



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0905/3  
PJK:jld:nwn

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DOA:.....Pink, BB0185 - BadgerCare Plus

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

*5-note*

*do not  
agree*

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Under current law, DHFS administers the Medical Assistance (MA) program and the Badger Care health care program (BadgerCare), both of which provide health care benefits for eligible individuals. Individuals who may be eligible for MA, generally, are pregnant women, certain children, and elderly or disabled individuals, all of whom must meet specific low-income requirements. Families, children who do not reside with their parents, and unborn children whose mothers are not eligible for MA or BadgerCare may be eligible for BadgerCare if their incomes do not exceed 185 percent of the federal poverty line and they meet certain nonfinancial criteria, such as not having access to employer-subsidized health care coverage.

***Waiver to implement BadgerCare Plus***

Under this bill, DHFS must request a waiver from, and submit amendments to the state MA plan to, the secretary of the federal department of health and human services to allow DHFS to implement an MA health care program called BadgerCare Plus (BC+). BC+ would be financed as are other MA programs, partly with federal funds and partly with state funds. BC+ would replace all of BadgerCare and part of MA. Thus, individuals who satisfy eligibility criteria under both BC+ and BadgerCare would receive benefits under BC+. Individuals who satisfy eligibility

criteria under both BC+ and MA would receive benefits under either BC+ or MA, depending on the basis for their eligibility for MA. For example, an individual who is eligible for MA because he or she receives supplemental security income would continue to receive benefits as usual under MA rather than under BC+.

### ***Benefits and general eligibility***

BC+ would provide health care benefits to recipients under two different plans, depending on the basis for the recipient's eligibility. The first plan provides the same benefits that are provided under regular MA. Individuals eligible for BC+ benefits under that plan (regular MA plan) include: a pregnant woman whose family income does not exceed 200 percent of the poverty level (poverty); a child under one year of age whose mother, on the day on which the child was born, was eligible for and receiving benefits under MA or BC+ under the regular MA plan; any child whose family income does not exceed 200 percent of poverty; an individual whose family income does not exceed 200 percent of poverty and who is the parent or caretaker relative of a child who is, generally, living in the home of the parent or caretaker relative; certain migrant workers and their dependents; and an individual between 19 and 21 years of age who was in foster care on his or her 18th birthday.

The second plan, called the Benchmark Plan, provides specified benefits, including, but not limited to, coverage for prescription drugs; physicians' services; inpatient and outpatient hospital services; home health services; physical, occupational, and speech therapy; treatment for nervous and mental disorders and alcoholism and other drug abuse problems; durable medical equipment; and transportation to obtain emergency medical care. Individuals eligible for BC+ benefits under the Benchmark Plan include: a pregnant woman whose family income exceeds 200 percent, but does not exceed 300 percent, of poverty; a child under one year of age whose mother, on the day on which the child was born, was eligible for and receiving BC+ benefits under the Benchmark Plan; any child whose family income exceeds 200 percent, but does not exceed 300 percent, of poverty; and an individual whose family income exceeds 200 percent, but does not exceed 300 percent, of poverty and who is the parent or caretaker relative of a child who is, generally, living in the home of the parent or caretaker relative. In addition, any child whose family income exceeds 300 percent of poverty may purchase coverage under the Benchmark Plan at the full per member per month cost of the coverage.

For coverage under both the regular MA plan and the Benchmark Plan, a child is defined to include an unborn child whose mother is not eligible for MA or BC+ but satisfies all other eligibility criteria except that she is not a U.S. citizen or qualifying alien or is an inmate of a public institution. If the mother's family income does not exceed 200 percent of poverty, the unborn child is eligible for BC+ benefits, limited to prenatal care, under the regular MA plan; if the mother's family income exceeds 200 percent, but does not exceed 300 percent, of poverty, the unborn child is eligible for BC+ benefits, limited to prenatal care, under the Benchmark Plan.

Various other eligibility provisions apply under BC+. For example, regardless of any increase in income, a pregnant woman who is eligible for regular MA benefits remains eligible for those benefits until the last day of the month in which the 60th day after the last day of the pregnancy falls. A child who is receiving inpatient

services under the regular MA plan on the day before his or her 19th birthday remains eligible for those services until the end of the stay for which the services are being provided. A pregnant woman, a child, or a parent or caretaker relative whose family income is less than 150 percent of poverty is eligible for benefits for any of the three months before he or she applied for coverage if he or she was otherwise eligible and his or her family income was less than 150 percent of poverty.

### ***Health insurance-related provisions***

Various health insurance qualifications and limitations apply under BC+. As a condition of eligibility for BC+, an individual who is eligible for enrollment in a group health plan must apply for enrollment in that plan if DHFS determines that it is cost-effective. With exceptions for pregnant women, individuals in foster care on their 18th birthday, and certain children, no individual whose family income exceeds 150 percent of poverty is eligible for BC+ if the individual has health care coverage under the state employee health plan or coverage that is provided by an employer and for which the employer pays at least 80 percent of the premium. Regardless of family income, however, an unborn child is not eligible for BC+ if the unborn child or its mother has any type of health insurance coverage. Unless there is a good cause reason for not enrolling in the coverage, if an individual whose family income exceeds 150 percent of poverty or an unborn child or its mother had access in the 12 months before applying for BC+ to health care coverage under the state employee health plan or coverage that is provided by an employer and for which the employer pays at least 80 percent of the premium, the individual or unborn child is not eligible for BC+. A pregnant woman whose family income exceeds 200 percent of poverty and who has health insurance coverage must maintain that coverage as a condition of eligibility for BC+. If an individual whose family income exceeds 150 percent of poverty had coverage under the state employee health plan or employer-provided coverage but no longer has the coverage, if an unborn child or its mother had health insurance coverage but no longer has the coverage, or if a pregnant woman whose family income exceeds 200 percent of poverty did not maintain coverage that she had, the individual, unborn child, or pregnant woman is not eligible for BC+ for three calendar months following the month in which the coverage ended, unless there was a good cause reason for the termination of the coverage.

Under the bill, with certain exceptions, for an individual whose family income exceeds 150 percent of poverty, DHFS must verify directly with the employer, if any, whether the individual has or had insurance coverage or access. An employer that receives a request from DHFS for that information must supply the information within a certain time or pay a penalty equal to the full per member per month cost of coverage under BC+ for each month the individual is covered under BC+ until the employer provides the information. Penalties are limited to no more than \$1,000 in any six-month period for an employer with fewer than 250 employees, and to no more than \$15,000 in any six-month period for other employers.

### ***Cost sharing***

Generally, the same copayment requirements that apply under MA apply to BC+ recipients with benefits under the regular MA plan. BC+ recipients with

benefits under the Benchmark Plan are subject to the copayment and coinsurance requirements specified in the bill for that plan. A BC+ recipient who is an adult and who is not a pregnant woman must pay a premium for BC+ coverage if the recipient's family income is at least 150 percent of poverty. The premium may not exceed 5 percent of the recipient's family income. A BC+ recipient who is a child must pay a premium for BC+ coverage if the recipient's family income is at least 200 percent of poverty. The premium may not exceed the full per member per month cost of coverage for a child with a family income equal to 300 percent of poverty. A BC+ recipient who is an unborn child or a pregnant woman must pay a premium if the recipient's family income exceeds 200 percent of poverty. The premium may not exceed the full per member per month cost of coverage for an adult with a family income equal to 300 percent of poverty. If a recipient who is required to pay a premium does not pay it when it is due, the recipient's coverage terminates and the recipient may not be eligible for BC+ again for six months.

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

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

1           **SECTION 1.** 20.435 (4) (b) of the statutes, as affected by 2007 Wisconsin Act ....  
2 (this act), is amended to read:

3           20.435 (4) (b) *Medical Assistance program benefits.* Biennially, the amounts  
4 in the schedule to provide a portion of the state share of Medical Assistance program  
5 benefits administered under ~~s. 49.45~~ subch. IV of ch. 49, to provide a portion of the  
6 Medical Assistance program benefits administered under ~~s. 49.45~~ subch. IV of ch. 49  
7 that are not also provided under par. (o), to fund the pilot project under s. 46.27 (9)  
8 and (10), to provide a portion of the facility payments under 1999 Wisconsin Act 9,  
9 section 9123 (9m), to fund services provided by resource centers under s. 46.283, for  
10 services under the family care benefit under s. 46.284 (5), for assisting victims of  
11 diseases, as provided in ss. 49.68, 49.683, and 49.685, and for reduction of any  
12 operating deficits as specified in 2005 Wisconsin Act 15, section 3. Notwithstanding  
13 s. 20.002 (1), the department may transfer from this appropriation account to the

1 appropriation account under sub. (7) (kb) funds in the amount of and for the purposes  
2 specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002 (1), the  
3 department may credit or deposit into this appropriation account and may transfer  
4 between fiscal years funds that it transfers from the appropriation account under  
5 sub. (7) (kb) for the purposes specified in s. 46.485 (3r). Notwithstanding s. 20.002  
6 (1), the department may transfer from this appropriation account to the  
7 appropriation account under sub. (7) (bd) funds in the amount and for the purposes  
8 specified in s. 49.45 (6v).

\*\*\*\*NOTE: This is reconciled s. 20.435 (4) (b). This SECTION has been affected by  
drafts with the following LRB numbers: LRB-0905 and LRB-1521.

9 **SECTION 2.** 20.435 (4) (bm) of the statutes, as affected by 2007 Wisconsin Act  
10 .... (this act), is amended to read:

11 20.435 (4) (bm) *Medical Assistance, food stamps, and Badger Care*  
12 *administration; contract costs, reports, and resource centers.* Biennially, the amounts  
13 in the schedule to provide a portion of the state share of administrative contract costs  
14 for the Medical Assistance program under s. 49.45 subch. IV of ch. 49 and the Badger  
15 Care health care program under s. 49.665 and to provide the state share of  
16 administrative costs for the food stamp program under s. 49.79, other than payments  
17 to counties and tribal governing bodies under s. 49.78 (8), to develop and implement  
18 a registry of recipient immunizations, to reimburse 3rd parties for their costs under  
19 s. 49.475, for costs associated with outreach activities, and for services of resource  
20 centers under s. 46.283. No state positions may be funded in the department of  
21 health and family services from this appropriation, except positions for the  
22 performance of duties under a contract in effect before January 1, 1987, related to  
23 the administration of the Medical Assistance program between the subunit of the

1 department primarily responsible for administering the Medical Assistance  
2 program and another subunit of the department. Total administrative funding  
3 authorized for the program under s. 49.665 may not exceed 10% of the amounts  
4 budgeted under pars. (bc), (p), and (x).

\*\*\*\*NOTE: This is reconciled s. 20.435 (4) (bm). This SECTION has been affected by  
drafts with the following LRB numbers: LRB-0905, LRB-0248, and LRB-0892.

5 **SECTION 3.** 20.435 (4) (bn) of the statutes, as affected by 2007 Wisconsin Act  
6 .... (this act), is amended to read:

7 20.435 (4) (bn) *Income maintenance.* Biennially, the amounts in the schedule  
8 for funeral expenses under s. 49.785, for administration of the food stamp  
9 employment and training program under s. 49.79 (9), and for payments under s.  
10 49.78 (8) relating to the administration of the Medical Assistance program under  
11 subch. IV of ch. 49, the Badger Care health care program under s. 49.665, the food  
12 stamp program, and the cemetery, funeral, and burial expenses program under s.  
13 49.785.

\*\*\*\*NOTE: This is reconciled s. 20.435 (4) (bn). This SECTION has been affected by  
drafts with the following LRB numbers: LRB-0905 and LRB-1313.

14 **SECTION 4.** 20.435 (4) (jw) of the statutes is created to read:

15 20.435 (4) (jw) *BadgerCare Plus administrative costs.* Biennially, the amounts  
16 in the schedule to provide a portion of the state share of administrative costs for the  
17 BadgerCare Plus Medical Assistance program under s. 49.471. Ten percent of all  
18 moneys received from penalty assessments under s. 49.471 (9) (c) shall be credited  
19 to this appropriation account.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
reflected in the revised schedule in s. 20.005, stats.

20 **SECTION 5.** 20.435 (4) (jz) of the statutes is amended to read:

1           20.435 (4) (jz) Medical Assistance and Badger Care cost sharing and employer  
2 penalty assessments. All moneys received ~~from~~ in cost sharing from medical  
3 assistance recipients, including payments under s. 49.665 (5) ~~and~~, all moneys  
4 received from penalty assessments under s. 49.665 (7) (b) 2., and 90 percent of all  
5 moneys received from penalty assessments under s. 49.471 (9) (c) to be used for the  
6 Badger Care health care program under s. 49.665 and for the Medical Assistance  
7 program under subch. IV of ch. 49.

      \*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
reflected in the revised schedule in s. 20.005, stats.

8           **SECTION 6.** 20.435 (4) (o) of the statutes is amended to read:

9           20.435 (4) (o) *Federal aid; medical assistance.* All federal moneys received for  
10 meeting costs of ~~medical assistance~~ Medical Assistance administered under ss.  
11 46.284 (5), 49.45 and 49.665 and subch. IV of ch. 49, to be used for those purposes and  
12 for transfer to the ~~medical assistance~~ Medical Assistance trust fund, for those  
13 purposes.

14           **SECTION 7.** 45.51 (13) (intro.) of the statutes is amended to read:

15           45.51 (13) ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SKILLED NURSING FACILITIES.  
16 (intro.) Any person admitted to a skilled nursing facility at a veterans home shall  
17 meet the eligibility requirements under ss. 49.45 and 49.46, and, if applicable, s.  
18 49.471 and rules promulgated under those sections during residence at the skilled  
19 nursing facility except if any of the following apply:

20           **SECTION 8.** 45.51 (13) (a) of the statutes is amended to read:

21           45.51 (13) (a) Persons with sufficient income and resources to meet the  
22 expenses of care for one or more months may be admitted to the skilled nursing  
23 facility but shall apply income and resources to costs to the extent required under ss.

1 49.45 and 49.46, and, if applicable, s. 49.471 and rules promulgated under those  
2 sections.

3 **SECTION 9.** 45.51 (13) (b) of the statutes is amended to read:

4 45.51 (13) (b) Persons who meet all the requirements of this section but whose  
5 degree of physical disability does not meet the minimum requirements under ss.  
6 49.45 and 49.46 and rules promulgated under those sections may be admitted to the  
7 skilled nursing facility but shall apply income and resources to costs to the extent  
8 required by ss. 49.45 and 49.46, and, if applicable, s. 49.471 and rules promulgated  
9 under those sections.

10 **SECTION 10.** 46.206 (1) (bm) of the statutes is amended to read:

11 46.206 (1) (bm) All records of the department relating to aid provided under  
12 s. 49.46, 49.465, 49.468, 49.47, 49.471, or 49.77 are open to inspection at reasonable  
13 hours by members of the legislature who require the information contained in the  
14 records in pursuit of a specific state legislative purpose. All records of any county  
15 relating to aid provided under s. 49.46, 49.465, 49.468, 49.47, 49.471, or 49.77 are  
16 open to inspection at reasonable hours by members of the board of supervisors of the  
17 county or the governing body of a city, village or town located in the county who  
18 require the information contained in the records in pursuit of a specific county or  
19 municipal legislative purpose. The right to records access provided by this  
20 paragraph does not apply if access is prohibited by federal law or regulation or if this  
21 state is required to prohibit such access as a condition precedent to participation in  
22 a federal program in which this state participates.

23 **SECTION 11.** 46.22 (1) (b) 1. d. of the statutes is amended to read:



1           46.22 (1) (b) 1. d. To submit a final budget in accordance with s. 46.031 (1) for  
2 services authorized in this section, except for the administration of and cost of aid  
3 granted under ss. 49.02, 49.19 and 49.45 to ~~49.47~~ 49.471.

4           **SECTION 12.** 46.27 (6u) (c) 1. a. of the statutes is amended to read:

5           46.27 (6u) (c) 1. a. Eligible for medical assistance under s. 49.46, 49.468 ~~or~~,  
6 49.47, or 49.471 (4) (a).

7           **SECTION 13.** 46.27 (6u) (d) (intro.) of the statutes is amended to read:

8           46.27 (6u) (d) (intro.) In determining financial eligibility under par. (c) 1. and  
9 in calculating the amount under par. (c) 2., the county department or aging unit shall  
10 include as the assets for any person, except those persons who are eligible for medical  
11 assistance under s. 49.46, 49.468 ~~or~~, 49.47, or 49.471 (4) (a), any portion of assets that  
12 the person or the person's spouse has, after August 12, 1993, transferred to another  
13 as specified in par. (b), unless one of the following conditions applies:

14           **SECTION 14.** 46.27 (7) (am) of the statutes is amended to read:

15           46.27 (7) (am) From the appropriation under s. 20.435 (7) (bd), the department  
16 shall allocate funds to each county or private nonprofit agency with which the  
17 department contracts to pay assessment and case plan costs under sub. (6) not  
18 otherwise paid by fee or under s. 49.45 or 49.78 (2). The department shall reimburse  
19 counties for the cost of assessing persons eligible for medical assistance under s.  
20 49.46, 49.468, ~~or~~ 49.47, or 49.471 (4) (a) as part of the administrative services of  
21 medical assistance, payable under s. 49.45 (3) (a). Counties may use unspent funds  
22 allocated under this paragraph to pay the cost of long-term community support  
23 services and for a risk reserve under par. (fr).

24           **SECTION 15.** 46.27 (7) (b) of the statutes is amended to read:

1           46.27 (7) (b) From the appropriations under s. 20.435 (7) (bd) and (im), the  
2 department shall allocate funds to each county to pay the cost of providing long-term  
3 community support services under sub. (5) (b) not otherwise paid under s. 49.45 to  
4 persons eligible for medical assistance under s. 49.46 ~~or~~, 49.47, or 49.471 (4) (a) or  
5 to persons whom the county department or aging unit administering the program  
6 finds likely to become medically indigent within 6 months by spending excess income  
7 or assets for medical or remedial care. The average per person reimbursement under  
8 this paragraph may not exceed the state share of the average per person payment  
9 rate the department expects under s. 49.45 (6m). The county department or aging  
10 unit administering the program may spend funds received under this paragraph  
11 only in accordance with the case plan and service contract created for each person  
12 receiving long-term community support services. Counties may use unspent funds  
13 allocated under this paragraph from the appropriation under s. 20.435 (7) (bd) for a  
14 risk reserve under par. (fr).

15           **SECTION 16.** 46.275 (1m) (a) of the statutes is amended to read:

16           46.275 (1m) (a) "Medical assistance" means aid provided under subch. IV of ch.  
17 49, except s. ss. 49.468 and 49.471.

18           **SECTION 17.** 46.277 (1m) (a) of the statutes is amended to read:

19           46.277 (1m) (a) "Medical assistance" means aid provided under subch. IV of ch.  
20 49, except s. ss. 49.468 and 49.471.

21           **SECTION 18.** 46.278 (1m) (b) of the statutes is amended to read:

22           46.278 (1m) (b) "Medical assistance" means aid provided under subch. IV of ch.  
23 49, except s. ss. 49.468 and 49.471.

24           **SECTION 19.** 46.283 (3) (k) of the statutes is amended to read:

1           46.283 (3) (k) A determination of eligibility for state supplemental payments  
2 under s. 49.77, medical assistance under s. 49.46, 49.468 ~~or~~, 49.47, or 49.471, or the  
3 federal food stamp program under 7 USC 2011 to 2029.

4           **SECTION 20.** 46.485 (3g) of the statutes is amended to read:

5           46.485 (3g) The amount that the department may transfer under sub. (2g) for  
6 counties may not exceed the estimated state share of payments under s. 49.45, 49.46  
7 ~~or~~, 49.47, or 49.471 for mental health care and treatment that is provided in inpatient  
8 facilities for children with severe emotional disturbances.

9           **SECTION 21.** 48.57 (3m) (e) of the statutes is amended to read:

10           48.57 (3m) (e) The department shall determine whether the child is eligible  
11 for medical assistance under ss. 49.43 to ~~49.47~~ 49.471.

12           **SECTION 22.** 48.57 (3n) (e) of the statutes is amended to read:

13           48.57 (3n) (e) The department shall determine whether the child is eligible for  
14 medical assistance under ss. 49.43 to ~~49.47~~ 49.471.

15           **SECTION 23.** 49.22 (2m) (a) of the statutes is amended to read:

16           49.22 (2m) (a) The department may request from any person in this state  
17 information it determines appropriate and necessary for the administration of this  
18 section, ss. 49.141 to 49.161, 49.19, 49.46, 49.468 ~~and~~, 49.47, and 49.471 and  
19 programs carrying out the purposes of 7 USC 2011 to 2029. Unless access to the  
20 information is prohibited or restricted by law, or unless the person has good cause,  
21 as determined by the department in accordance with federal law and regulations, for  
22 refusing to cooperate, the person shall make a good faith effort to provide this  
23 information within 7 days after receiving a request under this paragraph. Except  
24 as provided in subs. (2p) and (2r) and subject to sub. (12), the department or the  
25 county child support agency under s. 59.53 (5) may disclose information obtained

1 under this paragraph only in the administration of this section, ss. 49.141 to 49.161,  
2 49.19, 49.46 and, 49.47, and 49.471 and programs carrying out the purposes of 7 USC  
3 2011 to 2029. Employees of the department or a county child support agency under  
4 s. 59.53 (5) are subject to s. 49.83.

5 **SECTION 24.** 49.22 (2m) (b) of the statutes is amended to read:

6 49.22 (2m) (b) The department or county child support agency under s. 59.53  
7 (5) may issue a subpoena, in substantially the form authorized under s. 885.02, to  
8 compel the production of financial information and other documentary evidence in  
9 the administration of this section, ss. 49.145, 49.19, 49.46 and, 49.47, and 49.471 and  
10 programs carrying out the purposes of 7 USC 2011 to 2029.

11 **SECTION 25.** 49.22 (2m) (c) 3. of the statutes is amended to read:

12 49.22 (2m) (c) 3. Any other action taken in good faith to comply with this section  
13 or a subpoena described in par. (bc) or to comply with a request for information or  
14 access to records from the department or a county child support agency under s. 59.53  
15 (5) in the administration of this section, ss. 49.145, 49.19, 49.46 and, 49.47, and  
16 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029.

17 **SECTION 26.** 49.22 (6) of the statutes, as affected by 2007 Wisconsin Act .... (this  
18 act), is amended to read:

19 49.22 (6) The department shall establish, pursuant to federal and state laws,  
20 rules and regulations, a uniform system of fees for services provided under this  
21 section to individuals not receiving aid under s. 48.645, 49.19 or, 49.47, or 49.471;  
22 benefits under s. 49.148, 49.155, or 49.79; foster care maintenance payments under  
23 42 USC 670 to 679a; or kinship care payments under s. 48.57 (3m) or long-term  
24 kinship care payments under s. 48.57 (3n). The system of fees may take into account  
25 an individual's ability to pay. Any fee paid and collected under this subsection may

1 be retained by the county providing the service except for the fee specified in 42 USC  
2 653 (e) (2) for federal parent locator services.

\*\*\*\*NOTE: This is reconciled s. 49.22 (6). This SECTION has been affected by drafts  
with the following LRB numbers: LRB-0905 and LRB-1261.

3 **SECTION 27.** 49.45 (2) (a) 1. of the statutes is amended to read:

4 49.45 (2) (a) 1. Exercise responsibility relating to fiscal matters, the eligibility  
5 for benefits under standards set forth in ss. 49.46 to ~~49.47~~ 49.471, and general  
6 supervision of the medical assistance program.

7 **SECTION 28.** 49.45 (2) (a) 3. of the statutes is amended to read:

8 49.45 (2) (a) 3. Determine the eligibility of persons for medical assistance,  
9 rehabilitative, and social services under ss. 49.46, 49.468, ~~and 49.47,~~ and 49.471 and  
10 rules and policies adopted by the department and may, under a contract under s.  
11 49.78 (2), delegate all, or any portion, of this function to the county department under  
12 s. 46.215, 46.22, or 46.23 or a tribal governing body.

13 **SECTION 29.** 49.45 (2) (b) 3. of the statutes is amended to read:

14 49.45 (2) (b) 3. Audit all claims filed by any contractor making the payment of  
15 benefits paid under ss. 49.46 to ~~49.47~~ 49.471 and make proper fiscal adjustments.

16 **SECTION 30.** 49.45 (2) (b) 7. (intro.) of the statutes is amended to read:

17 49.45 (2) (b) 7. (intro.) Require, as a condition of certification under par. (a) 11.,  
18 all providers of a specific service that is among those enumerated under s. 49.46 (2)  
19 ~~or, 49.47 (6) (a), or 49.471 (11),~~ as specified in this subdivision, to file with the  
20 department a surety bond issued by a surety company licensed to do business in this  
21 state. Providers subject to this subdivision provide those services specified under s.  
22 49.46 (2) ~~or, 49.47 (6) (a), or 49.471 (11)~~ for which providers have demonstrated  
23 significant potential to violate s. 49.49 (1) (a), (2) (a) or (b), (3), (3m) (a), (3p), (4) (a),

1 or (4m) (a), to require recovery under par. (a) 10., or to need additional sanctions  
2 under par. (a) 13. The surety bond shall be payable to the department in an amount  
3 that the department determines is reasonable in view of amounts of former  
4 recoveries against providers of the specific service and the department's costs to  
5 pursue those recoveries. The department shall promulgate rules to implement this  
6 subdivision that specify all of the following:

7 **SECTION 31.** 49.45 (3) (b) 1. of the statutes is amended to read:

8 49.45 (3) (b) 1. The contractor, if any, administering benefits or providing  
9 prepaid health care under s. 49.46, 49.465, 49.468 ~~or~~, 49.47, or 49.471 shall be  
10 entitled to payment from the department for benefits so paid or prepaid health care  
11 so provided or made available when a certification of eligibility is properly on file  
12 with the contractor in addition to the payment of administrative expense incurred  
13 pursuant to the contract and as provided in sub. (2) (a) 4., but the contractor shall  
14 not be reimbursed for benefits erroneously paid where no certification is on file.

15 **SECTION 32.** 49.45 (3) (b) 2. of the statutes is amended to read:

16 49.45 (3) (b) 2. The contractor, if any, insuring benefits under s. 49.46, 49.465,  
17 49.468 ~~or~~, 49.47, or 49.471 shall be entitled to receive a premium, in an amount and  
18 on terms agreed, for such benefits for the persons eligible to receive them and for its  
19 services as insurer.

20 **SECTION 33.** 49.45 (3) (dm) of the statutes is amended to read:

21 49.45 (3) (dm) After distribution of computer software has been made under  
22 1993 Wisconsin Act 16, section 9126 (13h), no payment may be made for home health  
23 care services provided to persons who are enrolled in the federal medicare program  
24 and are recipients of medical assistance under s. 49.46 ~~or~~, 49.47, or 49.471 unless the

1 provider of the services has in use the computer software to maximize payments  
2 under the federal medicare program under 42 USC 1395.

3 **SECTION 34.** 49.45 (3) (f) 2. of the statutes is amended to read:

4 49.45 (3) (f) 2. The department may deny any provider claim for reimbursement  
5 which cannot be verified under subd. 1. or may recover the value of any payment  
6 made to a provider which cannot be so verified. The measure of recovery will be the  
7 full value of any claim if it is determined upon audit that actual provision of the  
8 service cannot be verified from the provider's records or that the service provided was  
9 not included in s. 49.46 (2) or 49.471 (11). In cases of mathematical inaccuracies in  
10 computations or statements of claims, the measure of recovery will be limited to the  
11 amount of the error.

12 **SECTION 35.** 49.45 (3) (L) 2. of the statutes is amended to read:

13 49.45 (3) (L) 2. The department may not pay a provider for a designated health  
14 service that is authorized under this section or s. 49.46 ~~or~~, 49.47, or 49.471, that is  
15 provided as the result of a referral made to the provider by a physician and that,  
16 under 42 USC 1396b (s), if made on behalf of a beneficiary of medicare under the  
17 requirements of 42 USC 1395nn, as amended to August 10, 1993, would result in the  
18 denial of payment for the service under 42 USC 1395nn.

19 **SECTION 36.** 49.45 (3) (m) of the statutes is amended to read:

20 49.45 (3) (m) To be certified under sub. (2) (a) 11. to provide transportation by  
21 specialized medical vehicle, a person must have at least one human service vehicle,  
22 as defined in s. 340.01 (23g), that satisfies the requirements imposed under s. 110.05  
23 for a vehicle that is used to transport a person in a wheelchair. If a certified provider  
24 uses 2 or more vehicles to provide transportation by specialized medical vehicle, at  
25 least 2 of the vehicles must be human service vehicles that satisfy the requirements

1 imposed under s. 110.05 for a vehicle that is used to transport a person in a  
2 wheelchair, and any 3rd or additional vehicle must be a human service vehicle to  
3 which the equipment required under s. 110.05 for transporting a person in a  
4 wheelchair may be added. The department shall pay for transportation by  
5 specialized medical vehicle under s. 49.46 (2) (b) 3. or 49.471 (11) (m) that is provided  
6 in a human service vehicle that is not equipped to transport a person in a wheelchair  
7 if the person being transported does not use a wheelchair. The reimbursement rate  
8 for transportation by specialized medical vehicle provided in a vehicle that is not  
9 equipped to accommodate a wheelchair shall be the same as for transportation by  
10 specialized medical vehicle provided in a vehicle that is equipped to accommodate a  
11 wheelchair.

12 **SECTION 37.** 49.45 (6c) (d) 1. of the statutes is amended to read:

13 49.45 (6c) (d) 1. No payment may be made under sub. (6m) to a facility or to  
14 an institution for mental diseases for the care of an individual who is otherwise  
15 eligible for medical assistance under s. 49.46 ~~or~~, 49.47, or 49.471, who has  
16 developmental disability or mental illness and for whom under par. (b) or (c) it is  
17 determined that he or she does not need facility care, unless it is determined that the  
18 individual requires active treatment for developmental disability or active  
19 treatment for mental illness and has continuously resided in a facility or institution  
20 for mental diseases for at least 30 months prior to the date of the determination. If  
21 that individual requires active treatment and has so continuously resided, he or she  
22 shall be offered the choice of receiving active treatment for developmental disability  
23 or active treatment for mental illness in the facility or institution for mental diseases  
24 or in an alternative setting. A facility resident who has developmental disability or  
25 mental illness, for whom under par. (c) it is determined that he or she does not need



1 facility care and who has not continuously resided in a facility for at least 30 months  
2 prior to the date of the determination, may not continue to reside in the facility after  
3 December 31, 1993, and shall, if the department so determines, be relocated from the  
4 facility after March 31, 1990, and before December 31, 1993. The county department  
5 shall be responsible for securing alternative residence on behalf of an individual who  
6 is required to be relocated from a facility under this subdivision, and the facility shall  
7 cooperate with the county department in the relocation.

8 **SECTION 38.** 49.45 (6c) (d) 2. of the statutes is amended to read:

9 49.45 (6c) (d) 2. Payment may be made under sub. (6m) to a facility or  
10 institution for mental diseases for the care of an individual who is otherwise eligible  
11 for medical assistance under s. 49.46 ~~or~~, 49.47, or 49.471 and who has developmental  
12 disability or mental illness and is determined under par. (b) or (c) to need facility care,  
13 regardless of whether it is determined under par. (b) or (c) that the individual does  
14 or does not require active treatment for developmental disability or active treatment  
15 for mental illness.

16 **SECTION 39.** 49.45 (8) (a) 4. of the statutes is amended to read:

17 49.45 (8) (a) 4. "Patient care visit" means a personal contact with a patient in  
18 a patient's home that is made by a registered nurse, licensed practical nurse, home  
19 health aide, physical therapist, occupational therapist, or speech-language  
20 pathologist who is on the staff of or under contract or arrangement with a home  
21 health agency, or by a registered nurse or licensed practical nurse practicing  
22 independently, to provide a service that is covered under s. 49.46 ~~or~~, 49.47, or 49.471.  
23 "Patient care visit" does not include time spent by a nurse, therapist, or home health  
24 aide on case management, care coordination, travel, record keeping, or supervision  
25 that is related to the patient care visit.

1           **SECTION 40.** 49.45 (9) of the statutes is amended to read:

2           49.45 (9) **FREE CHOICE.** Any person eligible for medical assistance under ss. s.  
3           49.46, 49.468 and, 49.47, or 49.471 may use the physician, chiropractor, dentist,  
4           pharmacist, hospital, skilled nursing home, health maintenance organization,  
5           limited service health organization, preferred provider plan or other licensed,  
6           registered or certified provider of health care of his or her choice, except that free  
7           choice of a provider may be limited by the department if the department's alternate  
8           arrangements are economical and the recipient has reasonable access to health care  
9           of adequate quality. The department may also require a recipient to designate, in any  
10          or all categories of health care providers, a primary health care provider of his or her  
11          choice. After such a designation is made, the recipient may not receive services from  
12          other health care providers in the same category as the primary health care provider  
13          unless such service is rendered in an emergency or through written referral by the  
14          primary health care provider. Alternate designations by the recipient may be made  
15          in accordance with guidelines established by the department. Nothing in this  
16          subsection shall vitiate the legal responsibility of the physician, chiropractor,  
17          dentist, pharmacist, skilled nursing home, hospital, health maintenance  
18          organization, limited service health organization, preferred provider plan or other  
19          licensed, registered or certified provider of health care to patients. All contract and  
20          tort relationships with patients shall remain, notwithstanding a written referral  
21          under this section, as though dealings are direct between the physician, chiropractor,  
22          dentist, pharmacist, skilled nursing home, hospital, health maintenance  
23          organization, limited service health organization, preferred provider plan or other  
24          licensed, registered or certified provider of health care and the patient. No physician,

1 chiropractor, pharmacist or dentist may be required to practice exclusively in the  
2 medical assistance program.

3 SECTION 41. 49.45 (18) (ac) of the statutes is amended to read:

4 49.45 (18) (ac) Except as provided in pars. (am) to (d), and subject to par. (ag),  
5 any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the  
6 benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum  
7 amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided  
8 under s. 49.46 (2). The service provider shall collect the specified or allowable  
9 copayment, coinsurance, or deductible, unless the service provider determines that  
10 the cost of collecting the copayment, coinsurance, or deductible exceeds the amount  
11 to be collected. The department shall reduce payments to each provider by the  
12 amount of the specified or allowable copayment, coinsurance, or deductible. No  
13 provider may deny care or services because the recipient is unable to share costs, but  
14 an inability to share costs specified in this subsection does not relieve the recipient  
15 of liability for these costs.

16 SECTION 42. 49.45 (18) (am) of the statutes is amended to read:

17 49.45 (18) (am) No person is liable under this subsection for services provided  
18 through prepayment contracts. This paragraph does not apply to a person who is  
19 eligible for the benefits under s. 49.46 (2) (a) and (b) under s. 49.471.

20 SECTION 43. 49.45 (24g) of the statutes is repealed.

21 SECTION 44. 49.45 (29) of the statutes is amended to read:

22 49.45 (29) HOSPICE REIMBURSEMENT. The department shall promulgate rules  
23 limiting aggregate payments made to a hospice under ss. 49.46 ~~and~~, 49.47, and  
24 49.471.

25 SECTION 45. 49.45 (35) of the statutes is repealed.

Insert 19-19

1           **SECTION 46.** 49.45 (42m) (a) of the statutes is amended to read:

2           49.45 **(42m)** (a) If, in authorizing the provision of physical or occupational  
3 therapy services under s. 49.46 (2) (b) 6. b. or 49.471 (11) (i), the department  
4 authorizes a reduced duration of services from the duration that the provider  
5 specifies in the authorization request, the department shall substantiate the  
6 reduction that the department made in the duration of the services if the provider  
7 of the services requests any additional authorizations for the provision of physical  
8 or occupational therapy services to the same individual.

9           **SECTION 47.** 49.45 (48) of the statutes is amended to read:

10          49.45 **(48)** PAYMENT OF MEDICARE PART B OUTPATIENT HOSPITAL SERVICES  
11 COINSURANCES. The department shall include in the state plan for medical assistance  
12 a methodology for payment of the medicare part B outpatient hospital services  
13 coinsurance amounts that are authorized under ss. 49.46 (2) (c) 2., 4., and 5m., 49.468  
14 (1) (b), and 49.47 (6) (a) 6. b., d., and f., and 49.471 (6) (j) 1.

15          **SECTION 48.** 49.45 (49m) (c) 1. of the statutes is amended to read:

16          49.45 **(49m)** (c) 1. A list of the prescription drugs that are included as a benefit  
17 under s. ~~ss.~~ 49.46 (2) (b) 6. h. and 49.471 (11) (a) that identifies preferred choices  
18 within therapeutic classes and includes prescription drugs that bear only generic  
19 names.

20          **SECTION 49.** 49.45 (53) of the statutes is amended to read:

21          49.45 **(53)** PAYMENTS FOR CERTAIN SERVICES. Beginning on January 1, 2003, the  
22 department may, from the appropriation account under s. 20.435 (7) (b), make  
23 Medical Assistance payments to providers for covered services under s. ~~ss.~~ 49.46 (2)  
24 (a) 4. d. and (b) 6. j. and m. and 49.471 (11) (f).

25          **SECTION 50.** 49.46 (1) (a) 5. of the statutes is amended to read:

1           49.46 (1) (a) 5. Any child in an adoption assistance, foster care, ~~kinship care,~~  
2 ~~long-term kinship care,~~ treatment foster care, or subsidized guardianship  
3 placement under ch. 48 or 938, as determined by the department.

4           **SECTION 51.** 49.468 (1) (b) of the statutes is amended to read:

5           49.468 (1) (b) For an elderly or disabled individual who is entitled to coverage  
6 under part A of medicare, entitled to coverage under part B of medicare and who does  
7 not meet the eligibility criteria for medical assistance under s. 49.46 (1), 49.465 ~~or,~~  
8 ~~49.47 (4), or 49.471~~ but meets the limitations on income and resources under par. (d),  
9 medical assistance shall pay the deductible and coinsurance portions of medicare  
10 services under 42 USC 1395 to 1395zz which are not paid under 42 USC 1395 to  
11 1395zz, including those medicare services that are not included in the approved state  
12 plan for services under 42 USC 1396; the monthly premiums payable under 42 USC  
13 1395v; the monthly premiums, if applicable, under 42 USC 1395i-2 (d); and the late  
14 enrollment penalty, if applicable, for premiums under part A of medicare. Payment  
15 of coinsurance for a service under part B of medicare under 42 USC 1395j to 1395w,  
16 other than payment of coinsurance for outpatient hospital services, may not exceed  
17 the allowable charge for the service under medical assistance minus the medicare  
18 payment.

19           **SECTION 52.** 49.468 (1) (c) of the statutes is amended to read:

20           49.468 (1) (c) For an elderly or disabled individual who is only entitled to  
21 coverage under part A of medicare and who does not meet the eligibility criteria for  
22 medical assistance under s. 49.46 (1), 49.465 ~~or,~~ 49.47 (4), ~~or 49.471~~ but meets the  
23 limitations on income and resources under par. (d), medical assistance shall pay the  
24 deductible and coinsurance portions of medicare services under 42 USC 1395 to  
25 1395i which are not paid under 42 USC 1395 to 1395i, including those medicare

1 services that are not included in the approved state plan for services under 42 USC  
2 1396; the monthly premiums, if applicable, under 42 USC 1395i-2 (d); and the late  
3 enrollment penalty for premiums under part A of medicare, if applicable.

4 **SECTION 53.** 49.468 (1m) (a) of the statutes is amended to read:

5 49.468 **(1m)** (a) Beginning on January 1, 1993, for an elderly or disabled  
6 individual who is entitled to coverage under part A of medicare and is entitled to  
7 coverage under part B of medicare, does not meet the eligibility criteria for medical  
8 assistance under s. 49.46 (1), 49.465 ~~or~~, 49.47 (4), or 49.471 but meets the limitations  
9 on income and resources under par. (b), medical assistance shall pay the monthly  
10 premiums under 42 USC 1395r.

11 **SECTION 54.** 49.468 (2) (a) of the statutes is amended to read:

12 49.468 **(2)** (a) Beginning on January 1, 1991, for a disabled working individual  
13 who is entitled under P.L. 101-239, section 6012 (a), to coverage under part A of  
14 medicare and who does not meet the eligibility criteria for medical assistance under  
15 s. 49.46 (1), 49.465 ~~or~~, 49.47 (4), or 49.471 but meets the limitations on income and  
16 resources under par. (b), medical assistance shall pay the monthly premiums for the  
17 coverage under part A of medicare, including late enrollment fees, if applicable.

18 **SECTION 55.** 49.471 of the statutes is created to read:

19 **49.471 BadgerCare Plus. (1) DEFINITIONS.** In this section, unless the context  
20 requires otherwise:

21 (a) "BadgerCare Plus" means the Medical Assistance program described in this  
22 section.

23 (b) "Caretaker relative" means an individual who is maintaining a residence  
24 as a child's home, who exercises primary responsibility for the child's care and

1 control, including making plans for the child, and who is any of the following with  
2 respect to the child:

3 1. A blood relative, including those of half-blood, and including first cousins,  
4 nephews, nieces, and individuals of preceding generations as denoted by prefixes of  
5 grand, great, or great-great.

6 2. A stepfather, stepmother, stepbrother, or stepsister.

7 3. An individual who is the adoptive parent of the child's parent, a natural or  
8 legally adopted child of such individual, or a relative of an adoptive parent.

9 4. A spouse of any individual named in this paragraph even if the marriage is  
10 terminated by death or divorce.

11 (c) "Child" means an individual who is under the age of 19 years. "Child"  
12 includes an unborn child.

13 (d) "Essential person" means an individual who satisfies all of the following:

14 1. Is related to an individual receiving benefits under this section.

15 2. Is otherwise nonfinancially eligible, except that the individual need not have  
16 a minor child under his or her care.

17 3. Provides at least one of the following to an individual receiving benefits  
18 under this section:

19 a. Child care that enables a caretaker to work outside the home for at least 30  
20 hours per week for pay, to receive training for at least 30 hours per week, or to attend,  
21 on a full-time basis as defined by the school, high school or a course of study meeting  
22 the standards established by the state superintendent of public instruction for the  
23 granting of a declaration of equivalency of high school graduation under s. 115.29 (4).

24 b. Care for anyone who is incapacitated.

1 (e) "Family" means all children for whom assistance is requested, their minor  
2 siblings, including half brothers, half sisters, stepbrothers, and stepsisters, and any  
3 parents of these minors and their spouses.

4 (f) "Family income" means the total gross earned and unearned income  
5 received by all members of a family.

6 (g) "Group health plan" has the meaning given in 42 USC 300gg-91 (a) (1).

7 (h) "Health insurance coverage" has the meaning given in 42 USC 300gg-91  
8 (b) (1), and also includes any arrangement under which a 3rd party agrees to pay for  
9 the health care costs of the individual.

10 (i) "Parent" has the meaning given in s. 49.141 (1) (j).

11 (j) "Recipient" means an individual receiving benefits under this section.

12 (k) "Unborn child" means an individual from conception until he or she is born  
13 alive for whom all of the following requirements are met:

14 1. The unborn child's mother is not eligible for medical assistance under this  
15 subchapter, except that she may be eligible for benefits under s. 49.45 (27).

16 2. The income of the unborn child's mother, mother and her spouse, or mother  
17 and her family, whichever is applicable, does not exceed 300 percent of the poverty  
18 line.

19 3. Each of the following applicable persons who is employed provides  
20 verification from his or her employer, in the manner specified by the department, of  
21 his or her earnings:

22 a. The unborn child's mother.

23 b. The spouse of the unborn child's mother.

24 c. Members of the unborn child's mother's family.



1           4. The unborn child's mother provides medical verification of her pregnancy,  
2 in the manner specified by the department. An unborn child's eligibility for coverage  
3 under this section does not begin before the first day of the month in which the  
4 unborn child's mother provides the medical verification.

5           5. The unborn child and the mother of the unborn child meet all other  
6 applicable eligibility requirements under this chapter or established by the  
7 department by rule except for any of the following:

8           a. The mother is not a U.S. citizen or an alien qualifying for Medicaid under  
9 8 USC 1612.

10          b. The mother is an inmate of a public institution.

11          c. The mother does not provide a social security number, but only if subd. 5. a.  
12 applies.

13          (2) WAIVER. The department shall request a waiver from, and submit  
14 amendments to the state Medical Assistance plan to, the secretary of the federal  
15 department of health and human services to implement BadgerCare Plus. If the  
16 state plan amendments are approved and a waiver that is consistent with all of the  
17 provisions of this section is granted and in effect, the department shall implement  
18 BadgerCare Plus beginning on January 1, 2008, the effective date of the state plan  
19 amendments, or the effective date of the waiver, whichever is latest. If the state plan  
20 amendments are not approved or if a waiver that is consistent with all of the  
21 provisions of this section is not granted, BadgerCare Plus may not be implemented.  
22 If the state plan amendments are approved but approval is not continued or if a  
23 waiver that is consistent with all of the provisions of this section is granted but not  
24 continued in effect, BadgerCare Plus shall be discontinued.

1           **(3) INELIGIBILITY FOR OTHER MEDICAL ASSISTANCE BENEFITS. (a) 1.**

2           Notwithstanding ss. 49.46 (1), 49.465, 49.47 (4), and 49.665 (4), if the amendments  
3           to the state plan under sub. (2) are approved and a waiver under sub. (2) that is  
4           consistent with all of the provisions of this section is granted and in effect, an  
5           individual described in sub. (4) (a) or (b) or (5) is not eligible under s. 49.46, 49.465,  
6           49.47, or 49.665 for Medical Assistance or BadgerCare health program benefits. The  
7           eligibility of an individual described in sub. (4) (a) or (b) or (5) for Medical Assistance  
8           benefits shall be determined under this section.

9           2. Notwithstanding subd. 1., an individual who is eligible for medical  
10          assistance under s. 49.46 (1) (a) 3. or 4. may not receive benefits under this section.

11          3. Notwithstanding subd. 1., an individual described in sub. (4) (a) or (b) or (5)  
12          who is eligible for medical assistance under s. 49.46 (1) (a) 5., 6m., 14., 14m., or 15.  
13          or (d) or 49.47 (4) (a) or (as) may receive medical assistance benefits under this  
14          section or under s. 49.46 or 49.47.

15          (b) 1. If an individual over 18 years of age who is eligible for and receiving  
16          Medical Assistance benefits under s. 49.46, 49.47, or 49.665 in the month before  
17          BadgerCare Plus is implemented loses that eligibility solely due to the  
18          implementation of BadgerCare Plus and, because of his or her income, is not eligible  
19          for BadgerCare Plus, the individual shall continue receiving for 18 consecutive  
20          months the medical assistance he or she was receiving before the implementation of  
21          BadgerCare Plus if all of the following are satisfied:

22                a. The individual's eligibility for the Medical Assistance benefits in the month  
23                before the implementation of BadgerCare Plus was based on an application filed  
24                before the implementation of BadgerCare Plus.

1 b. The individual continues to pay any premium that he or she was required  
2 to pay for the Medical Assistance coverage in the same amount as the amount that  
3 was due in the month before the implementation of BadgerCare Plus.

4 c. The individual continues to meet all nonfinancial eligibility requirements for  
5 the coverage that he or she had in the month before the implementation of  
6 BadgerCare Plus.

7 d. The individual continues to be ineligible for BadgerCare Plus because of his  
8 or her income.

9 2. Notwithstanding subd. 1., if at any time during an individual's 18-month  
10 eligibility extension under subd. 1. any criterion under subd. 1. a. to d. is not satisfied,  
11 the individual's eligibility for the extended coverage is terminated and any time  
12 remaining in the eligibility period is lost.

13 (4) GENERAL ELIGIBILITY CRITERIA; APPLICABLE BENEFITS. (a) Except as otherwise  
14 provided in this section, all of the following individuals are eligible for the benefits  
15 described in s. 49.46 (2) (a) and (b); *→, subject to Sub. (6)(k)*

16 1. A pregnant woman whose family income does not exceed 200 percent of the  
17 poverty line.

18 2. A child who is under one year of age, whose mother was, on the day the child  
19 was born, eligible for and receiving medical assistance under subd. 1. or 5. or s. 49.46  
20 or 49.47, and who lives with his or her mother in this state.

21 3. A child whose family income does not exceed 200 percent of the poverty line.  
22 For a child under this subdivision who is an unborn child, benefits are limited to  
23 prenatal care.

24 3m. A child who obtains eligibility under sub. (7) (b) 2.

25 4. An individual who satisfies all of the following criteria:

1           a. The individual is a parent or caretaker relative of a child who is living in the  
2 home with the parent or caretaker relative or who is temporarily absent from the  
3 home for not more than 6 months or, if the child has been removed from the home for  
4 more than 6 months, the parent or caretaker relative is working toward unifying the  
5 family by complying with a permanency plan under s. 48.38.

6           b. Except as provided in subd. 4. c., the individual's family income does not  
7 exceed 200 percent of the poverty line and does not include self-employment income.

8           c. If the individual's family income includes self-employment income, the  
9 individual's family income does not exceed 200 percent of the poverty line as  
10 calculated under sub. (7) (a) 2.

11           5. An individual who, regardless of family income, was born on or after January  
12 1, 1990, and who, on his or her 18th birthday, was in a foster care or treatment foster  
13 care placement under the responsibility of a state, as determined by the department.  
14 The coverage for an individual under this subdivision ends on the last day of the  
15 month in which the individual becomes 21 years of age, unless he or she otherwise  
16 loses eligibility sooner.

17           6. Migrant workers and their dependents who are determined eligible under  
18 sub. (6) (f).

19           (b) Except as otherwise provided in this section, all of the following individuals  
20 are eligible for the benefits described in sub. (11):

21           1. A pregnant woman whose family income exceeds 200 percent but does not  
22 exceed 300 percent of the poverty line.

23           1m. A pregnant woman or unborn child who obtains eligibility under sub. (7)

24 (b) 1.

1           2. A child who is under one year of age, whose mother was determined to be  
2 eligible under subd. 1., and who lives with his or her mother in this state.

3           3. A child whose family income exceeds 200 percent but does not exceed 300  
4 percent of the poverty line. For a child under this subdivision who is an unborn child,  
5 benefits are limited to prenatal care.

6           4. An individual who satisfies all of the following criteria:

7           a. The individual is a parent or caretaker relative of a child who is living in the  
8 home with the parent or caretaker relative or who is temporarily absent from the  
9 home for not more than 6 months or, if the child has been removed from the home for  
10 more than 6 months, the parent or caretaker relative is working toward unifying the  
11 family by complying with a permanency plan under s. 48.38.

12           b. The individual's family income includes self-employment income and does  
13 not exceed 200 percent of the poverty line as calculated under sub. (7) (a) 3.

14           (c) Except as otherwise provided in this section, a child who is not an unborn  
15 child and whose family income exceeds 300 percent of the poverty line is eligible to  
16 purchase coverage of the benefits described in sub. (11), at the full per member per  
17 month cost of the coverage.

18           **(5) PRESUMPTIVE ELIGIBILITY.** (a) In this subsection:

19           1. "Qualified entity" means an entity that satisfies the requirements under 42  
20 USC 1396r-1a (b) (3) (A), as determined by the department.

21           2. "Qualified provider" means a provider that satisfies the requirements under  
22 42 USC 1396r-1 (b) (2), as determined by the department.

23           (b) 1. Except as provided in sub. (6) (a), a pregnant woman is eligible for the  
24 benefits specified in par. (c) during the period beginning on the day on which a  
25 qualified provider determines, on the basis of preliminary information, that the

1 woman's family income does not exceed 300 percent of the poverty line and ending  
2 on the applicable day specified in subd. 3.

3 2. Except as provided in sub. (6) (a), a child who is not an unborn child is eligible  
4 for the benefits described in s. 49.46 (2) (a) and (b) during the period beginning on  
5 the day on which a qualified entity determines, on the basis of preliminary  
6 information, that the child's family income does not exceed 150 percent of the poverty  
7 line and ending on the applicable day specified in subd. 3.

8 3. a. If the woman or child applies for benefits under sub. (4) within the time  
9 required under par. (d), the benefits specified in subd. 1. or 2., whichever is  
10 applicable, end on the day on which the department or the county department under  
11 s. 46.215, 46.22, or 46.23 determines whether the woman or child is eligible for  
12 benefits under sub. (4).

13 b. If the woman or child does not apply for benefits under sub. (4) within the  
14 time required under par. (d), the benefits specified in subd. 1. or 2., whichever is  
15 applicable, end on the last day of the month following the month in which the  
16 provider or entity makes the determination under this paragraph.

17 (c) On behalf of a woman under par. (b) 1., the department shall audit and pay  
18 allowable charges to a provider certified under s. 49.45 (2) (a) 11. only for ambulatory  
19 prenatal care services under the benefits under sub. (11).

20 (d) A woman or child who is determined to be eligible under par. (b) shall apply  
21 for benefits under sub. (4) on or before the last day of the month following the month  
22 in which the qualified provider or entity makes the eligibility determination.

23 (e) A qualified provider or entity that determines that a woman or child is  
24 eligible under par. (b) shall do all of the following:

1           1. Notify the department of that determination within 5 working days after the  
2 day on which the determination is made.

3           2. Notify the woman or child of the requirement under par. (d) at the time of  
4 the determination.

5           (f) The department shall provide qualified providers and qualified entities with  
6 application forms for the benefits under sub. (4) and information on how to assist  
7 women and children in completing the forms.

8           **(6) MISCELLANEOUS ELIGIBILITY AND BENEFIT PROVISIONS.** (a) Any pregnant  
9 woman, including a pregnant woman under sub (5) (b) 1., child who is not an unborn  
10 child, including a child under sub. (5) (b) 2., parent, or caretaker relative whose  
11 family income is less than 150 percent of the poverty line is eligible for medical  
12 assistance under this section for any of the 3 months prior to the month of application  
13 if the individual met the eligibility criteria under this section and had a family  
14 income of less than 150 percent of the poverty line in that month.

15           (b) A pregnant woman who is determined to be eligible for benefits under sub.  
16 (4) remains eligible for benefits under sub. (4) for the balance of the pregnancy and  
17 to the last day of the month in which the 60th day after the last day of the pregnancy  
18 falls without regard to any change in the woman's family income.

19           (c) If a child who is eligible for benefits under sub. (4) is receiving inpatient  
20 services covered under sub. (4) on the day before his or her 19th birthday and, but  
21 for attaining 19 years of age, the child would remain eligible for benefits under sub.  
22 (4), the child remains eligible for benefits until the end of the stay for which the  
23 inpatient services are being furnished.

1 (d) If an application under this section shows that an individual is an essential  
2 person, the individual shall be provided the benefits specified under sub. (4) (a) or  
3 (b).

4 (e) The medical assistance eligibility extensions under s. 49.46 (1) (c), (cg), and  
5 (co) for individuals who lose eligibility due to increased income do not apply to  
6 BadgerCare Plus.

7 (f) The medical assistance eligibility provisions for migrant workers and their  
8 dependents under s. 49.47 (4) (av) apply to BadgerCare Plus.

9 (g) 1. Except as provided in subd. 2., as a condition of eligibility for coverage  
10 under this section, an individual with income shall provide verification, as  
11 determined by the department, of that income.

12 2. Subdivision 1. does not apply to an individual under sub. (4) (a) 5. or a child  
13 under the age of 18.

14 (h) Within 10 days after the change occurs, a recipient shall report to the  
15 department any change that might affect his or her eligibility or any change that  
16 might require premium payment by a recipient who was not required to pay  
17 premiums before the change.

18 (i) For purposes of determining eligibility and family income, the department  
19 shall include a family member who is temporarily absent from the home for not more  
20 than 6 months, as determined by the department.

21 (j) All of the following apply to BadgerCare Plus in the same respect as they  
22 apply under s. 49.46:

23 1. Section 49.46 (2) (c) and (cm), relating to benefits for individuals who are  
24 eligible for Medicare.



1           2. Section 49.46 (2) (d), relating to prohibiting payments for any part of any  
2 service payable through 3rd-party liability or any governmental or private benefit  
3 system.

4           3. Section 49.46 (2) (dm), relating to prohibiting payment for services to  
5 residents of institutions for mental diseases.

6           4. Section 49.46 (2) (f), relating to prohibiting payment for gastric bypass or  
7 stapling surgery.

8           **(7) SPECIAL INCOME PROVISIONS.** (a) 1. In the calculation of family income, if an  
9 adult member of the family has self-employment income, the department shall count  
10 the net self-employment earnings. Net self-employment earnings shall be  
11 determined by subtracting from gross self-employment income all self-employment  
12 expenses that are allowed under federal and state tax law, except for depreciation.

13           2. If a parent's or caretaker relative's family income includes self-employment  
14 income and, without deducting depreciation, does not exceed 200 percent of the  
15 poverty line, the parent or caretaker relative is eligible under sub. (4) (a) 4.

16           3. If a parent's or caretaker relative's family income includes self-employment  
17 income and, without deducting depreciation, exceeds 200 percent of the poverty line,  
18 the parent or caretaker relative is eligible under sub. (4) (b) 4. if his or her family  
19 income does not exceed 200 percent of the poverty line after depreciation is deducted.

20           (b) 1. A pregnant woman, or an unborn child, whose family income exceeds 300  
21 percent of the poverty line may become eligible for coverage under this section if the  
22 difference between the pregnant woman's or unborn child's family income and the  
23 applicable income limit under sub. (4) (b) is obligated or expended for any member  
24 of the pregnant woman's or unborn child's family for medical care or any other type  
25 of remedial care recognized under state law or for personal health insurance

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1 premiums or for both. Eligibility obtained under this subdivision continues without  
2 regard to any change in family income for the balance of the pregnancy and, for a  
3 pregnant woman but not for an unborn child, to the last day of the month in which  
4 the 60th day after the last day of the woman's pregnancy falls. Eligibility obtained  
5 by a pregnant woman under this subdivision extends to all pregnant women in the  
6 pregnant woman's family.

7 2. A child who is not an unborn child and whose family income exceeds 150  
8 percent of the poverty line may obtain eligibility under this section if the difference  
9 between the child's family income and 150 percent of the poverty line is obligated or  
10 expended on behalf of the child or any member of the child's family for medical care  
11 or any other type of remedial care recognized under state law or for personal health  
12 insurance premiums or for both. Eligibility obtained under this subdivision during  
13 any 6-month period, as determined by the department, continues for the remainder  
14 of the 6-month period and extends to all children in the family.

15 3. For a pregnant woman or an unborn child to obtain eligibility under subd.  
16 1., the amount that must be obligated or expended in any 6-month period is equal  
17 to the sum of the differences in each of those 6 months between the pregnant woman's  
18 or unborn child's monthly family income and the monthly family income that is 300  
19 percent of the poverty line. For a child to obtain eligibility under subd. 2., the amount  
20 that must be obligated or expended in any 6-month period is equal to the sum of the  
21 differences in each of those 6 months between the child's monthly family income and  
22 the monthly family income that is 150 percent of the poverty line.

23 (c) When calculating an individual's family income, the department shall do all  
24 of the following:

1           1. Deduct from family income any payments made by the individual for  
2 court-ordered child or family support or maintenance.

3           2. Disregard earnings of children under 18 years of age.

4           3. Determine separately the family incomes of caretaker relatives and the  
5 children for whom they are caring and not legally responsible.

6           4. Not include in the calculation any income of an individual receiving benefits  
7 under s. 49.77 or federal Title XVI.

8           **(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY.** (a) 1. Except as provided in  
9 subd. 2., any individual who is otherwise eligible under this section and who is  
10 eligible for enrollment in a group health plan shall, as a condition of eligibility for  
11 BadgerCare Plus and if the department determines that it is cost-effective to do so,  
12 apply for enrollment in the group health plan, except that, for a minor, the parent  
13 of the minor shall apply on the minor's behalf.

14           2. If a parent of a minor fails to enroll the minor in a group health plan in  
15 accordance with subd. 1., the failure does not affect the minor's eligibility under this  
16 section.

17           (b) Except as provided in pars. (c) and (d), an individual whose family income  
18 exceeds 150 percent of the poverty line is not eligible for BadgerCare Plus if any of  
19 the following applies:

20           1. The individual has individual or family health insurance coverage that is any  
21 of the following:

22           a. Coverage provided by an employer and for which the employer pays at least  
23 80 percent of the premium.

24           b. Coverage under the state employee health plan under s. 40.51 (6).

1           2. The individual, in the 12 months before applying, had access to the health  
2 insurance coverage specified in subd. 1.

3           3. The individual could be covered under the health insurance coverage  
4 specified in subd. 1. if the coverage is applied for, and the coverage could become  
5 available to the individual in the month in which the individual applies for benefits  
6 under this section or in any of the next 3 calendar months.

7           (c) An unborn child, regardless of family income, is not eligible for BadgerCare  
8 Plus if any of the following applies:

9           1. The unborn child or the unborn child's mother has individual or family  
10 health insurance coverage.

11           2. The unborn child or the unborn child's mother, in the 12 months before  
12 applying, had access to the health insurance coverage specified in par. (b) 1.

13           3. The unborn child or the unborn child's mother could be covered under  
14 individual or family health insurance coverage if the coverage is applied for, and the  
15 coverage could become available to the unborn child or the unborn child's mother in  
16 the month in which the unborn child applies for benefits under this section or in any  
17 of the next 3 calendar months.

18           (d) 1. None of the following is ineligible for BadgerCare Plus by reason of having  
19 health insurance coverage or access to health insurance coverage:

20           a. A pregnant woman.

21           b. A child described in sub. (4) (a) 2. or (b) 2.

22           c. Except as provided in par. (c), a child who has health insurance coverage, or  
23 access to health insurance coverage, as a dependent of an absent parent but who  
24 resides outside of the service area of the absent parent's plan.

25           d. An individual described in sub. (4) (a) 5.

1 e. A child who obtains eligibility under sub. (7) (b) 2., but only for the remainder  
2 of the child's eligibility period under sub. (7) (b) 2.

3 2. An individual under par. (b) 2., or an individual who is an unborn child or  
4 an unborn child's mother under par. (c) 2., is not ineligible if any of the following good  
5 cause reasons is the reason that the individual did not obtain the health insurance  
6 coverage under par. (b) 1. to which they had access:

7 a. The individual's employment ended.

8 b. The individual's employer discontinued health insurance coverage for all  
9 employees.

10 c. One or more members of the individual's family were eligible for other health  
11 insurance coverage or Medical Assistance at the time the employee failed to enroll  
12 in the health insurance coverage under par. (b) 1. and no member of the family was  
13 eligible for coverage under this section at that time.

14 d. The individual's access to health insurance coverage has ended due to the  
15 death or change in marital status of the subscriber.

16 e. Any other reason that the department determines is a good cause reason.

17 (e) If a pregnant woman has health insurance coverage and her family income  
18 exceeds 200 percent of the poverty line, the woman is required, as a condition of  
19 eligibility, to maintain the health insurance coverage.

20 (f) If an individual with a family income that exceeds 150 percent of the poverty  
21 line had the health insurance coverage specified in par. (b) 1. but no longer has the  
22 coverage, if an individual who is an unborn child or an unborn child's mother,  
23 regardless of family income, had health insurance coverage but no longer has the  
24 coverage, or if a pregnant woman specified in par. (e) has health insurance coverage  
25 and does not maintain the coverage, the individual or pregnant woman is not eligible

1 for BadgerCare Plus for the 3 calendar months following the month in which the  
2 insurance coverage ended without a good cause reason specified in par. (g).

3 (g) Any of the following is a good cause reason for purposes of par. (f):

4 1. The individual or pregnant woman was covered by a group health plan that  
5 was provided by a subscriber through his or her employer, and the subscriber's  
6 employment ended for a reason other than voluntary termination, unless the  
7 voluntary termination was a result of the incapacitation of the subscriber or because  
8 on an immediate family member's health condition.

9 2. The individual or pregnant woman was covered by a group health plan that  
10 was provided by a subscriber through his or her employer, the subscriber changed  
11 employers, and the new employer does not offer health insurance coverage.

12 3. The individual or pregnant woman was covered by a group health plan that  
13 was provided by a subscriber through his or her employer, and the subscriber's  
14 employer discontinued health plan coverage for all employees.

15 4. The pregnant woman's coverage was continuation coverage and the  
16 continuation coverage was exhausted in accordance with 29 CFR 2590.701-2 (4).

17 5. The individual's or pregnant woman's coverage terminated due to the death  
18 or change in marital status of the subscriber.

19 6. Any other reason determined by the department to be a good cause reason.

20 **(9) EMPLOYER VERIFICATION OF INSURANCE COVERAGE.** (a) 1. Except as provided  
21 in subd. 2., for an applicant or recipient with a family income that exceeds 150  
22 percent of the poverty line, the department shall verify insurance coverage and  
23 access information directly with the employer through which the applicant or  
24 recipient may have health insurance coverage or access to coverage.

25 2. Subdivision 1. does not apply to any of the following:

1 a. A pregnant woman.

2 b. A child described in sub. (4) (a) 2. or (b) 2.

3 c. An individual described in sub. (4) (a) 5.

4 (b) An employer that receives a request from the department for insurance  
5 coverage and access to coverage information shall supply the information requested  
6 by the department in the format specified by the department within 30 calendar days  
7 after receiving the request.

8 (c) 1. Subject to subds. 2. and 3., an employer that does not comply with the  
9 requirements under par. (b) shall be required to pay, within 45 days after the  
10 requested information was due, a penalty equal to the full per member per month  
11 cost of coverage under BadgerCare Plus for the individual about whom the  
12 information is requested, and for each of the individual's family members with  
13 coverage under BadgerCare Plus, for each month in which the individual and the  
14 individual's family members are covered before the employer provides the  
15 information.

16 2. An employer with fewer than 250 employees may not be required to pay more  
17 than \$1,000 in penalties under this paragraph that are attributable to any 6-month  
18 period. An employer with 250 or more employees may not be required to pay more  
19 than \$15,000 in penalties under this paragraph that are attributable to any 6-month  
20 period.

21 3. Notwithstanding subd. 1., an employer shall not be subject to any penalties  
22 if the employer, at least once per year, timely provides to the department, in the  
23 manner and format specified by the department, information from which the  
24 department may determine whether the employer provides its employees with  
25 access to health insurance coverage.

1           4. All penalty assessments collected under this paragraph shall be credited to  
2 the appropriation accounts under s. 20.435 (4) (jw) and (jz).

3           (d) An employer may contest a penalty assessment under par. (c) by sending  
4 a written request for hearing to the division of hearings and appeals in the  
5 department of administration. Proceedings before the division are governed by ch.  
6 227.

7           **(10) COST SHARING.** (a) *Copayments.* Except as provided in s. 49.45 (18) (am),  
8 all cost-sharing provisions under s. 49.45 (18) apply to a recipient with coverage of  
9 the benefits described in s. 49.46 (2) (a) and (b) to the same extent as they apply to  
10 a person eligible for medical assistance under s. 49.46, 49.468, or 49.47.

11           (b) *Premiums.* 1. Except as provided in subd. 4., a recipient who is an adult,  
12 who is not a pregnant woman, and whose family income is greater than 150 percent  
13 but not greater than 200 percent of the poverty line shall pay a premium for coverage  
14 under BadgerCare Plus that does not exceed 5 percent of his or her family income.  
15 If the recipient has self-employment income and is eligible under sub. (4) (b) 4., the  
16 premium may not exceed 5 percent of family income calculated before depreciation  
17 was deducted.

18           2. Except as provided in subds. 3. and 4., a recipient who is a child whose family  
19 income is greater than 200 percent of the poverty line shall pay a premium for  
20 coverage of the benefits described in sub. (11) that does not exceed the full per  
21 member per month cost of coverage for a child with a family income of 300 percent  
22 of the poverty line.

23           3. Except as provided in subd. 4., a recipient who is an unborn child, or a  
24 pregnant woman eligible under sub. (4) (b) 1., whose family income is greater than  
25 200 percent of the poverty line shall pay a premium for coverage of the benefits



1 described in sub. (11) that does not exceed the full per member per month cost of  
2 coverage for an adult with a family income of 300 percent of the poverty line.

3 4. None of the following shall pay a premium:

4 a. A child who is a Native American or an Alaskan Native with a family income  
5 that does not exceed 300 percent of the poverty line.

6 b. A child who is eligible under sub. (4) (a) 2. or (b) 2.

7 c. A child whose family income does not exceed 200 percent of the poverty line.

8 d. A pregnant woman whose family income does not exceed 200 percent of the  
9 poverty line.

10 e. A child who obtains eligibility under sub. (7) (b) 2.

11 f. An individual who is eligible under sub. (4) (a) 5.

12 5. If a recipient who is required to pay a premium under this paragraph or  
13 under sub. (4) (c) does not pay a premium when due, the recipient's coverage  
14 terminates and the recipient is not eligible for BadgerCare Plus for 6 calendar  
15 months following the date on which the recipient's coverage terminated.

16 **(11) BENCHMARK PLAN BENEFITS AND COPAYMENTS.** Recipients who are not eligible  
17 for the benefits described in s. 49.46 (2) (a) and (b) shall have coverage of the following  
18 benefits and pay the following copayments: *Subject to sub. (6)(k), ✓*

19 (a) Prescription drugs bearing only a generic name, as defined in s. 450.12 (1)  
20 (b), with a copayment of no more than \$5 per prescription, and subject to the Badger  
21 Rx Gold program discounts.

22 (b) Physicians' services, including one annual routine physical examination,  
23 with a copayment of no more than \$15 per visit.

24 (c) Inpatient hospital services as medically necessary, subject to coinsurance  
25 payment per inpatient stay of no more than 10 percent of the allowable payment

1 rates under s. 49.46 (2) for the services provided and a copayment of no more than  
2 \$50 per admission for psychiatric services.

3 (d) Outpatient hospital services, subject to coinsurance payment of no more  
4 than 10 percent of the allowable payment rates under s. 49.46 (2) for the services  
5 provided, except that use of emergency room services for treatment of a condition  
6 that is not an emergency medical condition, as defined in s. 632.85 (1) (a), shall  
7 require a copayment of no more than \$75.

8 (e) Laboratory and X-ray services, including mammography.

9 (f) Home health services, limited to 60 visits per year.

10 (g) Skilled nursing home services, limited to 30 days per year, and subject to  
11 coinsurance payment of no more than 10 percent of the allowable payment rates  
12 under s. 49.46 (2) for the services provided.

13 (h) Inpatient rehabilitation services, limited to 60 days per year, and subject  
14 to coinsurance payment of no more than 10 percent of the allowable payment rates  
15 under s. 49.46 (2) for the services provided.

16 (i) Physical, occupational, speech, and pulmonary therapy, limited to 20 visits  
17 per year for each type of therapy, and subject to coinsurance payment of no more than  
18 10 percent of the allowable payment rates under s. 49.46 (2) for the services provided.

19 (j) Cardiac rehabilitation, limited to 36 visits per year and subject to  
20 coinsurance payment of no more than 10 percent of the allowable payment rates  
21 under s. 49.46 (2) for the services provided.

22 (k) Inpatient, outpatient, and transitional treatment for nervous or mental  
23 disorders and alcoholism and other drug abuse problems, with a copayment of no  
24 more than \$15 per visit and coverage limits that are the same as those under the state  
25 employee health plan under s. 40.51 (6).

1 (L) Durable medical equipment, limited to \$2,500 per year, and subject to  
2 coinsurance payment of no more than 10 percent of the allowable payment rates  
3 under s. 49.46 (2) for the articles provided.

4 (m) Transportation to obtain emergency medical care only, as medically  
5 necessary, and subject to coinsurance payment of no more than 10 percent of the  
6 allowable payment rates under s. 49.46 (2) for the services provided.

7 (n) One refractive eye examination every 2 years, with a copayment of no more  
8 than \$15 per visit.

9 (o) Fifty percent of allowable charges for preventive and basic dental services,  
10 including services for accidental injury and for the diagnosis and treatment of  
11 temporomandibular disorders. The coverage under this paragraph is limited to \$750  
12 per year, applies only to pregnant women and children under 19 years of age, and  
13 requires an annual deductible of \$200 and a copayment of no more than \$15 per visit.

14 (p) Early childhood developmental services, for children under 6 years of age.

15 (q) Smoking cessation treatment, for pregnant women only.

16 (r) Prenatal care coordination, for pregnant women at high risk only.

17 **(11m) PROVIDER PAYMENTS AND REQUIREMENTS.** The provider of a service or  
18 equipment under sub. (11) shall collect the specified or allowable copayment or  
19 coinsurance, unless the provider determines that the cost of collecting the copayment  
20 or coinsurance exceeds the amount to be collected. The department shall reduce  
21 payments for services or equipment under sub. (11) by the amount of the specified  
22 or allowable copayment or coinsurance. A provider may deny care or services or  
23 equipment under sub. (11) if the recipient does not pay the specified or allowable  
24 copayment or coinsurance. If a provider provides care or services or equipment

1 under sub. (11) to a recipient who is unable to share costs as specified in sub. (11),  
2 the recipient is not relieved of liability for those costs.

3 **(12) RULES; NOTICE OF EFFECTIVE DATE.** (a) 1. The department may promulgate  
4 any rules necessary for and consistent with its administrative responsibilities under  
5 this section, including additional eligibility criteria.

6 2. The department may promulgate emergency rules under s. 227.24 for the  
7 administration of this section for the period before the effective date of any  
8 permanent rules promulgated under subd. 1., but not to exceed the period authorized  
9 under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the  
10 department is not required to provide evidence that promulgating a rule under this  
11 subdivision as an emergency rule is necessary for the preservation of the public  
12 peace, health, safety, or welfare and is not required to provide a finding of emergency  
13 for a rule promulgated under this subdivision.

14 (b) If the amendments to the state plan submitted under sub. (2) are approved  
15 and a waiver that is consistent with all of the provisions of this section is granted and  
16 in effect, the department shall publish a notice in the Wisconsin Administrative  
17 Register that states the date on which BadgerCare Plus is implemented.

18 **SECTION 56.** 49.473 (2) (a) of the statutes is amended to read:

19 49.473 (2) (a) The woman is not eligible for medical assistance under ss. 49.46  
20 (1) and (1m), 49.465, 49.468, 49.47, 49.471, and 49.472, and is not eligible for health  
21 care coverage under s. 49.665.

22 **SECTION 57.** 49.49 (3m) (a) (intro.) of the statutes is amended to read:

23 49.49 (3m) (a) (intro.) No provider may knowingly impose upon a recipient  
24 charges in addition to payments received for services under ss. 49.45 to 49.47 49.471

1 or knowingly impose direct charges upon a recipient in lieu of obtaining payment  
2 under ss. 49.45 to 49.47 49.471 except under the following conditions:

3 **SECTION 58.** 49.49 (3m) (a) 1. of the statutes is amended to read:

4 49.49 (3m) (a) 1. Benefits or services are not provided under s. 49.46 (2) or  
5 49.471 (11) and the recipient is advised of this fact prior to receiving the service.

6 **SECTION 59.** 49.49 (3m) (a) 2. of the statutes, as affected by 2007 Wisconsin Act  
7 .... (this act), is amended to read:

8 49.49 (3m) (a) 2. If an applicant is determined to be eligible retroactively under  
9 s. 49.46 (1) (b) ~~or~~, 49.47 (4) (d), or 49.471 and a provider bills the applicant directly  
10 for services and benefits rendered during the retroactive period, the provider shall,  
11 upon notification of the applicant's retroactive eligibility, submit claims for payment  
12 under s. 49.45 for covered services or benefits rendered to the recipient during the  
13 retroactive period. Upon receipt of payment under s. 49.45, the provider shall  
14 reimburse the recipient or other person who has made prior payment to the provider  
15 for services provided to the recipient during the retroactive eligibility period, by the  
16 amount of the prior payment made.

\*\*\*\*NOTE: This is reconciled s. 49.49 (3m) (a) 2. This SECTION has been affected by  
LRB-0250 and LRB-0905.

17 **SECTION 60.** 49.49 (3m) (a) 3. of the statutes is amended to read:

18 49.49 (3m) (a) 3. Benefits or services for which recipient copayment,  
19 coinsurance, or deductible is required under s. 49.45 (18), not to exceed maximum  
20 amounts allowable under 42 CFR 447.53 to 447.58, or for which recipient copayment  
21 or coinsurance is required under s. 49.471 (11).

22 **SECTION 61.** 49.497 (title) of the statutes is amended to read:

1           **49.497 (title) Recovery of incorrect Medical Assistance or Badger Care**  
2 **payments and of unpaid employer penalties.**

3           **SECTION 62.** 49.497 (1r) of the statutes is created to read:

4           49.497 (1r) (a) The department may recover any penalty assessment not paid  
5 under s. 49.471 (9) (c) from the employer against which the penalty was assessed.  
6 If, after notice that payment of a penalty is overdue, the employer who is liable fails  
7 to pay the penalty amount, or enter into or comply with an agreement for payment,  
8 the department may bring an action to enforce the liability or may issue an order to  
9 compel payment of the liability. Any person aggrieved by an order issued by the  
10 department under this paragraph may appeal the order as a contested case under  
11 ch. 227 by filing with the department a request for a hearing within 30 days after the  
12 date of the order. The only issue at the hearing shall be the determination by the  
13 department that the person has not paid the penalty or entered into, or complied  
14 with, an agreement for payment.

15           (b) If any employer named in an order to compel payment issued under par. (a)  
16 fails to pay the department any amount due under the terms of the order and no  
17 contested case to review the order is pending and the time for filing for a contested  
18 case review has expired, the department may present a certified copy of the order to  
19 the circuit court for any county. The sworn statement of the secretary shall be  
20 evidence of the failure to pay the penalty. The circuit court shall, without notice,  
21 render judgment in accordance with the order. A judgment rendered under this  
22 paragraph shall have the same effect and shall be entered in the judgment and lien  
23 docket and may be enforced in the same manner as if the judgment had been  
24 rendered in an action tried and determined by the circuit court.

1 (c) The recovery procedure under this subsection is in addition to any other  
2 recovery procedure authorized by law.

3 **SECTION 63.** 49.497 (4) of the statutes is amended to read:

4 49.497 (4) The department may appear for the state in any and all collection  
5 matters under this section, and may commence suit in the name of the department  
6 to recover an incorrect payment from the recipient to whom or on whose behalf it was  
7 made or to recover an unpaid penalty from the employer against which the penalty  
8 was assessed.

9 **SECTION 64.** 49.665 (4) (ap) 2. of the statutes is repealed.

10 **SECTION 65.** 49.665 (7) (a) 1. of the statutes is amended to read:

11 49.665 (7) (a) 1. Notwithstanding sub. (4) (a) 3m. and ~~(ap) 2.~~, the department  
12 shall mail information verification forms to the employers of the individuals required  
13 to provide the verifications under sub. (4) (a) 3m. and ~~(ap) 2.~~ to obtain the information  
14 specified.

15 **SECTION 66.** 49.688 (5) (a) (intro.) of the statutes is amended to read:

16 49.688 (5) (a) (intro.) Beginning on September 1, 2002, except as provided in  
17 sub. (7) (b), as a condition of participation by a pharmacy or pharmacist in the  
18 program under s. 49.45, 49.46, ~~or 49.47,~~ or 49.471, the pharmacy or pharmacist may  
19 not charge a person who presents a valid prescription order and a card indicating  
20 that he or she meets eligibility requirements under sub. (2) an amount for a  
21 prescription drug under the order that exceeds the following:

22 **SECTION 67.** 49.785 (1) (intro.) of the statutes is amended to read:

23 49.785 (1) (intro.) Except as provided in sub. (1m), if any recipient of benefits  
24 under ~~s. 49.148, 49.46 or 49.77, or under 42 USC 1381 to 1385 in effect on~~  
25 May 8, 1980, specified in sub. (1c) dies and the estate of the deceased recipient is

1 insufficient to pay the funeral, burial, and cemetery expenses of the deceased  
2 recipient, the county or applicable tribal governing body or organization responsible  
3 for burial of the recipient shall pay, to the person designated by the county  
4 department under s. 46.215, 46.22, or 46.23 or applicable tribal governing body or  
5 organization responsible for the burial of the recipient, all of the following:

6 **SECTION 68.** 49.785 (1c) of the statutes is created to read:

7 **49.785 (1c)** All of the following are eligible recipients under this section:

8 (a) A recipient of benefits under s. 49.148, 49.46, or 49.77, or under 42 USC 1381  
9 to 1385 in effect on May 8, 1980.

10 (b) A recipient of benefits under s. 49.471 who is any of the following:

11 1. A pregnant woman or a child under 6 years of age with a family income not  
12 exceeding 185 percent of the poverty line at the time of death.

13 2. A child at least 6 years of age but less than 19 years of age with a family  
14 income not exceeding 100 percent of the poverty line at the time of death.

15 3. A parent or caretaker relative with a family income not exceeding 50 percent  
16 of the poverty line at the time of death.

17 **SECTION 69.** 49.81 (4) of the statutes is amended to read:

18 **49.81 (4)** The right to a speedy determination of the recipient's status or  
19 eligibility for public assistance, to notice of any proposed change in such status or  
20 eligibility, and, in the case of assistance granted under s. 49.19, 49.46, 49.468 or  
21 49.47, or 49.471, to a speedy appeals process for resolving contested determinations.

22 **SECTION 70.** 49.82 (2) (b) 1. of the statutes, as created by 2007 Wisconsin Act  
23 .... (this act), is amended to read:

24 **49.82 (2) (b) 1.** A child who is eligible for medical assistance under s. 49.46 or,  
25 49.47, or 49.471 because of 42 USC 1396a (e) (4).



\*\*\*NOTE: This is reconciled s. 49.82 (2) (b) 1. This SECTION has been affected by drafts with the following LRB numbers: LRB-0905 and LRB-1311.

1 SECTION 71. 49.82 (2) (b) 2. of the statutes, as created by 2007 Wisconsin Act  
2 ... (this act), is amended to read:

3 49.82 (2) (b) 2. An unborn child who is eligible for coverage under s. 49.471 or  
4 the Badger Care health care program under s. 49.665 (4) (ap).

\*\*\*NOTE: This is reconciled s. 49.82 (2) (b) 2. This SECTION has been affected by drafts with the following LRB numbers: LRB-0905 and LRB-1311.

5 SECTION 72. 49.89 (7) (b) of the statutes is amended to read:  
6 49.89 (7) (b) The incentive payment shall be an amount equal to 15% of the  
7 amount recovered because of benefits paid under s. 49.46, 49.465, 49.468 or, 49.47,  
8 or 49.471. The incentive payment shall be taken from the federal share of the sum  
9 recovered as provided under 42 CFR 433.153 and 433.154.

10 SECTION 73. 51.038 of the statutes is amended to read:  
11 **51.038 Outpatient mental health clinic certification.** Except as provided  
12 in s. 51.032, if a facility that provides mental health services on an outpatient basis  
13 holds current accreditation from the council on accreditation of services for families  
14 and children, the department may accept evidence of this accreditation as equivalent  
15 to the standards established by the department, for the purpose of certifying the  
16 facility for the receipt of funds for services provided as a benefit to a medical  
17 assistance recipient under s. 49.46 (2) (b) 6. f. or 49.471 (11) (k), a community aids  
18 funding recipient under s. 51.423 (2) or as mandated coverage under s. 632.89.

19 SECTION 74. 51.04 of the statutes is amended to read:  
20 **51.04 Treatment facility certification.** Except as provided in s. 51.032, any  
21 treatment facility may apply to the department for certification of the facility for the  
22 receipt of funds for services provided as a benefit to a medical assistance recipient

Insert 49-5

1 under s. 49.46 (2) (b) 6. f. or 49.471 (11) (k) or to a community aids funding recipient  
2 under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The  
3 department shall annually charge a fee for each certification.

4 **SECTION 75.** 59.53 (5) (a) of the statutes, as affected by 2007 Wisconsin Act ...  
5 (this act), is amended to read:

6 59.53 (5) (a) The board shall contract with the department of children and  
7 families to implement and administer the child and spousal support and  
8 establishment of paternity and the medical support liability programs provided for  
9 by Title IV of the federal social security act. The board may designate by board  
10 resolution any office, officer, board, department or agency, except the clerk of circuit  
11 court, as the county child support agency. The board or county child support agency  
12 shall implement and administer the programs in accordance with the contract with  
13 the department of children and families. The attorneys responsible for support  
14 enforcement under sub. (6) (a), circuit court commissioners and all other county  
15 officials shall cooperate with the county and the department of children and families  
16 as necessary to provide the services required under the programs. The county shall  
17 charge the fee established by the department of children and families under s. 49.22  
18 for services provided under this paragraph to persons not receiving benefits under  
19 s. 49.148 or 49.155 or assistance under s. 48.645, 49.19, ~~or 49.46, 49.465, 49.47,~~  
20 49.471, or 49.472.

\*\*\*\*NOTE: This is reconciled s. 59.53 (5) (a). This SECTION has been affected by drafts  
with the following LRB numbers: LRB-0905 and LRB-1261.

21 **SECTION 76.** 66.0137 (3) of the statutes is amended to read:

22 66.0137 (3) HEALTH INSURANCE FOR UNEMPLOYED PERSONS. Any city, village,  
23 town, or county may purchase health or dental insurance for unemployed persons

1 residing in the city, village, town, or county who are not eligible for medical  
2 assistance under s. 49.46, 49.468 ~~or~~, 49.47, or 49.471 (4) (a) or (b).

3 **SECTION 77.** 227.01 (13) (um) of the statutes is amended to read:

4 227.01 (13) (um) Lists over-the-counter drugs covered by ~~medical assistance~~  
5 Medical Assistance under s. 49.46 (2) (b) 6. i. or 49.471 (11) (a).

6 **SECTION 78.** 253.10 (3) (d) 1. of the statutes is amended to read:

7 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform  
8 a woman about public and private agencies, including adoption agencies, and  
9 services that are available to provide information on family planning, as defined in  
10 s. 253.07 (1) (a), including natural family planning information, to provide  
11 ultrasound imaging services, to assist her if she has received a diagnosis that her  
12 unborn child has a disability or if her pregnancy is the result of sexual assault or  
13 incest and to assist her through pregnancy, upon childbirth and while the child is  
14 dependent. The materials shall include a comprehensive list of the agencies  
15 available, a description of the services that they offer and a description of the manner  
16 in which they may be contacted, including telephone numbers and addresses, or, at  
17 the option of the department, the materials shall include a toll-free, 24-hour  
18 telephone number that may be called to obtain an oral listing of available agencies  
19 and services in the locality of the caller and a description of the services that the  
20 agencies offer and the manner in which they may be contacted. The materials shall  
21 provide information on the availability of governmentally funded programs that  
22 serve pregnant women and children. Services identified for the woman shall include  
23 medical assistance for pregnant women and children under s. 49.47 (4) (am) and  
24 49.471, the availability of family or medical leave under s. 103.10, the Wisconsin  
25 works program under ss. 49.141 to 49.161, child care services, child support laws and

1 programs and the credit for expenses for household and dependent care and services  
2 necessary for gainful employment under section 21 of the internal revenue code. The  
3 materials shall state that it is unlawful to perform an abortion for which consent has  
4 been coerced, that any physician who performs or induces an abortion without  
5 obtaining the woman's voluntary and informed consent is liable to her for damages  
6 in a civil action and is subject to a civil penalty, that the father of a child is liable for  
7 assistance in the support of the child, even in instances in which the father has  
8 offered to pay for an abortion, and that adoptive parents may pay the costs of  
9 prenatal care, childbirth and neonatal care. The materials shall include  
10 information, for a woman whose pregnancy is the result of sexual assault or incest,  
11 on legal protections available to the woman and her child if she wishes to oppose  
12 establishment of paternity or to terminate the father's parental rights. The  
13 materials shall state that fetal ultrasound imaging and auscultation of fetal heart  
14 tone services are obtainable by pregnant women who wish to use them and shall  
15 describe the services.

16 **SECTION 79.** 302.38 (3) of the statutes is amended to read:

17 302.38 (3) The maximum amount that a governmental unit may pay for the  
18 costs of medical or hospital care under this section is limited for that care to the  
19 amount payable by medical assistance under subch. IV of ch. 49, ~~except s. excluding~~  
20 ss. 49.468 and 49.471 (11), for care for which a medical assistance rate exists. No  
21 provider of medical or hospital care may bill a prisoner under sub. (1) for the cost of  
22 care exceeding the amount paid under this subsection by the governmental unit. If  
23 no medical assistance rate exists for the care provided, there is no limitation under  
24 this subsection.

25 **SECTION 80.** 302.386 (1) of the statutes is amended to read:

1           302.386 (1) Except as provided in sub. (5), liability for medical and dental  
2 services furnished to residents housed in prisons identified in s. 302.01, in a juvenile  
3 correctional facility, or in a secured residential care center for children and youth, or  
4 to forensic patients in state institutions for those services that are not provided by  
5 employees of the department shall be limited to the amounts payable under ss. 49.43  
6 to 49.47, ~~except s. 49.471, excluding ss. 49.468 and 49.471 (11)~~, for similar services.  
7 The department may waive any such limit if it determines that needed services  
8 cannot be obtained for the applicable amount. No provider of services may bill the  
9 resident or patient for the cost of services exceeding the amount of the liability under  
10 this subsection.

11           **SECTION 81.** 449.17 (8) of the statutes is amended to read:

12           449.17 (8) REIMBURSEMENT PROHIBITED. No optometrist may be reimbursed  
13 under s. 49.46 (2) (a) 3. ~~or 49.471 (11)~~ for any increase in charges or separate charge  
14 which is attributable to the use of topical ocular diagnostic pharmaceutical agents.

15           **SECTION 82.** 632.746 (7m) (b) 1. of the statutes is amended to read:

16           632.746 (7m) (b) 1. The employee or dependent is eligible for benefits under the  
17 Medical Assistance program under s. ~~49.471 or~~ 49.472 or for coverage under the  
18 Badger Care health care program under s. 49.665.

19           **SECTION 83.** 814.61 (13) of the statutes is amended to read:

20           814.61 (13) SUPPORT OR MAINTENANCE PETITION. For the cost of court services,  
21 whenever a person not receiving benefits under s. 49.148 or 49.155 or aid under s.  
22 49.19, 49.46, 49.465, 49.468 ~~or~~, 49.47, ~~or 49.471~~ files a petition requesting child  
23 support, maintenance or family support payments, \$10 in addition to any other fee  
24 required under this section. This subsection does not apply to a petition filed by the  
25 state or its delegate.

1 SECTION 84. 885.01 (5) of the statutes, as affected by 2007 Wisconsin Act ...  
2 (this act), is amended to read:

3 885.01 (5) By the department of children and families or a county child support  
4 agency under s. 59.53 (5) in the administration of ss. 49.145, 49.19, 49.22, 49.46 and,  
5 49.47, and 49.471 and programs carrying out the purposes of 7 USC 2011 to 2029.

\*\*\*\*NOTE: This is reconciled s. 885.01 (5). This SECTION has been affected by drafts  
with the following LRB numbers: LRB-0905 and LRB-1261.

6 SECTION 9421. Effective dates; Health and Family Services.

7 (1) BADGERCARE PLUS. The treatment of sections 20.435 (4) (b) (by SECTION 1),  
8 (bm) (by SECTION 2), (bn) (by SECTION 3), (jw), (jz), and (o), 45.51 (13) (intro.), (a), and  
9 (b), 46.206 (1) (bm), 46.22 (1) (b) 1. d., 46.27 (6u) (c) 1. a. and (d) (intro.) and (7) (am)  
10 and (b), 46.275 (1m) (a), 46.277 (1m) (a), 46.278 (1m) (b), 46.283 (3) (k), 46.485 (3g),  
11 48.57 (3m) (e) and (3n) (e), 49.22 (2m) (a), (b), and (c) 3. and (6) (by SECTION 26), 49.45  
12 (2) (a) 1. and 3. and (b) 3. and 7. (intro.), (3) (b) 1. and 2., (dm), (f) 2., (L) 2., and (m),  
13 (6c) (d) 1. and 2., (8) (a) 4., (9), (18) (ac) and (am), (24g), (29), (35), (42m) (a), (48), (49m)  
14 (c) 1., and (53), 49.468 (1) (b) and (c), (1m) (a), and (2) (a), 49.473 (2) (a), 49.49 (3m)  
15 (a) (intro.), 1., 2. (by SECTION 59), and 3., 49.497 (title), (1r), and (4), 49.665 (4) (ap)  
16 2. and (7) (a) 1., 49.688 (5) (a) (intro.), 49.785 (1) (intro.) and (1c), 49.81 (4), 49.82 (2)  
17 (b) 1. (by SECTION 70) and 2. (by SECTION 71), 49.89 (7) (b), 51.038, 51.04, 59.53 (5) (a)  
18 (by SECTION 75), 66.0137 (3), 227.01 (13) (um), 253.10 (3) (d) 1., 302.38 (3), 302.386  
19 (1), 449.17 (8), 632.746 (7m) (b) 1., 814.61 (13), and 885.01 (5) (by SECTION 84) of the  
20 statutes takes effect on the date stated in the Wisconsin Administrative Register by  
21 the department of health and family services under section 49.471 (12) (b) of the  
22 statutes, as created by this act, as the implementation date for BadgerCare Plus.

→ and the amendment of sections 49.45(18m)(a)1.  
and 49.84(b)(c) 1. d. and e. of the statutes

\*\*\*\*NOTE: This is reconciled SECTION 9421 (1). This SECTION has been affected by drafts with the following LRB numbers: -0248, -0250, -0892, -0905, -1261, -1311, -1313, -1333, and -1521.

1

(END)

-0263, -0265,  
-0268,

*X - note*

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0905/3ins  
PJK:jld:nwn

INSERT 19-19

1           **SECTION 1.** 49.45 (18m) (a) 1. of the statutes, ✓ as created by 2007 Wisconsin Act  
2 .... (this act), is amended to read:

3           49.45 (18m) (a) 1. Medical assistance services under s. 49.46, 49.47, ✓ 49.471, or  
4 49.472.

\*\*\*\*NOTE: This is reconciled s. 49.45 (18m) (a) 1. ✓ This SECTION has been affected  
by drafts with the following LRB numbers: -0268 and -0905.

(END OF INSERT 19-19)

INSERT 33-7

5           (k) ✓ For an individual who is eligible for medical assistance under this ✓ section  
6 and who is eligible for coverage under Part D of Medicare ✓ under 42 USC 1395w-101  
7 et seq., benefits under sub. (11) (a) ✓ or s. 49.46 (2) (b) 6. h. ✓ do not include payment for  
8 any Part D drug, as defined in 42 CFR 423.100, regardless of whether the individual  
9 is enrolled in Part D of Medicare or whether, if the individual is enrolled, his or her  
10 Part D plan, as defined in 42 CFR 423.4, covers the Part D drug. ✓

\*\*\*\*NOTE: This is reconciled s. 49.471 (6) (k). ✓ This SECTION has been affected by  
drafts with the following LRB numbers: -0263 and -0905.

(END OF INSERT 33-7)

INSERT 49-5

11           **SECTION 2.** 49.84 (6) (c) 1. d. ✓ of the statutes, as created by 2007 Wisconsin Act  
12 .... (this act), is amended to read:

13           49.84 (6) (a) 1. d. A child who is receiving medical assistance under s. 49.46 (1)  
14 (a) 13. or, ✓ 49.47 (4) (am) 3., or 49.471 (4) (a) 2. or (b) 2. or an unborn child receiving  
15 prenatal care under s. 49.471. ✓

\*\*\*\*NOTE: This is reconciled s. 49.84 (6) (c) 1. d. ✓ This SECTION has been affected by  
drafts with the following LRB numbers: -0265 and -0905.





*Ins 49-5 cont'd*

1           **SECTION 3.** 49.84 (6) (c) 1. e. of the statutes, as created by 2007 Wisconsin Act

2           ... (this act), is amended to read:

3           49.84 **(6)** (a) 1. e. A pregnant woman who is receiving medical assistance under  
4           s. 49.465 or a child or pregnant woman who is receiving medical assistance under s.  
5           49.471 (5) (b) 1. or 2.

\*\*\*\*NOTE: This is reconciled s. 49.84 (6) (c) 1. e. This SECTION has been affected by  
drafts with the following LRB numbers: -0265 and -0905.

**(END OF INSERT 49-5)**

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

LRB-0905/3dn  
PJK:jtd:arwn

Michelle:

This version of the draft conceptually reconciles BadgerCare Plus (LRB-0905/2) with LRB-0265/3 (see the amendment of s. 49.84 (6) (c) 1. d. and e.), LRB-0268/3 (see the amendment of s. 49.45 (18m) (a) 1.), and LRB-0263/3 (see s. 49.471 (6) (k)). All of these drafts should continue to appear in the compiled bill.

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

LRB-0905/3dn  
PJK:jld:pg

February 1, 2007

Michelle:

This version of the draft conceptually reconciles BadgerCare Plus (LRB-0905/2) with LRB-0265/3 (see the amendment of s. 49.84 (6) (c) 1. d. and e.), LRB-0268/3 (see the amendment of s. 49.45 (18m) (a) 1.), and LRB-0263/3 (see s. 49.471 (6) (k)). All of these drafts should continue to appear in the compiled bill.

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