Drafter's Note
from the
Legislative Reference Bureau

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1. In addition to the ERISA issues previously raised, this proposal has other legal problems. Because the corporation is determining a number of substantive matters under the program, such as what brand−name drugs are on the preferred list and what services or procedures are not subject to a copayment, the proposal may violate article IV, section 1, of the Wisconsin Constitution by unconstitutionally delegating legislative authority to the corporation. You could, instead, direct a state agency, such as DHFS, to make the determinations by rule and have the corporation merely implement them, or the statutes could set out specific guidelines for the corporation to follow in making the determinations.

The residency requirement of six months and the application of the preexisting condition exclusion only to persons who previously lived in another state or country may unconstitutionally infringe on the right to travel under the Fourteenth Amendment of the U.S. Constitution. The U. S. Supreme Court has determined that the right to travel includes the right to be treated in a new state of residence in the same way as other residents are treated and that it is impermissible to treat residents of the same state differently on the basis of the length of residency. See *Saenz v. Roe*, 526 U.S. 489, 119 S.Ct. 1518 (1999).

2. If coverage begins on January 1, 2007, but the assessment is not collected until the first quarter of 2007, isn't there a funding problem? Should the assessment begin sooner or the coverage begin later?

3. This draft does not yet treat any statutes that might be affected as a result of the new chapter. I think it is best to make those changes after the language of the new chapter is finalized.

4. Do you want to provide an appeal process to a state agency, such as DHFS, for disputes over eligibility and other determinations made by the corporation?

5. Because I don't have enough information with which to determine which sections of the statutes provide eligibility criteria for the "family portion" of MA, and because many of the sections that provide eligibility criteria may apply to both the "family portion" and the "elderly/disabled" portion, I have provided a nonstatutory provision that directs DHFS to identify the sections for each category and, if necessary, to submit proposed legislation that separates the two categories.

Similarly, many of the MA appropriations do not apply to separate categories of eligible persons and many of the appropriations combine BadgerCare and MA. I do not know how much of each amount in the schedule is attributable to each category or to MA and BadgerCare separately. Consequently, I do not know the amount by which the amounts in the schedule must be reduced in the second year of the biennium. Therefore, the nonstatutory provision directs DHFS and the fiscal bureau to determine the amounts and to submit proposed legislation that provides separate appropriations for each category and for BadgerCare.

6. Previously you asked whether the corporation needed to be made exempt from state income tax. Joe Kreye explains that, if a corporation is exempt from federal income tax under section 501 (c) (3) of the IRC, it is also exempt from state income tax because the state adopts the federal tax provisions related to 501 (c) (3) entities.

7. This version does not include the assessment and related provisions.

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