



## 2011 ASSEMBLY BILL 339

October 25, 2011 - Introduced by Representatives PASCH, RICHARDS, C. TAYLOR, SINICKI, STASKUNAS, HEBL, JORGENSEN, DOYLE, MILROY, BERNARD SCHABER, ZAMARRIPA, ROYS, POPE-ROBERTS, FIELDS, RINGHAND, GRIGSBY, SEIDEL, POCAN, BERCEAU and TURNER, cosponsored by Senators ERPENBACH, SHILLING, VINEHOUT, MILLER, C. LARSON, KING, LASSA, HANSEN, RISSER, S. COGGS and TAYLOR. Referred to Committee on Insurance.

1     **AN ACT** *to repeal* 49.45 (2m), 49.45 (3) (n), 49.45 (6m) (n), 49.46 (1) (n), 49.47 (5)  
2           (c) and 49.471 (13); and *to amend* 49.45 (8) (b), 49.45 (8) (c), 49.45 (8r), 49.45  
3           (8v), 49.45 (18) (ac), 49.45 (18) (ag) (intro.), 49.45 (18) (b) (intro.), 49.45 (18) (d),  
4           49.45 (23) (a), 49.45 (23) (b), 49.45 (24g) (c), 49.45 (24s) (a), 49.45 (25g) (c), 49.45  
5           (27), 49.45 (39) (b) 1., 49.46 (2) (a) (intro.), 49.46 (2) (b) (intro.), 49.465 (2)  
6           (intro.), 49.47 (4) (a) (intro.), 49.47 (6) (a) (intro.), 49.472 (3) (intro.), 49.472 (4)  
7           (b) (intro.), 49.473 (2) (intro.) and 49.473 (5) of the statutes; **relating to:**  
8           eliminating the ability for the Department of Health Services to alter Medical  
9           Assistance eligibility, provider payment methods, and other Medical  
10          Assistance procedures by policy.

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### *Analysis by the Legislative Reference Bureau*

Currently, the Department of Health Services (DHS) administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws (MA waiver programs). Current law requires DHS to study potential changes to the

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MA state plan and to waivers of federal Medicaid law for certain purposes, including increasing the cost effectiveness and efficiency of care for the MA program and MA waiver programs and improving the health status of individuals who receive benefits under the MA program or an MA waiver program. If DHS determines that revision of existing statutes or rules would be necessary to advance any of the purposes for which the study was conducted, DHS may propose a policy to do any of the following: require cost sharing from program benefit recipients up to the maximum allowed by the federal government; authorize providers to deny care or services if a program benefit recipient is unable to share costs; modify existing benefits or establish various benefit packages and offer different packages to different groups of recipients; revise provider reimbursement models for particular services; mandate that program benefit recipients enroll in managed care; restrict or eliminate presumptive eligibility; impose restrictions on providing benefits to individuals who are not citizens of the United States; set standards for establishing and verifying eligibility requirements; develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility; and reduce income levels for purposes of determining eligibility. Before implementing a policy that conflicts with a state statute, DHS must submit to the Joint Committee on Finance under the committee's passive review process the proposed amendment to the state MA plan or proposed waiver of federal Medicaid law and estimates of the projected cost savings associated with the amendment or waiver request. If the proposed state MA plan amendment or waiver request is not rejected by the committee, DHS must submit the amendment or waiver request, if necessary, to the extent necessary to implement its policy. If the federal Department of Health and Human Services does not allow the amendment or does not grant the waiver, DHS may not implement the policy.

Current law also requires DHS to request a waiver from the federal government to allow the department to implement eligibility standards, methodologies, and procedures under the state MA plan or federal Medicaid law waivers that are more restrictive than those in place on March 23, 2010. If the federal government does not approve the waiver request before December 31, 2011, DHS must reduce, on July 1, 2012, following the procedures under federal law, income levels to 133 percent of the federal poverty line for adults who are not pregnant or disabled for the purposes of determining eligibility to the extent permitted under federal law.

This bill eliminates the requirement for DHS to conduct the study. DHS is not authorized, under the bill, to create a policy that would override elements of the MA program or MA waiver programs. The bill also eliminates the requirement for DHS to request a waiver to implement more restrictive eligibility standards, methodologies, and procedures for the MA program or MA waiver programs than those in place on March 23, 2010, and also removes the requirement that DHS reduce income eligibility levels on July 1, 2012, if that waiver is not approved by the federal government.

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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.** 49.45 (2m) of the statutes, as affected by 2011 Wisconsin Acts 10  
2 and 32, is repealed.

3           **SECTION 2.** 49.45 (3) (n) of the statutes, as affected by 2011 Wisconsin Acts 10  
4 and 32, is repealed.

5           **SECTION 3.** 49.45 (6m) (n) of the statutes, as affected by 2011 Wisconsin Acts  
6 10 and 32, is repealed.

7           **SECTION 4.** 49.45 (8) (b) of the statutes, as affected by 2011 Wisconsin Act 10  
8 and 2011 Wisconsin Act 32, section 1435y, is amended to read:

9           49.45 (8) (b) ~~Unless otherwise provided by the department by a policy created~~  
10 ~~under sub. (2m) (e), reimbursement~~ Reimbursement under s. 20.435 (4) (b), (gm), (o),  
11 and (w) for home health services provided by a certified home health agency or  
12 independent nurse shall be made at the home health agency's or nurse's usual and  
13 customary fee per patient care visit, subject to a maximum allowable fee per patient  
14 care visit that is established under par. (c).

15           **SECTION 5.** 49.45 (8) (c) of the statutes, as affected by 2011 Wisconsin Act 10  
16 and 2011 Wisconsin Act 32, section 1436h, is amended to read:

17           49.45 (8) (c) The department shall establish a maximum statewide allowable  
18 fee per patient care visit, for each type of visit with respect to provider, that may be  
19 no greater than the cost per patient care visit, as determined by the department from  
20 cost reports of home health agencies, adjusted for costs related to case management,

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1 care coordination, travel, record keeping and supervision, ~~unless otherwise provided~~  
2 by the department by a policy created under sub. (2m) (e).

3 **SECTION 6.** 49.45 (8r) of the statutes, as affected by 2011 Wisconsin Act 10 and  
4 2011 Wisconsin Act 32, section 1436y, is amended to read:

5 49.45 (8r) PAYMENT FOR CERTAIN OBSTETRIC AND GYNECOLOGICAL CARE. ~~Unless~~  
6 ~~otherwise provided by the department by a policy created under sub. (2m) (e), the~~ The  
7 rate of payment for obstetric and gynecological care provided in primary care  
8 shortage areas, as defined in s. 36.60 (1) (cm), or provided to recipients of medical  
9 assistance who reside in primary care shortage areas, that is equal to 125% of the  
10 rates paid under this section to primary care physicians in primary care shortage  
11 areas, shall be paid to all certified primary care providers who provide obstetric or  
12 gynecological care to those recipients.

13 **SECTION 7.** 49.45 (8v) of the statutes, as affected by 2011 Wisconsin Act 10 and  
14 2011 Wisconsin Act 32, section 1437e, is amended to read:

15 49.45 (8v) INCENTIVE-BASED PHARMACY PAYMENT SYSTEM. The department shall  
16 establish a system of payment to pharmacies for legend and over-the-counter drugs  
17 provided to recipients of medical assistance that has financial incentives for  
18 pharmacists who perform services that result in savings to the medical assistance  
19 program. Under this system, the department shall establish a schedule of fees that  
20 is designed to ensure that any incentive payments made are equal to or less than the  
21 documented savings ~~unless otherwise provided by the department by a policy~~  
22 ~~created under sub. (2m) (e).~~ The department may discontinue the system established  
23 under this subsection if the department determines, after performance of a study,  
24 that payments to pharmacists under the system exceed the documented savings  
25 under the system.

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1           **SECTION 8.** 49.45 (18) (ac) of the statutes, as affected by 2011 Wisconsin Act 10  
2 and 2011 Wisconsin Act 32, section 1437j, is amended to read:

3           49.45 (18) (ac) Except as provided in pars. (am) to (d), and subject to par. (ag),  
4 any person eligible for medical assistance under s. 49.46, 49.468, or 49.47, or for the  
5 benefits under s. 49.46 (2) (a) and (b) under s. 49.471 shall pay up to the maximum  
6 amounts allowable under 42 CFR 447.53 to 447.58 for purchases of services provided  
7 under s. 49.46 (2). The service provider shall collect the specified or allowable  
8 copayment, coinsurance, or deductible, unless the service provider determines that  
9 the cost of collecting the copayment, coinsurance, or deductible exceeds the amount  
10 to be collected. The department shall reduce payments to each provider by the  
11 amount of the specified or allowable copayment, coinsurance, or deductible. ~~Unless~~  
12 ~~otherwise provided by the department by a policy created under sub. (2m) (e), no~~ 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 9.** 49.45 (18) (ag) (intro.) of the statutes, as affected by 2011 Wisconsin  
17 Act 10 and 2011 Wisconsin Act 32, section 1437n, is amended to read:

18           49.45 (18) (ag) (intro.) Except as provided in pars. (am), (b), and (c), and subject  
19 to par. (d), a recipient specified in par. (ac) shall pay all of the following, ~~unless~~  
20 ~~otherwise provided by the department by a policy created under sub. (2m) (e):~~

21           **SECTION 10.** 49.45 (18) (b) (intro.) of the statutes, as affected by 2011 Wisconsin  
22 Act 10 and 2011 Wisconsin Act 32, section 1437q, is amended to read:

23           49.45 (18) (b) (intro.) ~~Unless otherwise provided by the department by a policy~~  
24 ~~created under sub. (2m) (e), the~~ The following services are not subject to recipient cost  
25 sharing under this subsection:

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1           **SECTION 11.** 49.45 (18) (d) of the statutes, as affected by 2011 Wisconsin Act 10  
2 and 2011 Wisconsin Act 32, section 1437t, is amended to read:

3           49.45 **(18)** (d) No person who designates a pharmacy or pharmacist as his or  
4 her sole provider of prescription drugs and who so uses that pharmacy or pharmacist  
5 is liable under this subsection for more than \$12 per month for prescription drugs  
6 received, ~~unless otherwise provided by the department by a policy created under sub.~~  
7 ~~(2m) (e).~~

8           **SECTION 12.** 49.45 (23) (a) of the statutes, as affected by 2011 Wisconsin Act 10  
9 and 2011 Wisconsin Act 32, section 1438d, is amended to read:

10           49.45 **(23)** (a) The department shall request a waiver from the secretary of the  
11 federal department of health and human services to permit the department to  
12 conduct a demonstration project to provide health care coverage for basic primary  
13 and preventive care to adults who are under the age of 65, who have family incomes  
14 not to exceed 200 percent of the poverty line, and who are not otherwise eligible for  
15 medical assistance under this subchapter, the Badger Care health care program  
16 under s. 49.665, or Medicare under 42 USC 1395 et seq. ~~If the department creates~~  
17 ~~a policy under sub. (2m) (e) 10., this paragraph does not apply to the extent that it~~  
18 ~~conflicts with the policy.~~

19           **SECTION 13.** 49.45 (23) (b) of the statutes, as affected by 2011 Wisconsin Act 10  
20 and 2011 Wisconsin Act 32, section 1438h, is amended to read:

21           49.45 **(23)** (b) If the waiver is granted and in effect, the department may  
22 promulgate rules defining the health care benefit plan, including more specific  
23 eligibility requirements and cost-sharing requirements. ~~Unless otherwise provided~~  
24 ~~by the department by a policy created under sub. (2m) (e), cost~~ Cost sharing may  
25 include an annual enrollment fee, which may not exceed \$75 per year.

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1 Notwithstanding s. 227.24 (3), the plan details under this subsection may be  
2 promulgated as an emergency rule under s. 227.24 without a finding of emergency.  
3 If the waiver is granted and in effect, the demonstration project under this subsection  
4 shall begin on January 1, 2009, or on the effective date of the waiver, whichever is  
5 later.

6 **SECTION 14.** 49.45 (24g) (c) of the statutes, as affected by 2011 Wisconsin Act  
7 10 and 2011 Wisconsin Act 32, section 1438L, is amended to read:

8 49.45 (24g) (c) The department's proposal under par. (a) shall specify increases  
9 in reimbursement rates for providers that satisfy the conditions under par. (a) 1. or  
10 2., and shall provide for payment of a monthly per-patient care coordination fee to  
11 those providers. The department shall set the increases in reimbursement rates and  
12 the monthly per-patient care coordination fee so that together they provide  
13 sufficient incentive for providers to satisfy a condition under par. (a) 1. or 2. The  
14 proposal shall specify effective dates for the increases in reimbursement rates and  
15 the monthly per-patient care coordination fee that are no sooner than July 1, 2011.  
16 ~~If the department creates a policy under sub. (2m) (c) 4., this paragraph does not~~  
17 ~~apply to the extent that it conflicts with the policy.~~

18 **SECTION 15.** 49.45 (24s) (a) of the statutes, as created by 2011 Wisconsin Act  
19 10 and 2011 Wisconsin Act 32, section 1441b, is amended to read:

20 49.45 (24s) (a) The department shall request a waiver from the secretary of the  
21 federal department of health and human services to permit the department to  
22 provide optional services for family planning, as defined in s. 253.07 (1) (a), under  
23 medical assistance, ~~unless otherwise provided by the department by a policy created~~  
24 ~~under sub. (2m) (c) 10.~~ The department shall implement any waiver granted.

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1           **SECTION 16.** 49.45 (25g) (c) of the statutes, as affected by 2011 Wisconsin Act  
2 10 and 2011 Wisconsin Act 32, section 1441c, is amended to read:

3           49.45 **(25g)** (c) The department's proposal under par. (b) shall specify increases  
4 in reimbursement rates for providers that satisfy the conditions under par. (b), and  
5 shall provide for payment of a monthly per-patient care coordination fee to those  
6 providers. The department shall set the increases in reimbursement rates and the  
7 monthly per-patient care coordination fee so that together they provide sufficient  
8 incentive for providers to satisfy a condition under par. (b) 1. or 2. The proposal shall  
9 specify effective dates for the increases in reimbursement rates and the monthly  
10 per-patient care coordination fee that are no sooner than January 1, 2011. The  
11 increases in reimbursement rates and monthly per-patient care coordination fees  
12 that are not provided by the federal government shall be paid from the appropriation  
13 under s. 20.435 (1) (am). ~~If the department creates a policy under sub. (2m) (c) 4.,~~  
14 ~~this paragraph does not apply to the extent it conflicts with the policy.~~

15           **SECTION 17.** 49.45 (27) of the statutes, as affected by 2011 Wisconsin Act 10 and  
16 2011 Wisconsin Act 32, section 1441f, is amended to read:

17           49.45 **(27)** ELIGIBILITY OF ALIENS. A person who is not a U.S. citizen or an alien  
18 lawfully admitted for permanent residence or otherwise permanently residing in the  
19 United States under color of law may not receive medical assistance benefits except  
20 as provided under 8 USC 1255a (h) (3) or 42 USC 1396b (v), ~~unless otherwise~~  
21 ~~provided by the department by a policy created under sub. (2m) (c).~~

22           **SECTION 18.** 49.45 (39) (b) 1. of the statutes, as affected by 2011 Wisconsin Act  
23 10 and 2011 Wisconsin Act 32, section 1442g, is amended to read:

24           49.45 **(39)** (b) 1. 'Payment for school medical services.' If a school district or a  
25 cooperative educational service agency elects to provide school medical services and



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1 meets all requirements under par. (c), the department shall reimburse the school  
2 district or the cooperative educational service agency for 60% of the federal share of  
3 allowable charges for the school medical services that it provides, ~~unless otherwise~~  
4 ~~provided by the department by a policy created under sub. (2m) (e)~~, and, as specified  
5 in subd. 2., for allowable administrative costs. If the Wisconsin Center for the Blind  
6 and Visually Impaired or the Wisconsin Educational Services Program for the Deaf  
7 and Hard of Hearing elects to provide school medical services and meets all  
8 requirements under par. (c), the department shall reimburse the department of  
9 public instruction for 60% of the federal share of allowable charges for the school  
10 medical services that the Wisconsin Center for the Blind and Visually Impaired or  
11 the Wisconsin Educational Services Program for the Deaf and Hard of Hearing  
12 provides, ~~unless otherwise provided by the department by a policy created under sub.~~  
13 ~~(2m) (e)~~, and, as specified in subd. 2., for allowable administrative costs. A school  
14 district, cooperative educational service agency, the Wisconsin Center for the Blind  
15 and Visually Impaired or the Wisconsin Educational Services Program for the Deaf  
16 and Hard of Hearing may submit, and the department shall allow, claims for common  
17 carrier transportation costs as a school medical service unless the department  
18 receives notice from the federal health care financing administration that, under a  
19 change in federal policy, the claims are not allowed. If the department receives the  
20 notice, a school district, cooperative educational service agency, the Wisconsin  
21 Center for the Blind and Visually Impaired, or the Wisconsin Educational Services  
22 Program for the Deaf and Hard of Hearing may submit, and the department shall  
23 allow, unreimbursed claims for common carrier transportation costs incurred before  
24 the date of the change in federal policy. The department shall promulgate rules  
25 establishing a methodology for making reimbursements under this paragraph. All

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1 other expenses for the school medical services provided by a school district or a  
2 cooperative educational service agency shall be paid for by the school district or the  
3 cooperative educational service agency with funds received from state or local taxes.  
4 The school district, the Wisconsin Center for the Blind and Visually Impaired, the  
5 Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the  
6 cooperative educational service agency shall comply with all requirements of the  
7 federal department of health and human services for receiving federal financial  
8 participation.

9 **SECTION 19.** 49.46 (1) (n) of the statutes, as affected by 2011 Wisconsin Acts 10  
10 and 32, is repealed.

11 **SECTION 20.** 49.46 (2) (a) (intro.) of the statutes, as affected by 2011 Wisconsin  
12 Act 10 and 2011 Wisconsin Act 32, section 1453h, is amended to read:

13 49.46 (2) (a) (intro.) Except as provided in par. (be) and ~~unless otherwise~~  
14 ~~provided by the department by a policy created under s. 49.45 (2m) (c),~~ the  
15 department shall audit and pay allowable charges to certified providers for medical  
16 assistance on behalf of recipients for the following federally mandated benefits:

17 **SECTION 21.** 49.46 (2) (b) (intro.) of the statutes, as affected by 2011 Wisconsin  
18 Act 10 and 2011 Wisconsin Act 32, section 1453k, is amended to read:

19 49.46 (2) (b) (intro.) Except as provided in pars. (be) and (dc) and ~~unless~~  
20 ~~otherwise provided by the department by a policy created under s. 49.45 (2m) (c),~~ the  
21 department shall audit and pay allowable charges to certified providers for medical  
22 assistance on behalf of recipients for the following services:

23 **SECTION 22.** 49.465 (2) (intro.) of the statutes, as affected by 2011 Wisconsin  
24 Act 10 and 2011 Wisconsin Act 32, section 1453r, is amended to read:

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1           49.465 (2) (intro.) ~~Unless otherwise provided by the department by a policy~~  
2           ~~created under s. 49.45 (2m) (e), a~~ A pregnant woman is eligible for medical assistance  
3           benefits, as provided under sub. (3), during the period beginning on the day on which  
4           a qualified provider determines, on the basis of preliminary information, that the  
5           woman's family income does not exceed the highest level for eligibility for benefits  
6           under s. 49.46 (1) or 49.47 (4) (am) or (c) 1. and ending as follows:

7           **SECTION 23.** 49.47 (4) (a) (intro.) of the statutes, as affected by 2011 Wisconsin  
8           Act 10 and 2011 Wisconsin Act 32, section 1457p, is amended to read:

9           49.47 (4) (a) (intro.) ~~Unless otherwise provided by the department by a policy~~  
10           ~~created under s. 49.45 (2m) (e), any~~ Any individual who meets the limitations on  
11           income and resources under pars. (b) to (c) and who complies with pars. (cm) and (cr)  
12           shall be eligible for medical assistance under this section if such individual is:

13           **SECTION 24.** 49.47 (5) (c) of the statutes, as affected by 2011 Wisconsin Acts 10  
14           and 32, is repealed.

15           **SECTION 25.** 49.47 (6) (a) (intro.) of the statutes, as affected by 2011 Wisconsin  
16           Act 10 and 2011 Wisconsin Act 32, section 1459n, is amended to read:

17           49.47 (6) (a) ~~Unless otherwise provided by the department by a policy created~~  
18           ~~under s. 49.45 (2m) (e), the~~ The department shall audit and pay charges to certified  
19           providers for medical assistance on behalf of the following:

20           **SECTION 26.** 49.471 (13) of the statutes, as affected by 2011 Wisconsin Acts 10  
21           and 32, is repealed.

22           **SECTION 27.** 49.472 (3) (intro.) of the statutes, as affected by 2011 Wisconsin  
23           Act 10 and 2011 Wisconsin Act 32, section 1461p, is amended to read:

24           49.472 (3) **ELIGIBILITY.** (intro.) Except as provided in sub. (6) (a) ~~and unless~~  
25           ~~otherwise provided by the department by a policy created under s. 49.45 (2m) (e), an~~

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1 individual is eligible for and shall receive medical assistance under this section if all  
2 of the following conditions are met:

3 **SECTION 28.** 49.472 (4) (b) (intro.) of the statutes, as affected by 2011 Wisconsin  
4 Act 10 and 2011 Wisconsin Act 32, section 1462g, is amended to read:

5 49.472 (4) (b) (intro.) The department may waive monthly premiums that are  
6 calculated to be below \$10 per month. ~~Unless otherwise provided by the department~~  
7 ~~by a policy created under s. 49.45 (2m) (e), the~~ The department may not assess a  
8 monthly premium for any individual whose income level, after adding the  
9 individual's earned income and unearned income, is below 150% of the poverty line.

10 **SECTION 29.** 49.473 (2) (intro.) of the statutes, as affected by 2011 Wisconsin  
11 Act 10 and 2011 Wisconsin Act 32, section 1465n, is amended to read:

12 49.473 (2) (intro.) ~~Unless otherwise provided by the department by a policy~~  
13 ~~created under s. 49.45 (2m) (e), a~~ A woman is eligible for medical assistance as  
14 provided under sub. (5) if, after applying to the department or a county department,  
15 the department or a county department determines that she meets all of the  
16 following requirements:

17 **SECTION 30.** 49.473 (5) of the statutes, as affected by 2011 Wisconsin Act 10 and  
18 2011 Wisconsin Act 32, section 1469y, is amended to read:

19 49.473 (5) The department shall audit and pay, from the appropriation  
20 accounts under s. 20.435 (4) (b), (gm), and (o), allowable charges to a provider who  
21 is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who  
22 meets the requirements under sub. (2) for all benefits and services specified under  
23 s. 49.46 (2), ~~unless otherwise provided by the department by a policy created under~~  
24 ~~s. 49.45 (2m) (e).~~

25

(END)