



2015 ASSEMBLY BILL 855

February 3, 2016 - Introduced by Representatives POPE and BARCA. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT** *to amend* 49.45 (23) (a) and 49.471 (4) (a) 4. b.; and *to create* 49.471 (1)
2 (cr), 49.471 (4g), 118.60 (10m), 119.23 (10m) and 946.94 of the statutes;
3 **relating to:** fraud in parental choice programs, Medicaid expansion, eligibility
4 for BadgerCare Plus and BadgerCare Plus Core, and providing a criminal
5 penalty.

Analysis by the Legislative Reference Bureau

This bill subjects certain acts and omissions related to a Parental Choice Program (PCP) to criminal penalties and changes the family income eligibility level to up to 133 percent of the federal poverty line (FPL) for parents and caretaker relatives under BadgerCare Plus (BC+) and for childless adults under BadgerCare Plus Core (BC+ Core).

Under the bill, intentionally making a false statement or representation in an application to participate in a PCP is a Class A misdemeanor. The bill makes concealing or failing to disclose an event with an intent to fraudulently participate in a PCP or using a payment received under a PCP for an unauthorized purpose either a Class G or Class H felony, depending on the payment a person received under the PCP. Additionally, under the bill, a statement in a written application for a PCP is considered to be an admission of the existence, correctness, or validity of the statement. This bill authorizes the Department of Justice or a district attorney to prosecute violations of criminal laws affecting a PCP, including laws affecting the health, safety, and welfare of pupils attending a private school participating in a PCP.

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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 financial resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws, including services provided through the BC+ and BC+ Core programs. Certain parents and caretaker relatives with incomes of not more than 100 percent of the FPL, before a 5 percent income disregard is applied, are eligible for BC+ benefits. Adults who are under age 65, who have family incomes that do not exceed 100 percent of the FPL, before a 5 percent income disregard is applied, and who are not otherwise eligible for MA, including BC+ (childless adults), are eligible for benefits under BC+ Core.

The federal Patient Protection and Affordable Care Act allows a state to receive an enhanced federal medical assistance percentage (FMAP) payment for providing benefits to certain individuals through a state's MA program. The bill expands the income eligibility level for parents and caretaker relatives under BC+ and for childless adults under BC+ Core. The bill requires DHS to comply with all federal requirements and to submit any amendment to the state MA plan, request for a waiver of Medicaid law, or other federal approval necessary to qualify for the highest available enhanced FMAP for parents and caretaker relatives and childless adults eligible for BC+ Core (collectively nonpregnant, nonelderly adults). If DHS does not qualify for the enhanced FMAP or if the FMAP is reduced, DHS is required to submit to the Joint Committee on Finance (JCF) a fiscal analysis comparing the cost of covering nonpregnant, nonelderly adults under the MA program at up to 133 percent of the FPL to the cost of limiting income eligibility to those adults to up to 100 percent of the FPL. DHS may reduce income eligibility levels for nonpregnant, nonelderly adults to up to 100 percent of the FPL only if JCF approves.

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

1 **SECTION 1.** 49.45 (23) (a) of the statutes is amended to read:
2 49.45 **(23)** (a) The department shall request a waiver from the secretary of the
3 federal department of health and human services to permit the department to
4 conduct a demonstration project to provide health care coverage to adults who are
5 under the age of 65, who have family incomes not to exceed ~~100~~ 133 percent of the
6 poverty line ~~before application of the 5 percent income disregard under 42 CFR~~
7 ~~435.603 (d)~~, except as provided in s. 49.471 (4g), and who are not otherwise eligible

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1 for medical assistance under this subchapter, the Badger Care health care program
2 under s. 49.665, or Medicare under 42 USC 1395 et seq.

3 **SECTION 2.** 49.471 (1) (cr) of the statutes is created to read:

4 49.471 (1) (cr) “Enhanced federal medical assistance percentage” means a
5 federal medical assistance percentage described under 42 USC 1396d (y) or (z).

6 **SECTION 3.** 49.471 (4) (a) 4. b. of the statutes is amended to read:

7 49.471 (4) (a) 4. b. ~~The Except as provided in sub. (4g), the individual’s family~~
8 ~~income does not exceed 100 133 percent of the poverty line before application of the~~
9 ~~5 percent income disregard under 42 CFR 435.603 (d).~~

10 **SECTION 4.** 49.471 (4g) of the statutes is created to read:

11 49.471 (4g) MEDICAID EXPANSION; FEDERAL MEDICAL ASSISTANCE PERCENTAGE. (a)
12 For services provided to individuals described under sub. (4) (a) 4. and s. 49.45 (23),
13 the department shall comply with all federal requirements to qualify for the highest
14 available enhanced federal medical assistance percentage. The department shall
15 submit any amendment to the state medical assistance plan, request for a waiver of
16 federal Medicaid law, or other approval required by the federal government to
17 provide services to the individuals described under sub. (4) (a) 4. and s. 49.45 (23) and
18 qualify for the highest available enhanced federal medical assistance percentage.

19 (b) If the department does not qualify for an enhanced federal medical
20 assistance percentage, or if the enhanced federal medical assistance percentage
21 obtained by the department is lower than printed in federal law as of July 1, 2013,
22 for individuals eligible under sub. (4) (a) 4. or s. 49.45 (23), the department shall
23 submit to the joint committee on finance a fiscal analysis comparing the cost to
24 maintain coverage for adults who are not pregnant and not elderly at up to 133
25 percent of the poverty line to the cost of limiting eligibility to those adults with family

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1 incomes up to 100 percent of the poverty line. The department may reduce income
2 eligibility for adults who are not pregnant and not elderly from up to 133 percent of
3 the poverty line to up to 100 percent of the poverty line only if this reduction in income
4 eligibility levels is approved by the joint committee on finance.

5 **SECTION 5.** 118.60 (10m) of the statutes is created to read:

6 118.60 **(10m)** The department of justice or the district attorney may institute,
7 manage, control, and direct, in the proper county, any prosecution for violation of
8 criminal laws affecting a parental choice program under this section, including laws
9 relating to parental choice programs under ch. 946 and laws affecting the health,
10 safety, and welfare of pupils attending private schools under parental choice
11 programs. For this purpose the department of justice shall have and exercise all
12 powers conferred upon district attorneys in such cases. The department of justice
13 or district attorney shall notify the department of public instruction of any such
14 prosecution of a person holding a license granted by the department of public
15 instruction.

16 **SECTION 6.** 119.23 (10m) of the statutes is created to read:

17 119.23 **(10m)** The department of justice or the district attorney may institute,
18 manage, control, and direct, in the proper county, any prosecution for violation of
19 criminal laws affecting a parental choice program under this section, including laws
20 relating to parental choice programs under ch. 946 and laws affecting the health,
21 safety, and welfare of pupils attending private schools under parental choice
22 programs. For this purpose the department of justice shall have and exercise all
23 powers conferred upon district attorneys in such cases. The department of justice
24 or district attorney shall notify the department of public instruction of any such

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1 prosecution of a person holding a license granted by the department of public
2 instruction.

3 **SECTION 7.** 946.94 of the statutes is created to read:

4 **946.94 Parental choice program fraud. (1)** In this section, “parental choice
5 program” means a parental choice program under s. 118.60 or 119.23.

6 **(2)** Whoever intentionally makes or causes to be made any false statement or
7 representation of material fact in any application to participate in a parental choice
8 program is guilty of a Class A misdemeanor.

9 **(3)** No person may do any of the following:

10 (a) Having knowledge of an event affecting the person’s eligibility to participate
11 in a parental choice program, conceal or fail to disclose that event with an intent to
12 fraudulently participate in a parental choice program.

13 (b) Receive a payment under a parental choice program and use the funding
14 for purposes that are not authorized under the parental choice program.

15 (c) Whoever violates par. (a) or (b) is subject to the following penalties:

16 1. If the value of the payment that is obtained as the result of the violation is
17 more than \$5,000 but does not exceed \$10,000, a Class H felony.

18 2. If the value of the payment that is obtained as the result of the violation is
19 more than \$10,000, a Class G felony.

20 **(4)** Whoever makes any statement in a written application to participate in a
21 parental choice program is considered to have made an admission as to the existence,
22 correctness, or validity of any fact stated. Such a statement is prima facie evidence
23 against the person who made it in any complaint, information, or indictment, or in
24 any action brought for enforcement of any provision of this section.

25 **SECTION 8. Fiscal changes.**

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1 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
2 to the department of health services under section 20.435 (4) (b) of the statutes, as
3 affected by the acts of 2015, the dollar amount for fiscal year 2015-16 is decreased
4 by \$102,900,000 to provide Medical Assistance to certain adults with incomes up to
5 133 percent of the federal poverty line. In the schedule under section 20.005 (3) of
6 the statutes for the appropriation to the department of health services under section
7 20.435 (4) (b) of the statutes, as affected by the acts of 2015, the dollar amount for
8 fiscal year 2016-17 is decreased by \$220,600,000 to provide Medical Assistance to
9 certain adults with incomes up to 133 percent of the federal poverty line.

SECTION 9. Initial applicability.

10
11 (1) PARENTAL CHOICE PROGRAM FRAUD. The treatment of section 946.94 of the
12 statutes first applies to acts and omissions that occur on the effective date of this
13 subsection.

14 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
15 except as follows:

16 (1) The treatment of sections 49.45 (23) (a) and 49.471 (1) (cr), (4) (a) 4. b., and
17 (4g) takes effect on January 1, 2016, or on the day after publication, whichever is
18 later.

19 (END)