

2009 DRAFTING REQUEST

Bill

Received: 09/04/2009

Received By: pkahler

Wanted: As time permits

Companion to LRB:

For: Joe Parisi (608) 266-5342

By/Representing: Mike Murray

May Contact:

Drafter: pkahler

Subject: Public Assistance - med. assist.

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Parisi@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disregarding a spouse's income for eligibility for the MA purchase plan

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/24/2009	jdyer 09/30/2009		_____			State
/P1			jfrantze 09/30/2009	_____	sbasford 09/30/2009		State
/1	pkahler 04/05/2010	jdyer 04/05/2010	phenry 04/06/2010	_____	mbarman 04/06/2010	cduerst 04/09/2010	

FE Sent For:

at
Intro

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FE Sent For:			1/2 lph	1/2 ph			<END>

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/?	pkahler	PI 9/30 jld	Jb 9/30	MD 9/30			

FE Sent For:

<END>

Kahler, Pam

From: Murray, Mike
Sent: Wednesday, September 02, 2009 10:10 AM
To: Kahler, Pam
Subject: RE: Comments on FVO draft LRB 2716/1

Absolutely feel free to speak w/Jim about this. Thanks for checking in.

Mike

From: Kahler, Pam
Sent: Wednesday, September 02, 2009 10:03 AM
To: Murray, Mike
Subject: RE: Comments on FVO draft LRB 2716/1

Mike:

I don't need to see anything else at this time. But I would like permission to consult with Jim Jones from DHS on this if necessary. I don't know exactly how the other states went about it, but some eligibility criteria for MA require a state to get a waiver from the federal DHHS, some criteria may be implemented without a waiver, and others may not be implemented at all (no waiver permitted) unless the state picks up the whole tab without federal financial participation. Jim would know what the federal law allows. Depending on the answer to that question, you can decide how you wish to proceed with this draft. May I speak with Jim on this draft?

Pam

From: Murray, Mike
Sent: Tuesday, September 01, 2009 4:44 PM
To: Kahler, Pam
Subject: RE: Comments on FVO draft LRB 2716/1

OK,

Thanks Pam. I've attached the relevant document that I mentioned in my previous email. Basically, there is a small population of folks with disabilities that qualified for the Community Options Program before they were married and their spouse's income counted against their eligibility.

The attached paper recommends amending 2009 AB 75 to disregard the spouse's income and assets when determining eligibility for the Medicaid Purchase Plan for individuals who were previously eligible for the Community Options Program or home and community-based waivers. However, Joe would like to get something drafted that would be a stand alone bill that would do this and not amend any existing legislation. He wants to keep this focused on a very narrow subset of people at this time. I've taken a pretty close look at other states that don't count spousal income or assets against an applicant's eligibility, and I haven't seen any sort of cap that has been implemented in other states to disqualify people whose spousal income exceeds a certain amount. However, if you think that is something that would be advisable, I think Joe would be willing to consider that.

I'll only attach the one document for now to this email. I have more detailed documents that go into the issue in greater length and summarize how other states have approached the issue of spousal income, so please let me know if you'd like more info or if it's not clear what we're trying to get at with this. However, from what I can tell, it's just a matter of making a policy decision of whether you want to consider spousal income or not and I haven't seen much nuance beyond that. I'm more than happy to discuss over email or the phone.

Thanks for all of your help with this and please let me know if you need anything else.

09/02/2009

Mike

From: Kahler, Pam
Sent: Tuesday, September 01, 2009 4:05 PM
To: Murray, Mike
Subject: RE: Comments on FVO draft LRB 2716/1

Yes, I would be the drafter for that.

From: Murray, Mike
Sent: Tuesday, September 01, 2009 3:53 PM
To: Kahler, Pam
Cc: 'Tony Gibart'
Subject: FW: Comments on FVO draft LRB 2716/1

Hi Pam,

I forwarded your draft and drafter's note to Tony Gibart at the WI Coalition Against Domestic Violence who wrote the original drafting request. Tony had just a few other follow up suggestions to the draft that I've attached to this email. If you have any questions about his suggestions, you can contact Tony (who I have copied to this email). Thanks very much for your work on this draft, I really appreciate it.

On an unrelated note, Rep. Parisi would like to start working on legislation that would address the issue of spousal benefits for the Medicaid Purchase Plan Option. Would you be the appropriate LRB attorney to contact about that issue? If so, I have some documents that I would like to share with you in order to discuss some drafting options.

Thanks again,

Mike Murray
Office of Rep. Parisi

Eliminate the Marriage Penalty Medicaid Purchase Plan Option

Section 4733 of the Balanced Budget Act of 1997 (Public Law 105-33) allows states to make available a new Medicaid subprogram for individuals with disabilities whose family income is below 250% of the federal poverty level (\$25,525 in 2004 for an individual). In Wisconsin, this subprogram is called the Medicaid Purchase Plan (MAPP). MAPP was created by 1999 Wisconsin Act 9 and was implemented on March 15, 2000

In order to be eligible for MAPP, an individual must be a Wisconsin resident and at least 18 years old. They must be determined to be disabled by the DHFS Disability Determination Bureau (DDB). Participants must also be working or enrolled in a Health and Employment Counseling Program (HEC) and have countable assets under \$15,000. Countable assets include items such as cash savings, life insurance policies, and stocks and bonds, **but** do not include an individual's home or vehicle

Disallowing the spouse's income and/or assets has already been done for Medicaid buy-in programs in other states. A summary of all Medicaid Buy-In programs, prepared by NCHSD using data from the CMS Medicaid Infrastructure Grant Progress Reports shows that as of December 2007 twelve states exclude spousal income when determining eligibility for their Medicaid Buy-In. Those states are Arkansas, Arizona, Connecticut, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, Oregon, Rhode Island, and West Virginia. Of these states, seven also exclude spousal resources. Six of these states implemented their Buy-In programs between 2003 and 2006, which meant they had time to review data from states that implemented between 1997 and 2003

The Medicaid Purchase Plan does not provide an exemption of spousal income and assets for individuals who are planning to marry or who are already married.

Recommendation:

Amend assembly Bill 75 to disregard the spouse's income and assets when determining eligibility for the Medicaid Purchase Plan for individuals who were previously eligible for the Community Options Program or home and community-based waivers.

*at any time
in the past?*

Fiscal Analysis: To Be Determined. But we do know is that individuals who are married have access to their spouses private health insurance coverage, so Medicaid becomes the pair of last resort. We also know that these individuals have already worked so we know that they will also have Medicare.

Support:

The Managed Care and Employment Task Force Report July 2008 recommend eliminating consideration of the spouse's income and assets when determining eligibility for the Medicaid Purchase Plan. The Council on Physical Disabilities and Governor's Committee for People with Disabilities recommends statutory authority eliminating the

consideration of a spouse's income and assets (marriage penalty) when determining eligibility for the Medicaid Purchase Plan.

Kahler, Pam

From: Jones, James D - DHS [James.Jones@dhs.wisconsin.gov]
Sent: Wednesday, September 23, 2009 3:59 PM
To: Kahler, Pam
Subject: RE: Eligibility criteria for MAPP

Here's what the Department's position on AB 238 is:

While the Department agrees in principle to the objective of expanding health care access to additional groups of persons, there are some concerns with how AB 238 changes policy to meet this objective.

- It seems inequitable to:
 - Treat people who are medically needy and categorically needy differently.
 - Treat elderly medically needy eligibility differently than medically needy for the blind and disabled.
 - Treat Medicaid applicants and recipients differently based on marital status.
 - Treat consideration of spousal income for EBD MA differently than BadgerCare Plus and MAPP eligibility policy which also considers spousal income.
- CMS Waiver Approval: AB 238 requires DHS to ask for a federal waiver to obtain these eligibility changes.
 - CMS approves waivers which states can identify as being budget neutral. Our analysis does not deem this policy change budget neutral; therefore, we do not believe CMS would not approve the waiver.
 - CMS indicates that states are not allowed to apply 1902(r) (2) eligibility criteria differently for Medicaid applicants than they do for Medicaid recipients. DHS interprets this to mean that DHS could not implement this change unless we excluded the income and resources of spouses of applicants as well.
 - CMS generally approves waivers which demonstrate a need. Given that the policy is inconsistent with medically and categorically eligibility categories for EBD MA, EBD MA elderly determinations, MAPP, and BadgerCare Plus eligibility considerations, it may be difficult for DHS to demonstrate a need for this policy change.

Here's my answer: This would definitely require a waiver that requires Medicaid eligibility to be determined based upon the financial resources and needs of the individual applying and any individual who is legally responsible for that individual (1902(a)(17)(D) of the Social Security Act). While it can be waived under 1115(a), as we indicate in our response to 238, we'd need to treat all the individual in the coverage (EBD) the same.

From: Kahler, Pam [<mailto:Pam.Kahler@legis.wisconsin.gov>]
Sent: Tuesday, September 22, 2009 11:34 AM
To: Jones, James D - DHS
Subject: Eligibility criteria for MAPP

H, Jim:

I have a question for you, but if you want to pass it on to someone else, feel free to delegate. Similar to AB 238, I have a drafting request to disregard a spouse's income and assets when determining the other spouse's eligibility for the MA Purchase Plan (s. 49.472). Do you see any problems/issues? Would this change require a waiver or amendment to a waiver? Thanks very much!

Pam

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1999 Act 9 for 49.472

99-0266

Long-term support?

Con Op prog

46.27

eligible for ↑

and home or community-based waiver programs

42 USC 1396n(c)

or 1915(c) of the SS Act

Section 1902 (a) (10) (A) (ii) (XIII)

1902 (a) (10) (A) (ii) (XVI)



MAI
Handwritten signature

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-into
(in 9-24)

4

generat

1

AN ACT; relating to: disregarding a spouse's income and assets for purposes of eligibility for the Medical Assistance Purchase Plan.

2

Analysis by the Legislative Reference Bureau

The Medical Assistance (MA) program under current law is administered by the Department of Health Services (DHS) and provides health care or long-term care services to eligible persons. Under current law, an individual who would be eligible for MA based on eligibility for supplemental security income (SSI), but who is not eligible for SSI because he or she is employed, may pay premiums for coverage under MA if his or her family's net income is less than 250 percent of the poverty line and his or her assets do not exceed \$15,000. This program is known as the "MA Purchase Plan."

*
→

This bill requires DHS to request a waiver from the secretary of the federal department of health and human services that would allow DHS, if the waiver is granted, to disregard the income and assets of a married individual's spouse, and to treat the individual as single, when determining the individual's eligibility and continued eligibility for the MA Purchase Plan.

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

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

1 SECTION 1. 49.472 (2) of the statutes is renumbered 49.472 (2) (a).

2 SECTION 2. 49.472 (2) (b) of the statutes is created to read:

3 49.472 (2) (b) 1. Subject to subd. 2. b., notwithstanding subs. (1) (am) and (3)
4 (a) and ch. 766, when determining a married individual's eligibility or continued
5 eligibility for medical assistance under this section the department shall not
6 consider the income of the individual's spouse and shall treat the individual as if he
7 or she is unmarried for purposes of the individual's family size.

8 2. a. No later than the first day of the 4th month beginning after the effective
9 date of this subd. 2. a. [LRB inserts date], the department shall submit to the
10 federal department of health and human services an amendment to the state medical
11 assistance plan, and shall request any necessary waivers from the secretary of the
12 federal department of health and human services, to implement the determination
13 of eligibility and continued eligibility of a married individual in the manner provided
14 in subd. 1.

15 b. The department shall implement the determination of eligibility and
16 continued eligibility in the manner provided in subd. 1. only if a waiver under subd.
17 2. a. that is consistent with subd. 1. is granted and in effect.

18 SECTION 3. Initial applicability.

19 (1) The treatment of section 49.472 (2) (b) 1. of the statutes first applies to
20 eligibility and continued eligibility determinations that are made on the date that
21 a waiver under section 49.472 (2) (b) 2. a. of the statutes, as created by this act, goes
22 into effect.

23 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRB-3387/Adn

PJK:.....

JLD

According to DHS, a waiver would be necessary for implementation of this provision, and all recipients and applicants must be treated in the same way. For that reason, I have not singled out those who were previously eligible for COP or the home and community-based waiver program.

I did not exclude a spouse's assets because it does not appear, under current law, that a spouse's assets are considered. However, in practice it may be difficult to separate many assets, such as a jointly owned family car or home.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

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

LRB-3387/P1dn
PJK:jld:jf

September 30, 2009

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Murray, Mike
Sent: Monday, April 05, 2010 4:33 PM
To: Kahler, Pam
Subject: RE: MAPP Spousal Income- LRB 3387/P1

Hi Pam,

We're hoping to just get this draft introduced as drafted. We'll have to work out any potential kinks at a later time. Any chance we could get a regular draft that I could jacket? Thanks for all of your help.

Mike

From: Kahler, Pam
Sent: Friday, March 19, 2010 4:28 PM
To: Murray, Mike
Subject: RE: MAPP Spousal Income- LRB 3387/P1

Mike:

MAPP has its own eligibility requirements in s. 49.472 (3), so whether a person is categorically needy or medically needy for MA isn't really relevant. For MAPP, an individual must be gainfully employed (or in a program aimed at helping the individual achieve employment goals, see s. 49.472 (3) (g)). That might eliminate *some* people who are categorically needy. However, if the purpose of the draft is to exclude a spouse's income when determining whether a person satisfies the eligibility requirements under s. 49.472 (3), whether the person is categorically or medically needy for MA is beside the point. I'm a little confused because it seems to me that someone who is categorically needy for MA gets MA on their own merits and wouldn't need assistance under MAPP.

Pam

From: Murray, Mike
Sent: Friday, March 19, 2010 1:23 PM
To: Kahler, Pam
Subject: FW: MAPP Spousal Income- LRB 3387/P1

Hi Pam-

Joe is still hoping to get this draft finalized and introduced this session. Some of the people that we've been working on the bill with had one outstanding concern regarding the bill that I wanted to resolve before finalizing the draft. I've pasted their correspondence to me below. To be honest, I don't completely understand their concerns, but thought that you might. Do you think the issue they bring up needs to be addressed, or is it your opinion that the draft already addresses their concerns.

If you'd like me to put you in touch with one of these people directly to further discuss, please let me know.

Thanks,

Mike Murray
Office of Rep. Parisi

From: Dan Johnson [mailto:dc_johnson47@yahoo.com]
Sent: Tuesday, March 16, 2010 5:05 PM

04/05/2010

To: Michels, Molly M - DHS; Murray, Mike
Cc: Jon Baltmanis; Reiser, John R - DHS; mrid2252@aol.com
Subject: RE: MAPP Spousal Income

Mike,

We need to make sure that individuals eligible because they are "categorically needy" are included in the proposed bill by Sen. Miller and Rep. Parisi.

I'm going to ask for Mary Ridgely's help, to make sure I have this correctly stated.

I want to make sure that we don't have any problems with this applying to individuals who are in that "categorically needy" population served by the Medicaid Purchase Plan. These are individuals who need long-term support services provided by the waiver programs like Family Care and the other Medicaid Home and Community-Based Waiver Services. My question is will people in the "categorically needy" population be included in this eligibility determination when excluding a spouses income?

It's my understanding that there is no statutory reference to "categorically needy", but there is a for "medically needy". The lack of this "categorically needy" reference in the legislation passed in the biennial budget bill is what's causing some problems in implementing the provisions for portability of the independence accounts because the language in the biennial budget bill only makes it possible for those in the "medically needy" category to do this. At least that's what I think I'm being told.

The reference to "medically needy" is again referenced in Assembly Bill 238, so it appears that if passed only individuals eligible through "medically needy" would be able to benefit from the excluding of a spouses income and assets. What happens to the individual who is eligible through the "categorically needy" provisions? Do they have the same privileges? If they aren't eligible can there be an amendment to include those who are eligible through the "categorically needy" provisions?

As I stated in the opening sentence: We need to make sure that individuals eligible because they are "categorically needy" are included in the proposed bill by Sen. Miller and Rep. Parisi, so that their spouses income is excluded for purposes of determining Medicaid Purchase Plan eligibility.

Thanks for your help in getting this clarified with the drafter, or whoever can answer the questions.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3387/2

PJK:jld:*

rmisner

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Tuesday, please

X

Regen

1 AN ACT *to renumber* 49.472 (2); and *to create* 49.472 (2) (b) of the statutes;
2 **relating to:** disregarding a spouse's income for purposes of eligibility for the
3 Medical Assistance Purchase Plan.

Analysis by the Legislative Reference Bureau

Under current law, under the Medical Assistance (MA) program, which is administered by the Department of Health Services (DHS) and under which eligible persons receive health care or long-term care services, an individual who would be eligible for MA based on eligibility for supplemental security income (SSI), but who is not eligible for SSI because he or she is employed, may pay premiums for coverage under MA if his or her family's net income is less than 250 percent of the poverty line and his or her assets do not exceed \$15,000. This subprogram is known as the "MA purchase plan."

This bill requires DHS to request a waiver from the secretary of the federal Department of Health and Human Services that would allow DHS, if the waiver is granted, to disregard the income of a married individual's spouse, and to treat the individual as single, when determining the individual's eligibility and continued eligibility for the MA purchase plan.

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21 a waiver under section 49.472 (2) (b) 2. a. of the statutes, as created by this act, goes
22 into effect.

23 (END)

Duerst, Christina

From: Murray, Mike
Sent: Friday, April 09, 2010 8:48 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3387/1 Topic: Disregarding a spouse's income for eligibility for the MA purchase plan

Please Jacket LRB 09-3387/1 for the ASSEMBLY.