding to increase the income limit, the Department would adjust the limit up to a maximum of 185% of the federal poverty level.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Victoria Agnew-Lyon
Phone: 266-5422



DOA:.....Geisler - Badger care for all children under 19 w/ incomes under 185%

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT *don't for cut* ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
HEALTH

Under current law, the department of health and family services (DHFS) must request a waiver from the secretary of the federal department of health and human services to provide health care coverage using federal funds to certain low-income families (with certain exceptions, families with an income at or below 185% of the federal poverty line). If the waiver is granted, DHFS must administer the health care program (known as "badger care") to provide health care coverage to low-income children and their parents if the children reside with their parents. *hyphen*

This bill expands the badger care program to cover any child under the age of 19 and who meets financial and other eligibility requirements regardless of whether the child resides with his or her parents. The bill also permits DHFS to lower the maximum income level for initial eligibility for badger care if funding for badger care is insufficient to accommodate the projected enrollment in badger care. The bill requires DHFS to raise the income limit to up to 185% of the federal poverty line if, after having lowered the income level, funding for badger care becomes sufficient to cover projected enrollment of persons at the higher income level.

For further information see the *state and local* 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. 49.665[✓] (1) (e) of the statutes is created to read:

2 49.665 (1) (e) "State[✓] plan"[✓] means the state child health plan under 42 USC

3 1397aa(b).

INSET
2-3

4 SECTION 2. 49.665[✓] (4) (a) 1. of the statutes is amended to read:

5 49.665 (4) (a) 1. The family's income does not exceed 185% of the poverty line,

6 except as provided in par. (at)[✓] and except that a family that is already receiving

7 health care coverage under this section may have an income that does not exceed

8 200% of the poverty line. The department shall establish by rule the criteria to be

9 used to determine income.

History: 1997 a. 27, 237.

10 SECTION 3. 49.665 (4) (am)[✓] of the statutes is created to read:

11 49.665 (4) (am) A child is eligible for health care coverage under this section[✓]

12 if the child meets all of the following requirements:

13 1. The child has not attained the age of 19.[✓]

14 2. The child's income does not exceed 185% of the poverty line, except as

15 provided in par. (at)[✓] and except that a child that is already receiving health care

16 coverage under this section may have an income that does not exceed 200% of the

17 poverty line. The department shall use the criteria established under par. (a) 1.[✓] to

18 determine income under this subdivision.[✓]

19 3. The child does not have access to employer-subsidized health care coverage.

1 4. The child has not had access to employer-subsidized health care coverage
2 within the time period established by the department under par. (a) 3. The
3 department may establish exceptions to this subdivision.

4 5. The child meets all other requirements established by the department by
5 rule. In establishing other eligibility criteria, the department may not include any
6 health condition requirements.

7 **SECTION 4.** 49.665 (4) (at) of the statutes is created to read:

8 49.665 (4) (at) 1. The department may establish by state plan amendment a
9 lower maximum income level for the initial eligibility determination if funding is
10 insufficient to accommodate the projected enrollment levels for the health care
11 program under this section. The adjustment may not be greater than necessary to
12 ensure sufficient funding.

13 2. If, after the department has established a lower maximum income level
14 under subd. 1., projections indicate that funding is sufficient to raise the level, the
15 department shall, by state plan amendment, raise the maximum income level for
16 initial eligibility, but not to exceed 185% of the poverty line.

17 3. The department may not adjust the maximum income level of 200% of the
18 poverty line for persons already receiving health care coverage under this section.

19 **SECTION 5.** 49.665 (4) (b) of the statutes is amended to read:

20 49.665 (4) (b) Notwithstanding fulfillment of the eligibility requirements
21 under this subsection, a family no person is not entitled to health care coverage under
22 this section.

23 History: 1997 a. 27, 237.

SECTION 6. 49.665 (4) (c) of the statutes is amended to read:

1 49.665 (4) (c) No family person ✓ may be denied health care coverage under this
2 section solely because of a health condition of that person or of ✓ any family member
3 of that person.

4 History: 1997 a. 27, 237.

(END)

(INSERT 2-3)
1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1967/lins
TAY.....

SECTION 1. 49.665 (3) of the statutes is amended to read:

49.665 (3) ADMINISTRATION. The department shall administer a program to provide the health services and benefits described in s. 49.46 (2) to ~~families~~ persons that meet the eligibility requirements specified in sub. (4). The department shall promulgate rules setting forth the application procedures and appeal and grievance procedures. The department may promulgate rules limiting access to the program under this section to defined enrollment periods. The department may also promulgate rules establishing a method by which the department may purchase family coverage offered by the employer of a member of an eligible family under circumstances in which the department determines that purchasing that coverage would not be more costly than providing the coverage under this section.

History: 1997 a. 27, 237.

****NOTE: Should this subsection be further amended with respect to the purchase of family coverage?

(END OF INSERT)

D-NOTE



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

99-1967/1dn

TAY.....

com
9/2

Jeff Geisler:

Will children who are not living with their parents be liable for a percentage of the cost of the health care coverage? That is, should I amend s. 49.665 (5) to reference children as well as families? *6↑*

Tina A. Yacker
Legislative Attorney
261-6927

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

99-1967/1dn
TAY:cmh&jlg:km

January 26, 1999

Jeff Geisler:

Will children who are not living with their parents be liable for a percentage of the cost of the health care coverage? That is, should I amend s. 49.665 (5) to reference children as well as families?

Tina A. Yacker
Legislative Attorney
261-6927

Fwlrb--2

From: Geisler, Jeffrey
Date: Friday, January 29, 1999 1:52 PM
To: Yacker, Tina
Cc:
Subject: FW: LRB-1967/1 BadgerCare language

Tina,
I endorse all changes requested except for the change in the paragraph below that start with "We would also suggest eliminating the 2 references to "state plan amendment" in."

However, please see the discussion of the issue in that paragraph. I would appreciate your thoughts on the issue.

Please note that the attachment below contains DHSF suggested language for adding the NLRR children.

Thanks

Jeffrey A. Geisler
267-7980
DOA State Budget Office

-----Original Message-----

From: Agnew-Lyon, Victoria
Sent: Friday, January 29, 1999 1:24 PM
To: Geisler, Jeffrey
Cc: Wood, Susan; Dombrowicki, Angela; Boroniec, Priscilla; Bartels, Peggy; Bove, Fredi-Ellen
Subject: LRB-1967/1 BadgerCare language

We have reviewed the BadgerCare language (LRB-1967/1). In response to the drafter's questions, we think that an NLRR child should be treated as any other family in BadgerCare. Therefore, if their income is in excess of 150% FPL they should pay premiums. HCFA has already asked us about this and we told them that premiums would be required from these children. Also, if there is an available employer plan that is cost-effective to buy these children into (i.e. a parent's under child support or the NLRR's as a household member), we would want to be able to do that.

As to the language itself, we would prefer to approach adding the NLRR

Page 1

file to 20.435(5)(bc)
20.435(5)(p)

children
in a way that does not modify the existing statutory language quite so much.
The Department recommends replacing sections 2, 4, 6 and 7 of the draft with the changes specified in the attached file. An additional reason that we prefer this language is because current language refers to s. 49.141(c), which defines custodial child as up to age 18, but BadgerCare covers children up to age 19.

We would also suggest eliminating the 2 references to "state plan amendment" in section 5 of the draft and the definition of "state plan" in section 1. This language anticipates that the change in income eligibility threshold will be made solely by amendment to the state CHIP plan. We are not sure that will be the means of accomplishing this result, and if it is, whether we will need to do anything additional. We would suggest simply striking the words "by state plan amendment."

In section 5, the draft uses 'may' when authorizing the department to decrease the income threshold if projections indicate we will be over-budget, but uses 'shall' in authorizing a subsequent increase in the threshold if projections indicate that we will have sufficient funding to do so. We are concerned that this obligates us to increase the threshold. We intend to increase the threshold when it is possible, but may be constrained in our ability to do so in some circumstances. For example, a projection late in the fiscal year could indicate that we have sufficient funding to increase the threshold, but the rule-making time line may prohibit us from doing so before the end of that year, which would put us out of compliance with the statutory requirement. For this reason we would suggest using 'may' in the language for the threshold increase as well as the decrease.

Please let me know if you need any additional information on this or

Fwlrb--2

if you
have any further questions.

Attachments:

draftBCL.doc

DRL = 090003e98090f4ef

49.665 Badger care.

(1) Definitions. In this section:

(a) "Custodial parent" has the meaning given in s. 49.141 (1) (b).

(b) "Dependent child" means a child under age 19. ~~has the meaning given in s. 49.141 (c) [s. 49.141(1) (e)].~~

(c) "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.

(d) "Family" means a unit that consists of at least one dependent child, and any his or her custodial parent or parents or spouse of a custodial parent who is living with the dependent child. "Family" includes the spouse of an individual who is a custodial parent if the spouse resides in the same household as the individual.

(Soon) | (D-NOTE)

1999 - 2000 LEGISLATURE

LRB-1967/M 2
TAY:cmh&jlg:km

RMR
~~CKB~~

DOA:.....Geisler – Badger care for all children under 19 w/ incomes under 185%

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Don't
cancel.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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HEALTH

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This bill expands the badger care program to cover any child under the age of 19 and who meets financial and other eligibility requirements regardless of whether the child resides with his or her parents. The bill also permits DHFS to lower the maximum income level for initial eligibility for badger care if funding for badger care is insufficient to accommodate the projected enrollment in badger care. The bill requires DHFS to raise the income limit to up to 185% of the federal poverty line if, after having lowered the income level, funding for badger care becomes sufficient to cover projected enrollment of persons at the higher income level.

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

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INSERT
1-1

1 SECTION 1. 49.665 (1) (f) of the statutes is created to read:

2 49.665 (1) (f) "State plan" means the state child health plan under 42 USC
3 1397aa(b).

4 SECTION 2. 49.665 (3) of the statutes is amended to read:

5 49.665 (3) ADMINISTRATION. The department shall administer a program to
6 provide the health services and benefits described in s. 49.46 (2) to families persons
7 that meet the eligibility requirements specified in sub. (4). The department shall
8 promulgate rules setting forth the application procedures and appeal and grievance
9 procedures. The department may promulgate rules limiting access to the program
10 under this section to defined enrollment periods. The department may also
11 promulgate rules establishing a method by which the department may purchase
12 family coverage offered by the employer of a member of an eligible family under
13 circumstances in which the department determines that purchasing that coverage
14 would not be more costly than providing the coverage under this section.

****NOTE: Should this subsection be further amended with respect to the purchase of family coverage?

15 SECTION 3. 49.665 (4) (a) 1. of the statutes is amended to read:

16 49.665 (4) (a) 1. The family's income does not exceed 185% of the poverty line,
17 except as provided in par. (at) and except that a family that is already receiving
18 health care coverage under this section may have an income that does not exceed
19 200% of the poverty line. The department shall establish by rule the criteria to be
20 used to determine income.

or by a member of a child's household

who does not reside with his
or her parent.

1 SECTION 4. 49.665 (4) (am) of the statutes is created to read:

2 49.665 (4) (am) A child is eligible for health care coverage under this section
3 if the child meets all of the following requirements:

4 ~~1. The child has not attained the age of 19.~~

5 ~~1.2.~~ The child's income does not exceed 185% of the poverty line, except as
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7 coverage under this section may have an income that does not exceed 200% of the
8 poverty line. The department shall use the criteria established under par. (a) 1. to
9 determine income under this subdivision.

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11 ~~3.4.~~ The child has not had access to employer-subsidized health care coverage
12 within the time period established by the department under par. (a) 3. The
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14 ~~4.5.~~ The child meets all other requirements established by the department by
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23 2. If, after the department has established a lower maximum income level
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under s. 20.435 (5)(bc), (jz) and (p)

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3 3. The department may not adjust the maximum income level of 200% of the
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6 49.665 (4) (b) Notwithstanding fulfillment of the eligibility requirements
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10 49.665 (4) (c) No family person may be denied health care coverage under this
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13 (END)

insert
4/12 →

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1967/2ins
TAY.....

insert 1-1 ✓

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History: 1997 a. 27, 237.

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History: 1997 a. 27, 237.

insert 4-12 ✓

SECTION 4. 49.665 (5) (a) of the statutes is amended to read:

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If the cochairpersons of the joint committee on finance do not notify the department within 14 working days after the date of the department's submittal of the schedule that the committee has scheduled a meeting to review the schedule, the department may implement the schedule. If, within 14 days after the date of the department's submittal of the schedule, the cochairpersons of the committee notify the department that the committee has scheduled a meeting to review the schedule, the department may not require a family, or child who does not reside with his or her parent, to contribute more than 3% of the family's or child's income unless the joint committee on finance approves the schedule. The joint committee on finance may not approve and the department may not implement a schedule that requires a family or child to contribute more than 3.5% of the family's or child's income towards the cost of the health care coverage provided under this section.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1967/2dn

TAY.....
29

Jeff Geisler:

As we discussed, the department's suggested changes to the definitions as a means to ensure that children who do not reside with their parents are covered would not have effected that result. Additionally, although I have changed the definitions to refer to children under the age of 19 (that's what I assume "up to age 19" means), retaining the definition of "custodial parent~~s~~" which in turn refers to a "dependent child~~s~~" also would not effect the department's intent. Instead, I added a definition of "parent~~s~~".

I also made clear that there is a distinction between a child who resides with his or her parents and one who does not, so that it cannot be later claimed that a family's premium may not include the cost of care for a child in the family who has an income of less than 150% of the poverty line.

Finally, as you requested, I have required the department to lower the maximum eligible income when funds are short and retained the provision requiring the department to increase the maximum eligible income when funding is sufficient.

If you have any question, as always, feel free to call me.

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us

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

LRB-1967/2dn
TAY:kg:ijs

January 30, 1999

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1967/3
TAY:cmh&jlg:ijs

RMR

DOA:.....Geisler - Badger care for all children under 19 w/ incomes under 185%

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

revised 8/1/00
1 AN ACT ...; relating to: the budget.

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17 provide the health services and benefits described in s. 49.46 (2) to ~~families~~ persons
18 that meet the eligibility requirements specified in sub. (4). The department shall
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21 under this section to defined enrollment periods. The department may also

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11 used to determine income.

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20 determine income under this subdivision.

21 2. The child does not have access to employer-subsidized health care coverage.

22 3. The child has not had access to employer-subsidized health care coverage
23 within the time period established by the department under par. (a) 3. The
24 department may establish exceptions to this subdivision.

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3 health condition requirements.

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25

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1967
LRB-1320/3dn
TAY.....
cmh
+
jlg

insert hyphen
cross-references to
the draft
(bc), (jz) and (p) ✓
(bc), (jz) and (pa)

This draft changes s. 20.435 (5) ~~(a)~~ to s. 20.435 (4) ~~(a)~~ to reconcile it conceptually with LRB-0028, which renumbers MA appropriations from program ~~53~~ to program ~~44~~.

and other

Tina A. Yacker
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*administered by
the division of
health care finance*

DOA:.....Geisler - Badger care for all children under 19 w/ incomes under
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FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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7 health care coverage provided under this section, the department shall submit the
8 schedule to the joint committee on finance for review and approval of the schedule.
9 If the cochairpersons of the joint committee on finance do not notify the department
10 within 14 working days after the date of the department's submittal of the schedule
11 that the committee has scheduled a meeting to review the schedule, the department
12 may implement the schedule. If, within 14 days after the date of the department's
13 submittal of the schedule, the cochairpersons of the committee notify the department
14 that the committee has scheduled a meeting to review the schedule, the department
15 may not require a family, or child who does not reside with his or her parent, to
16 contribute more than 3% of the family's or child's income unless the joint committee
17 on finance approves the schedule. The joint committee on finance may not approve
18 and the department may not implement a schedule that requires a family or child
19 to contribute more than 3.5% of the family's or child's income towards the cost of the
20 health care coverage provided under this section.

21 **SECTION 12.** 49.665 (5) (b) of the statutes is amended to read:

22 49.665 (5) (b) The department may not require a family, or child who does not
23 reside with his or her parent, with an income below ~~143%~~ 150% of the poverty line
24 to contribute to the cost of health care coverage provided under this section.

25

(END)