



Legislative Fiscal Bureau

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January 8, 2014

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: LRB 3908 and LRB 3896: BadgerCare Plus Eligibility

LRB 3908 and LRB 3896 are identical bills that would enable the Department of Health Services (DHS) to implement an agreement reached with the U.S. Department of Health and Human Services (DHHS), Centers for Medicare and Medicaid Services (CMS) regarding eligibility changes for the state's medical assistance (MA) and BadgerCare Plus program.

BACKGROUND

2013 Wisconsin Act 20 and Act 116. 2013 Wisconsin Act 20 (the 2013-15 biennial budget act) made several changes to the income standards DHS uses to determine eligibility for MA benefits available under BadgerCare Plus, effective January 1, 2014, including: (a) eliminating the Core Plan for adults without dependent children and, instead, providing standard MA benefits to all adults without dependent children in families with income up to 100% of the federal poverty level (FPL); and (b) reducing, from 200% to 100% of the FPL the income standard for adults with dependent children.

In addition, Act 20 required DHS to use a different method of counting income for the purpose of determining program eligibility, including replacing the previous definition of "family income" (the total gross earned and unearned income received by all members of a family) and certain income disregards with a definition of "family income" that references the definition of "household income" in federal code. For MA eligibility, the federal code defines household income as the sum of the modified adjusted gross income (MAGI) of every individual in the household, minus an amount equivalent to five percentage points of the FPL for the applicable family size. Under the federal Affordable Care Act (ACA), states are required to use MAGI for program eligibility purposes to be consistent with the income eligibility standards used to determine eligibility for premium assistance tax credits available through the federal health insurance exchange.

Under Act 20, the provisions relating to the new definition of family income, including the repeal of certain income disregards and treatment of income earned through self-employment, were scheduled to take effect on January 1, 2014, and would have first applied to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination. Act 20 established the income threshold for parents, caretakers, and adults without dependent children at 100% of the FPL before the application of the 5% disregard.

2013 Wisconsin Act 116 (December 2013 Special Session Bill 1) made several changes to the Act 20 provisions. In general, these changes delayed, from January 1, 2014, to April 1, 2014, the effective dates for many of the eligibility changes enacted in Act 20, including the requirement that the state use MAGI as the basis for making eligibility determinations. Act 116 did not modify the initial applicability provision in Act 20 relating to the use of MAGI for eligibility redeterminations.

Negotiated Agreement with CMS. In a December 20, 2013, letter to the state's Medicaid Director, CMS summarized an agreement reached with DHS regarding changes in the state's BadgerCare Plus program resulting from Acts 20 and 116. A copy of this letter is attached to this memorandum. Under the agreement:

- All parents and caretaker relatives who have enrolled by January 31 and have incomes between 100% and 200% of the FPL will remain eligible through March 31, 2014, after which the eligibility standard for this group will be reduced to 100% of the FPL. Through January 31, individuals will be enrolled based on 2013 rules (non-MAGI rules). Individuals who apply after that date will receive MAGI-based eligibility determinations and the Act 20 program eligibility standards and either be enrolled in BadgerCare Plus or be referred to the Marketplace for consideration for an advance premium tax credit. For current enrollees, beginning February 17, the state will conduct redeterminations under the Act 20 eligibility levels (using MAGI). However, no current enrollees would lose their eligibility for BadgerCare Plus as a result of the application of the MAGI rules prior to April 1, 2014.

- Adults without dependent children who are not currently enrolled in the Core Plan who have income up to 100% of the FPL will be provided coverage under BadgerCare Plus, effective April 1, 2014.* Beginning February 1, 2014, these applicants' eligibility will be determined using MAGI-based rules.

- Adults without dependent children in families with incomes up to 200% of the FPL who are currently enrolled in the Core Plan may retain their eligibility through March 31, 2014.

In addition, the agreement between the agencies addresses issues relating to the transfer of cases between DHS and DHHS, applicant notification requirements, and DHS' responsibility for making MA eligibility determinations for individuals who apply for coverage through the Marketplace.

* The letter from CMS describes this income eligibility standard as 95% of the FPL, or 100% of the FPL including the standard 5% disregard. This effective eligibility standard for adults of 100% of the FPL reflects the standards enacted in Act 20, and debated by the Legislature during the 2013-15 biennial budget process.

On December 30, 2013, the DHS Secretary notified legislative leaders of the agreement that the state had reached with CMS. In that letter, Secretary Rhoades indicated that several statutory modifications would be required for DHS to implement the agreement. The bill includes these changes.

SUMMARY OF BILL

Income Eligibility Standards for Parents and Caretaker Relatives. Under current law, parents and caretaker relatives in families with income up to 200% of the FPL are eligible for BadgerCare Plus through March 31, 2014, after which parents and caretaker relatives with income greater than 100% of the FPL will no longer be eligible. DHS will use MAGI rules for new enrollees beginning April 1, 2014. For current enrollees, DHS will use MAGI rules beginning on the later of April 1, 2014, or the actual date of the redetermination of eligibility. As redeterminations are conducted once every six months, an individual who was enrolled in March, 2014, would not be subject to the new MAGI rules until September, 2014.

The bill would change, from April 1, 2014, to February 1, 2014, the effective date for the change in the income standard for parents and caretaker relatives, from 200% of the FPL to 100% of the FPL. However, the bill would require DHS to allow individuals whose family income does not exceed 200% of the FPL who apply and are eligible for benefits before February 1, 2014, and who would otherwise be eligible for BadgerCare Plus except for the income limit to continue to be eligible for benefits until April 1, 2014. Consequently, parents and caretaker relatives who apply after February 1 with MAGI-based income that exceeds 100% of the FPL would not be eligible for program benefits, but could apply for subsidized private coverage through the federal health insurance exchange.

The bill specifies that if an individual who is receiving continued eligibility, as described above, has an increase in family income such that the individual's family income exceeds 200% of the FPL on or after February 1, 2014, DHS must redetermine the individual's eligibility for MA based on the new MAGI-based income rules.

MAGI Effective Date. The bill would change, from April 1, 2014, to February 1, 2014, the effective date of the following provisions relating to the use of MAGI for the purpose of making eligibility determinations for BadgerCare Plus to conform the statutes with the agreement between DHS and CMS.

1. *Eligibility for Persons Infected with Tuberculosis.* Under current law, until April 1, 2014, any individual who is infected with tuberculosis and meets the income and resource eligibility requirements for the federal supplemental security income (SSI) program is eligible for MA coverage. Beginning April 1, an individual's income will be determined by using the new definition of "family income," which is based on MAGI.

2. *Eligibility for Minors Residing in Institutions.* Under current law, until April 1, 2014, individuals under the age of 21 who reside in an intermediate care facility, skilled nursing facility or inpatient psychiatric hospital who meet financial eligibility standards (which are not based on

MAGI) are eligible for MA coverage. Beginning April 1, "income" is determined using the new MAGI rules.

3. *Definition of A Dependent Child.* Under current law, until April 1, 2014, a parent or caretaker relative of a child who is living in the home with the parent or caretaker relative or who is temporarily absent from the home for not more than six months or, if the child has been removed from the home for more than six months, the parent or caretaker relative is working toward unifying the family by complying with a permanency plan is eligible for BadgerCare Plus if the individual's family income does not exceed 200% of the FPL and does not include self-employment income.

Beginning April 1, this eligibility category is modified to: (a) reduce, from 200% to 100% of the FPL, the income eligibility standard; (b) delete the reference to self-employment income; and (c) specify that a "dependent child" is an individual who is under the age of 18 or an individual who is age 18 and is a full-time student in secondary school or equivalent vocational or technical training if, before attaining the age of 19, the individual is reasonably expected to complete the school or training.

4. *Treatment for Self-Employed Individuals.* Under current law, until April 1, 2014, special income rules apply to individuals who have self-employment income. DHS is required to count net self-employment earnings, which is determined by subtracting from gross self-employment income all self-employment expenses that are allowed under federal and state tax law, except for depreciation. On April 1, 2014, this provision is repealed.

5. *Income Disregards and Deductions.* Under current law, until April 1, 2014, DHS is required to do the following when calculating a family's income: (a) deduct from the individual's income, up to the amount of the individual's income, any amount the individual is obligated to pay for court-ordered child or family support or maintenance; (b) disregard earnings of children under 18 years of age; (c) determine separately the family incomes of caretaker relatives and the children for whom they are caring and not legally responsible; and (d) exclude income of an individual who receives state or federal supplemental security income (SSI) benefits. On April 1, 2014, this provision is repealed.

6. *Application of MAGI.* Under current law, beginning April 1, 2014, DHS will apply federal regulations defining a household for the purpose of determining family income.

MAGI -- Initial Applicability. Under current law, the use of MAGI and the new definition of family income would first apply to redeterminations of eligibility for BadgerCare Plus enrollees on the later of April 1, 2014 or the actual date of the redetermination.

Under the bill, the use of MAGI and the modifications and repeal of previous income rules described above would first apply to initial determinations of eligibility for MA that are made on February 1, 2014, for individuals who apply after January 31, 2014, for MA coverage. For individuals who apply before February 1, 2014, these changes would first apply to redeterminations of eligibility for MA made on the later of April 1, 2014 or the actual date of the redetermination of eligibility.

Coverage under the Benchmark Plan. Under current law, beginning on April 1, certain BadgerCare Plus enrollees that currently receive health care coverage under the benchmark plan will instead receive coverage under the standard plan. These groups include children and pregnant women in families with income greater than 200% of the FPL and self-employed parents with income greater than 200% of the FPL before depreciation is subtracted. In general, coverage under the benchmark plan is less comprehensive than under the standard plan, and enrollees are subject to greater cost sharing requirements than under the standard plan.

Under the bill, individuals who are currently enrolled in these plans would begin receiving coverage under the standard plan beginning February 1, 2014.

FISCAL EFFECT

The bill would not change the amount of funding budgeted for MA benefits in the 2013-15 biennium.

The program may realize a reduction in costs due to the provision that would prohibit adults with dependent children in families with income between 100% and 200% of the FPL from enrolling after February 1 for up to two months of coverage (February and March, 2014). Act 116 assumed that approximately 72,000 parents and caretakers in families with incomes between 100% and 200% of the FPL would remain enrolled in BadgerCare Plus from December, 2013, through March, 2014. This reflects an assumption that each month an equal number of individuals would enter and leave the program. The bill would apply the new MAGI and income eligibility standards to all applications received after January 31, 2014, so that parents and caretakers in families with income between 100% and 200% of the FPL would not be able to enroll in the program after that date. As a result, individuals who leave the program would not be replaced with new enrollees. The Department indicates that approximately 1.75% of parent and caretaker enrollees leave BadgerCare Plus every month. Based on this attrition rate, approximately 1,300 fewer parents and caretakers with incomes between 100% and 200% of the FPL would be enrolled in BadgerCare Plus in February and approximately 2,500 fewer parents and caretakers would be enrolled in BadgerCare Plus in March.

These savings may be somewhat offset by additional costs of providing coverage under the standard plan to some enrollees beginning February 1, rather than on April 1, 2014.

In summary, while the agreement reached by DHS with CMS would affect MA benefit expenditures, the effects of these eligibility and coverage changes are likely to be minimal compared to current law.

However, DHS staff indicates that if the state fails to implement the MAGI-based eligibility rules by February 1, 2014, pursuant to its agreement with CMS, the costs of services provided to the affected BadgerCare adult populations after that date would not be eligible for federal cost sharing until the state implements the MAGI-based income rules.

Prepared by: Charles Morgan and Grant Cummings
Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-01-16
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December 20, 2013

Mr. Brett Davis
Medicaid Director
Wisconsin Department of Health Services
1 West Wilson Street, Room 350
PO Box 309
Madison, WI 53701-0309

Dear Brett:

I am writing to confirm our agreement regarding Wisconsin's plans for effectuating the transition of the BadgerCare and BadgerCare Plus Core Plan section 1115 demonstrations in light of the changes to the Medicaid program resulting from the Affordable Care Act. This agreement reflects a series of discussions over the past several months, including the exchange of written documents outlining the state's proposed mitigation strategies for transitioning the source of health coverage for 77,500 Wisconsin residents from Medicaid to the new health insurance Marketplace.

Eligibility and Waiver Authority

The state has proposed to delay the expiration date for two Wisconsin section 1115 demonstrations – BadgerCare and BadgerCare Plus – from December 31, 2013 until March 31, 2014 for parents and caretaker relatives and adults without dependent children.

The temporary extension of these demonstrations allows Wisconsin to continue to cover childless adults currently enrolled in the program up to 200% FPL through March 31, 2014; and to continue to cover parents and caretaker adults consistent with authorities currently provided under the waivers.

The state has indicated that it will not scale back eligibility levels as proposed, from 200 percent of the federal poverty level (FPL) to 100 percent of the FPL for adults without children as well as parents and caretaker relatives on December 31st, instead putting into place a temporary extension of coverage through the demonstrations and current state plan authority. Based on our agreement, the coverage levels and effective dates for the following populations will be as follows:

- **Parents and Caretaker Relatives.** Existing beneficiaries will remain eligible up to 200% of the FPL through March 31, 2014, at which point the Medicaid eligibility level will reduce to

100% of the FPL. New applicants will be enrolled based on 2013 (non-MAGI) rules until February 1st, at which point MAGI-based rules will be applied, along with the reduction in eligibility. Individuals who apply on or after February 1st will receive a MAGI-based eligibility determination and either be enrolled in Medicaid or be sent to the Marketplace via an account transfer for consideration for an advance premium tax credit (APTC). CMS will work with Wisconsin to provide the necessary 1115 waiver extensions and Medicaid state plan authorities.

The accounts for the parents/caretaker relatives who have applied at the FFM since October 1st, but have incomes up to 95% of the FPL (effectively 100% of the FPL including the 5% disregard), will be transferred to the state in the very near future. Wisconsin will promptly contact these individuals upon receipt of the accounts to inform them that their coverage will begin on January 1, 2014.

Currently enrolled parents/caretakers will receive a form by mail from the state within the next few weeks asking them to provide information needed to complete a MAGI-based redetermination of eligibility before having their accounts either retained in Medicaid or transferred to the FFM. Beginning on February 17th the state will conduct redeterminations under the new eligibility levels and initiate account transfers to the Marketplace for consideration for APTC eligibility for individuals determined to have income above 100% of the FPL.

- **Adults without dependent children.** Pursuant to Wisconsin's direction to the FFM, individuals who are newly applying for coverage through the Marketplace are being screened and determined eligible for Medicaid if their income is up to 95% of the FPL (effectively 100% of the FPL including the 5% disregard). If they have income above 100% of the FPL, these individuals have the opportunity to enroll in coverage in the Marketplace and receive an APTC to subsidize their premium costs. The accounts for the individuals who have applied at the FFM since October 1, but have incomes below 100% of the FPL, will be transferred to the state in the very near future. Wisconsin will promptly contact these individuals upon receipt of the accounts to inform them that their coverage will begin on April 1, 2014.

Adults without dependent children who apply for coverage in Wisconsin will receive a MAGI-based eligibility determination once the MAGI-based rules are in place in February 2014. New applicants whose income is up to 95% of the FPL (effectively 100% of the FPL including the 5% disregard) will be informed that their eligibility for BadgerCare coverage will take effect on April 1, 2014. Individuals whose income is over 100% of the FPL will have their accounts promptly transferred to the Marketplace for consideration for APTC eligibility.

Adults without dependent children with incomes up to 200% of the FPL who are currently enrolled in the BadgerCare Plus Core Plan will continue to be eligible to receive these benefits through March 31, 2014.

Wisconsin residents with incomes above 100% of the FPL who have applied at the FFM during the fall of 2013 for coverage effective January 1st, 2014 will remain in Marketplace coverage.

Transitioning Populations and Implementation of MAGI-based Eligibility Rules

The state has adjusted its mitigation planning in order to implement MAGI-based eligibility rules on February 3, 2014 for new parent/family applicants; with full implementation of MAGI rules on February 17th to conduct redeterminations and account transfers for transitioning populations and for processing of all new applicants.

In order to minimize the impact of the delay in implementing MAGI rules, Wisconsin will send a letter and questionnaire to existing enrollees asking them to fill in information about their tax filing status and other information needed to complete a MAGI-based redetermination before the state transfers the accounts to the FFM. This document will be referred to as the Verification Check List (VCL). The individuals who return the information and whose incomes are above the reduced eligibility levels that Wisconsin is adopting will have their MAGI-based eligibility information transferred to the FFM beginning on February 17th.

CMS will continue to work with the state to establish acceptable mechanisms for tracking the individuals who do and do not successfully make the transition to coverage through the Marketplace, including the strategies discussed below.

Communication to Applicants

Because the FFM, at Wisconsin's instruction, is currently determining Medicaid eligibility for those Wisconsin applicants with incomes below up to 95% of the FPL (effectively 100% of the FPL including the 5% disregard), messaging is needed to explain the delay in coverage until April 1, 2014 for adults without dependent children. It is our understanding (as noted above) that the state will enroll eligible parents/caretaker relatives promptly upon receipt of the account transfers from the FFM to effectuate January 1, 2014 coverage. The state can also conduct post-eligibility checks and, with proper notice and appeal rights, disenroll beneficiaries based on those results and transfer their cases back to the FFM for action. It is important to note that individuals applying at the FFM have already received a notice indicating that they are Medicaid eligible and that their coverage will take effect on January 1st.

The state will use the information provided in the enhanced weekly account transfer "flat files" and the formal Account Transfer files to develop telephone and written messages to families informing them of their eligibility determination and coverage start date. As part of the calls, beneficiaries will be asked whether they have completed an application at the FFM, enrolled in a QHP, and paid the initial premium, and these outcomes will be recorded and reported. These messages need to go out as soon as possible.

FFM Programming for Wisconsin


As noted above, as part of its mitigation strategy, Wisconsin agreed to delegate the authority for the FFM to make Medicaid eligibility determinations for individuals who apply through the Marketplace.

The FFM has been making those determinations for applicants with incomes below 100% of the FPL and will be transferring those accounts to the state shortly. As described above, Wisconsin will act on those determinations and enroll individuals for the appropriate coverage effective date depending on the eligibility group.

Wisconsin has indicated interest in changing the delegation of authority to permit the FFM to make assessments, rather than determinations, of eligibility beginning on January 1, 2014. CMS will approve that request provided the other elements of this agreement, in particular the execution of MAGI rules in February 2014, are in place. In addition, the enhanced maintenance and operations funding will become available in February, when all of the critical success factors have been met.

I hope this information is helpful in confirming our mutual understanding of how Wisconsin will proceed with implementation of the Medicaid eligibility changes included in the Affordable Care Act. Please do not hesitate to contact me with any questions or concerns and we look forward to your written confirmation of this agreement.

Sincerely,



Eliot Fishman
Director
Children and Adults Health Programs Group

Cc: Cindy Mann, Director, CMCS
Jennifer Ryan, Director, Intergovernmental and External Affairs Group, CMCS
Verlon Johnson, ARA for Medicaid, Chicago Regional Office