



Oversight of DHS Requests to the Federal Government

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2017 Wisconsin Act 370 created a number of new requirements that the Department of Health Services (DHS) must satisfy when making requests to the federal government, described generally below.

WAIVERS, PILOTS, AND DEMONSTRATION PROJECTS

Legislative Authorization Required

DHS is prohibited from submitting any of the following requests to a federal agency, unless legislation has been enacted specifically directing submission of the request:

- **Federal waiver.** A request to a federal agency for a waiver or a renewal, modification, withdrawal, suspension, or termination of a waiver of federal law or rules.
- **Pilot program or demonstration project.** A request to a federal agency for authorization to implement a pilot program or demonstration project.¹

Oversight of Requests for New Federal Approval

DHS is subject to a process for legislative oversight if legislation enacted on or after January 1, 2011, requires DHS to make one of the above requests. The major provisions of that process include the following:

- **Plan for submitting a request.** Beginning 60 days after enactment of the legislation, DHS must submit a plan to the Joint Committee on Finance (JCF) describing its plan for submitting the request to the federal agency. The plan must also include an expected timeline for submitting the request within the next 90 days. JCF may grant up to three 90-day extensions to DHS's expected timeline.
- **JCF submission approval.** DHS must obtain JCF approval before submitting the request to the federal agency.
- **Negotiations and JCF updates.** While the request is pending, DHS must contact the federal agency at least biweekly to continue negotiations, submit monthly progress reports to JCF regarding the status of negotiations, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.
- **Submit proposed federal approval.** Before final approval by the federal agency, DHS must submit the proposed approval as negotiated to JCF. JCF may approve or disapprove the proposal, but may not modify it. If JCF disapproves, DHS must withdraw the request, or renegotiate with the federal agency and resubmit the proposed approval, as renegotiated, to JCF for approval or disapproval.
- **Approval before implementation.** DHS must obtain JCF approval before implementing approved portions of a request, and must submit to JCF an implementation plan for the approved portions beginning 60 days after the date of approval. Until an approval is fully implemented, DHS must submit monthly progress reports to JCF regarding implementation of approved portions of the request, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.

The JCF co-chairs may delegate any of the responsibilities in the bullet points above to a standing committee of appropriate subject matter jurisdiction, under terms specified by the JCF co-chairs. The JCF co-chairs determine what constitutes an approval by a standing committee.²

Expiration of Federal Approval

DHS is also required to notify JCF in writing at least nine months before an approved waiver, pilot program, or demonstration project expires, unless state law specifies that it must be suspended or terminated. If DHS intends to request substantive changes in a request for renewal, DHS must comply with the process of legislative oversight outlined in the bullet points above. If DHS intends to renew the approval without substantive changes, it must submit a proposed renewal request to JCF before submitting the renewal request to the federal agency, to be reviewed under JCF's 14-day passive review process.³

Enforcement

JCF has authority to reduce DHS's funding if it determines that DHS: (1) has not made sufficient progress in submitting a request, negotiating with a federal agency, or implementing an approved portion of a request; or (2) is not acting in accordance with the enacted legislation requiring the submission of a request. In any of those circumstances, JCF may reduce DHS's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time equivalent positions for DHS related to the program for which the request is required to be submitted.⁴

STATE PLAN AMENDMENTS AND PROVIDER PAYMENTS

DHS is also generally required to submit any of the following proposed actions to JCF for review, if the expected fiscal effect of the proposed action is \$7.5 million or more from all revenue sources over a 12-month period following the implementation date:

- Submitting a Medicaid state plan amendment to the U.S. Department of Health and Human Services.
- Implementing a change to the Medicaid reimbursement rate for a provider.
- Making a supplemental payment to a provider under the Medicaid program.

If the \$7.5 million threshold is met, the proposed action is reviewed under JCF's 14-day passive review process. DHS is not required to submit a proposal to JCF if the expected fiscal effect of the proposed action is below the \$7.5 million threshold, or if explicit expenditure authority or funding for the specific change or supplemental payment is included in enacted legislation.⁵

¹ s. 20.940(2), Stats.

² s. 20.940(3) and (5), Stats.

³ s. 20.940(4), Stats.

⁴ s. 20.940(6), Stats.

⁵ s. 49.45(2t), Stats.