



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #368

"Family Planning Only" MA Optional Eligibility Group (DHS -- Medical Assistance -- Services)

[LFB 2011-13 Budget Summary: Page 223, #12]

CURRENT LAW

The 2009-11 biennial budget (2009 Act 28) authorized the Department of Health Services (DHS) to request an amendment to the state's then-existing family planning waiver program to include males between the ages of 15 and 44 whose family income did not exceed 200% of the federal poverty level (FPL). At the time, the state's family planning waiver program only covered women (not males) between the ages of 15 and 44 with family income not greater than 200% of the FPL.

The Department's request to expand the then-existing family planning waiver program to include males was granted by the federal Centers for Medicare and Medicaid Services (CMS), and DHS began providing family planning services to males under the amended waiver on May 1, 2010.

The federal Patient Protection and Affordable Care Act ("PPACA") gave states the option, by submitting an amendment to their state medical assistance (MA) plan, to convert their existing family waiver programs into an optional eligibility group for "family planning only" services. The PPACA also allowed states such as Wisconsin to expand eligibility under that "family planning only" optional eligibility group to include men and women of childbearing ages with incomes up to 300% of the FPL. DHS exercised that option, and the resulting state plan amendment went into effect on November 1, 2010. Since that time DHS has provided family planning to males and females of childbearing ages with income not greater than 300% of the FPL under this "family planning only" optional eligibility group.

For both males and females who are eligible for full benefits under the state's MA program, family planning services are a mandatory benefit under federal law. The individuals who receive family planning under the optional eligibility group (and under the waiver program

prior to that) are not eligible for full benefits under the MA program.

GOVERNOR

Reduce funding for MA benefits by \$105,800 (\$-15,900 GPR and -\$89,900 FED) in 2011-12 and by \$382,100 (-\$57,300 GPR and -\$324,800 FED) in 2012-13 to reflect the administration's estimate of the savings that would result from eliminating family planning services currently provided to males under the "family planning only" optional eligibility group. Repeal, effective January 1, 2012, the statutory provision created in Act 28 that authorized DHS to request, and if granted to implement, modifications to the then-existing family planning waiver to include males.

DISCUSSION POINTS

1. Under the "family planning only" optional eligibility group, the state provides a range of family planning services to males and females of childbearing ages with family incomes not greater than 300% of the FPL. Those family planning services can include the following: (a) contraceptive services and supplies such as birth control pills and condoms; (b) family planning pharmacy visits; (c) pap tests; (d) tubal ligations; (e) tests and treatment for sexually transmitted diseases; and (f) routine preventive primary services, but only if related to family planning. As of March, 2011, approximately 57,600 individuals were receiving family planning under this optional eligibility group.

2. The savings associated with this item represent the administration's estimate of the reduction in service costs that will occur if family planning services are no longer provided to males under the "family planning only" optional eligibility group. Most of those savings are federal MA matching funds, reflecting the fact that CMS provides states an enhanced federal MA match for family planning services (in the case of the optional eligibility group, the effective federal match is approximately 85%).

3. As noted, the "family planning only" optional eligibility group under the state plan amendment currently serves both males and females. In fact, having been converted to an optional eligibility group under the PPACA's state plan amendment provisions, the former family planning waiver program no longer exists. Consequently, women who previously received family planning services under the waiver now receive those services through the "family planning only" state plan amendment.

4. DHS has determined that under the terms of the state plan amendment, it cannot eliminate males from the "family planning only" eligibility group without effectively eliminating the entire eligibility group (both males and females) under the state plan amendment. Accordingly, if the state decides to discontinue optional family planning only services to males while continuing to provide those services to women, it must obtain a waiver (or similar federal authorization) from CMS to that effect.

5. The Department has recently indicated that in light of this determination, it is still

considering a range of alternatives with respect to these optional family planning only services. Those alternatives include but may not be limited to the following: (a) maintain the current state plan amendment, which provides family planning only services to males and females of childbearing age with family income not greater than 300% of the FPL; (b) discontinue family planning only services to males while requesting a waiver or similar federal authorization from CMS to provide those services to women only (with the specific eligibility criteria for such a women-only group yet to be determined); or (c) discontinue family planning only services to both males and females.

6. A potentially complicating factor is the maintenance of effort (MOE) requirement under the PPACA. That MOE requirement prevents states, at the risk of losing federal MA matching funds, from having eligibility standards, methodologies, or procedures under their state MA plan, or under any waiver of such plan, that are more restrictive than the eligibility standards, methodologies, or procedures that were in effect on March 23, 2010. For adults, this MOE requirement is in effect until the state has a fully operational health benefit exchange in place (presumed date of January 1, 2014). During the period January 1, 2011 through December 31, 2013, there is a limited exception to the MOE requirement for non-pregnant, non-disabled adults who are covered at the option of the state and who have incomes greater than 133% of the FPL. To invoke that exception a state must certify that it has a budget deficit in the state fiscal year in which the certification is made or is projected to have a budget deficit in the succeeding state fiscal year. For children under age 19, the MOE requirements remain in effect through September 30, 2019.

7. Because the original family planning waiver program (prior to its conversion to an optional eligibility group under the state plan amendment) would have expired on December 31, 2010, DHS believes the PPACA's MOE provisions do not prevent the state from making eligibility standards for optional family planning only services more restrictive. In a letter dated April 15, 2011, the Department asked CMS to confirm that interpretation. To date, CMS has not responded to that inquiry.

8. Given the uncertainties outlined above, including the administration's indication that it is still considering a full range of alternatives, the Committee could decide to direct what optional family planning only services will be provided going forward. In making that determination, the Committee could consider the Department's past representations regarding the savings generated by family planning services. For instance, when the Legislature was debating whether to expand the then-existing family planning waiver to include males in Act 28, DHS maintained that doing so would save money by averting unintended pregnancies that would otherwise be funded by MA. Specifically, DHS estimated that providing family planning services to males under the waiver would avert 130 MA-funded births for every 1,000 males served, per quarter. At an estimated cost of \$5,500 per MA-funded birth, DHS projected that providing family planning services to males would save the MA program approximately \$715,000 (AF) for every 1,000 males served per quarter. More recently, the Department has stated that it has not acquired any information that would lead it to conclude its Act 28 savings assumptions were wrong, but neither has it acquired any data establishing the exact correlation between services for males in the family planning only benefit and the number of MA-funded births.

9. Similarly, at the time DHS sought to renew the then-existing family planning waiver

program in late 2007, it submitted documents to CMS estimating that the program helped avert nearly 12,000 MA-funded births in 2006, with associated savings to the MA program. More recently, DHS has stated that the methodology used in those 2007 waiver documents was mandated by CMS for purposes of calculating budget neutrality for the family planning waiver, and that the actual relationship between family planning services and MA-funded births is difficult to determine.

10. One alternative available to the Committee at this time would be to delete the relatively modest funding reductions in the bill, as well as the recommended statutory change in the bill, and direct the Department to submit a proposal for optional family planning only services to the Committee no later than August 1, 2011. The Committee could require the Department's proposal to identify whether males and/or females would continue to receive these services, and if so, the applicable eligibility criteria. If the Committee selected this option, it could establish a passive review process whereby a) the Department must submit its proposal to the Committee no later than August 1, 2011, and b) the Department could proceed to implement its proposal, including submitting a waiver request or such other federal approval as necessary, unless, within 14 working days of the submittal of that proposal, the Co-Chairpersons notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the proposal. If the Co-Chairpersons provide that notice, the Department could implement the proposal only with the approval of the Committee. The Committee could further direct that if the Department fails to submit a proposal by the specified date, the Department must continue to provide optional family planning only services under the terms of the current state plan amendment. This option would allow the Department to continue its review of the matter and to obtain CMS guidance on the MOE issue. At the same time, it would allow the Committee to direct the future disposition of the program (Alternative 1).

11. The Committee could also be more prescriptive in its direction to DHS. For instance, the Committee could delete the funding reductions in the bill and direct the Department to continue providing optional family planning only services to males and females under the terms of the current state plan amendment. If the Committee selects this option, it should revise current statutory provisions to delete obsolete references to the former family planning waiver program and create new provisions that authorize these services to males and females under the terms of the current state plan amendment (Alternative 2).

12. Alternatively, if the Committee agreed with the Governor's original proposal to eliminate family planning only services for males, but wished to ensure that services will continue to be provided to women, the Committee could direct DHS to take such actions as are needed to a) discontinue optional family planning only services for males, and b) obtain federal authorization to provide optional family planning only services to women. If the Committee prefers this approach, it could either direct DHS to obtain federal authorization to provide family planning to women (not males) of childbearing age with family income not greater than 300% of the FPL (Alternative 3), or it could direct DHS to obtain federal authorization to provide family planning to women (not males) between the ages of 15 and 44 with family income not greater than 200% of the FPL (Alternative 4). If the Committee selects either of these alternatives it should adopt the funding reductions in the bill, reflecting the elimination of services to males. It should also revise current statutory provisions to delete obsolete references to the former family planning waiver program and create new provisions that authorize DHS to request, and if granted, to implement federal authorization to

provide optional family planning only services to women.

13. Finally, the Committee could decide to eliminate all optional family planning only services to both males and females under the state plan amendment. If the Committee selects this alternative it should reduce funding in the bill by \$37,190,200 (-\$5,578,500 GPR and -\$31,611,700 FED) in 2011-12 and by \$38,001,900 (-\$5,700,300 GPR and -\$32,301,600 FED) in 2012-13 to eliminate all funding in the bill related to optional family planning only services to women (Alternative 5). Under this alternative, the Committee should also revise current statutory revisions to delete references to the family planning waiver program. It should be noted that this alternative would establish more restrictive eligibility standards than were in effect on March 23, 2010. Absent additional guidance from CMS, concern that such a change might violate the PPACA's MOE requirements would argue against the adoption of this alternative.

ALTERNATIVES

1. Delete the funding reductions in the bill. Require DHS to submit a proposal regarding optional family planning only services to the Committee no later than August 1, 2011. Require the Department's proposal to identify whether males and/or females would continue to receive these services, and if so, the applicable eligibility criteria. Establish a passive review process whereby a) the Department must submit its proposal to the Committee no later than August 1, 2011, and b) the Department could proceed to implement its proposal, including submitting a waiver request or such other federal approval as necessary, unless within 14 working days of the submittal of that proposal, the Co-Chairpersons notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the proposal. If the Co-Chairpersons provide that notice, the Department could implement the proposal only with the approval of the Committee. Specify that if the Department fails to submit a proposal by the specified date, the Department must continue to provide optional family planning only services under the terms of the current state plan amendment.

ALT 1	Change to Bill Funding
GPR	\$73,200
FED	<u>414,700</u>
Total	\$487,900

2. Delete the funding reductions in the bill. Require DHS to continue providing optional family planning only services to males and females under the terms of the current state plan amendment. Revise current statutory provisions to delete obsolete references to the former family planning waiver program and create new provisions that require DHS to provide these services to males and females under the terms of the current state plan amendment.

ALT 2	Change to Bill Funding
GPR	\$73,200
FED	<u>414,700</u>
Total	\$487,900

3. Adopt the funding reductions in the bill. Direct DHS to take such actions as are required to a) discontinue providing optional family planning only services to males, and b) allow the Department to provide optional family planning only services to woman (not males) of childbearing age with family income not greater than 300% of the FPL. Revise current statutory provisions to delete obsolete references to the former family planning waiver program and create new provisions that authorize DHS to request, and if granted, to implement federal authorization to provide optional family planning only services to women of childbearing age with family income not greater than 300% of the FPL.

4. Adopt the funding reductions in the bill. Direct DHS to take such actions as are required to a) discontinue providing optional family planning only services to males, and b) allow the Department to provide optional family planning only services to woman (not males) between the ages of 15 and 44 with family income not greater than 200% of the FPL. Revise current statutory provisions to delete obsolete references to the former family planning waiver program and create new provisions that authorize DHS to request, and if granted, to implement federal authorization to provide optional family planning only services to women between the ages of 15 and 44 with family income not greater than 200% of the FPL.

5. Adopt the funding reductions in the bill. In addition, reduce funding for MA benefit expenditures by \$37,190,200 (-\$5,578,500 GPR and -\$31,611,700 FED) in 2011-12 and by \$38,001,900 (-\$5,700,300 GPR and -\$32,301,600 FED) to eliminate the projected cost to serve women under the current family planning only optional eligibility group. Direct DHS to take such actions as are necessary to discontinue providing services under the state plan amendment's family planning only optional eligibility group. Revise current statutory provisions to delete obsolete references to the former family planning waiver program.

ALT 5	Change to Bill Funding
GPR	- \$11,278,800
FED	<u>- 63,913,300</u>
Total	- \$75,192,100

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