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Joint Committee on Finance

Paper #321

### **BadgerCare Plus -- Eligibility (DHS -- Medical Assistance and Related Programs)**

[LFB 2013-15 Budget Summary: Page 200, #3]

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#### **CURRENT LAW**

The following is a brief summary of several of the major provisions in current law pertaining to eligibility for BadgerCare Plus and the BadgerCare Plus Core Plan. Additional information is provided in later sections of this paper where appropriate.

*BadgerCare Plus for Children.* Children under age 19 in families with incomes less than 200% of the federal poverty level (FPL) are eligible for coverage under the medical assistance (MA) standard plan. Their families are not required to pay premiums in order for the child to participate in the program, and cost-sharing for most services is nominal. Children in families with incomes between 200% and 300% of the FPL are eligible for coverage under the benchmark plan if their families pay monthly premiums for the child on an income-based sliding scale. Families with incomes greater than 300% of the FPL can buy coverage for their children under the benchmark plan at the full per member per month cost of coverage.

*BadgerCare Plus for Parents and Caretaker Relatives.* Under current law, parents and caretaker relatives of children under age 19 are eligible for coverage under the standard plan if their family income does not exceed 200% of the FPL. Prior to July 1, 2012, adults with family incomes greater than 150% of the FPL paid premiums not greater than 5% of their family income. Under a process established in the 2011-13 state budget (2011 Act 32), the Department of Health Services (DHS) can temporarily implement certain changes to the MA program that conflict with current statutes, provided the changes are approved by the Legislature's Joint Committee on Finance (JFC), and, if necessary, by the federal Centers for Medicare and Medicaid Services (CMS). Under temporary policies that went into effect July 1, 2012, non-pregnant, non-disabled adults in BadgerCare Plus are required to pay premiums if their family income exceeds 133% of the FPL. The new premiums start at 3.0% of family income for adults

at 133% of the FPL and increase to 6.3% of family income for adults at 200% of the FPL. For non-pregnant, non-disabled adults with family incomes greater than 200% of the FPL (primarily, adults in transitional MA), the new premiums range from 6.3% of family income for those at 200% of the FPL to 9.5% of family income for those at 300% of the FPL or higher.

*BadgerCare Plus for Pregnant Women.* Pregnant women are eligible for BadgerCare Plus if their family income does not exceed 300% of the FPL, and are generally exempt from the program's premium requirements.

*Transitional MA.* Currently under BadgerCare Plus, individuals in families with dependent children whose family incomes were originally less than 100% of the FPL but have increased above 100% of the FPL as a result of earned income or child support remain eligible for coverage under the standard plan during their transitional MA period, even if their income increases to a level that would otherwise disqualify them from coverage. If the additional income is earned income, their transitional MA period is twelve months. If the additional income is from increased child support, their transitional MA period is four months. Prior to July 1, 2012, individuals did not pay premiums during their transitional MA period. Effective that date, DHS implemented a policy under the temporary authority described above that applies the new adult premium schedule to non-pregnant, non-disabled adults in transitional MA with incomes greater than 133% of the FPL.

*BadgerCare Plus Core Plan for Childless Adults.* The Core Plan provides healthcare coverage for basic primary and preventive care to non-pregnant, non-elderly adults without dependent children who are not otherwise eligible for MA or Medicare and whose family incomes are not greater than 200% of the FPL. The program operates under a waiver of federal law. The program has been closed to new enrollees since late 2009. Since July 1, 2012, Core Plan enrollees with family incomes greater than 133% of the FPL pay monthly premiums based on the new adult premium schedule. The current Core Plan waiver expires December 31, 2013.

## **GOVERNOR**

Reduce funding by \$46,973,800 (-\$8,608,100 GPR, -\$17,526,400 FED, and -\$20,839,300 PR) in 2013-14 and by \$39,487,800 (\$5,603,900 GPR, -\$6,995,100 FED, and -\$38,096,600 PR) in 2014-15 to reflect projected reductions in MA benefit expenditures resulting from eligibility and other program changes for children, their families, and pregnant women under BadgerCare Plus, and for non-elderly adults without dependent children under the Core Plan.

*Statutory Changes.* The bill would make a number of changes to current law relating to BadgerCare Plus, the Core Plan, and other aspects of the state's MA and MA-related programs. A comprehensive summary of those proposed changes is provided in the Attachment. The condensed summary that follows focuses on those sections of the bill that would most directly impact MA eligibility and coverage.

Some of the statutory changes in the bill are intended to codify changes DHS made to the program under the temporary Act 32 authority described above. The following summary refers

to these provisions as codifying temporary program changes implemented under Act 32. Under current state law, these temporary changes and the authority under which they were implemented are repealed effective January 1, 2015.

In other cases, the bill would revise existing statutes to reflect MA program changes DHS recommended and JFC approved under the temporary Act 32 process, but which have not received the requisite federal approval. The bill would revise current statutes to reflect these changes, while noting that their implementation requires federal approval. The following summary refers to these sections of the bill as JFC-approved Act 32 changes that require federal approval to implement.

Income eligibility requirements for MA are generally tied to the individual's family income expressed in terms of the federal poverty level (FPL). The following table presents various percentages of the 2013 FPL by family size.

**2013 Annual Federal Poverty Guidelines**

<u>Number In Family</u>	<u>100%</u>	<u>133%</u>	<u>150%</u>	<u>200%</u>	<u>300%</u>
One	\$11,490	\$15,282	\$17,235	\$22,980	\$34,470
Two	15,510	20,628	23,265	31,020	46,530
Three	19,530	25,975	29,295	39,060	58,590
Four	23,550	31,322	35,325	47,100	70,560
Five	27,570	36,668	41,355	55,140	82,710
Six	31,590	42,015	47,385	63,180	94,770

Unless otherwise noted, the proposed changes described below would go into effect on the bill's general effective date.

**Parents and Caretaker Relatives in BadgerCare Plus**

*Income Eligibility Limits.* Reduce income eligibility limits for parents and caretaker relatives in BadgerCare Plus from 200% to 100% of the FPL. Specify that the new income limit of 100% of the FPL is before application of the 5% income disregard established under the Patient Protection and Affordable Care Act (ACA) for purposes of determining MA eligibility. These changes would go into effect January 1, 2014.

*Require Child be a "Dependent Child" for Parents and Caretakers to Qualify for BadgerCare Plus.* Under current law, the term "child" is defined as a child under age 19 for purposes of establishing BadgerCare Plus eligibility for parents and caretaker relatives. The bill would replace the term "child" for these purposes with the term "dependent child," and would define a "dependent child" as an individual who is under age 18, or who is age 18 and is a full-time student in secondary school or equivalent vocational or technical training if before attaining age 19 the individual is reasonably expected to complete the school or training. These changes would go into effect January 1, 2014.

*Repeal Provisions Related to Treatment of Depreciation for Individuals with Self-Employment Income.* Under current law, if an adult family member has self-employment income, their "net self-employment earnings" are included when determining a parent's or caretaker relative's eligibility for BadgerCare Plus. In such instances, the parent or caretaker can qualify for the standard plan if their family income does not exceed 200% of the FPL without deducting depreciation, and they can qualify for the benchmark plan if their family income exceeds 200% of the FPL before deducting depreciation but does not exceed 200% of the FPL after deducting depreciation. The bill would repeal these provisions effective January 1, 2014. Thereafter, the bill would make parents and caretakers with self-employment income eligible for BadgerCare Plus if their family income does not exceed 100% of the FPL as calculated using the income counting methodologies that would be created in the bill (see "Counting Income for Purposes of Determining BadgerCare Plus Eligibility" below).

### **Pregnant Women in BadgerCare Plus**

The bill as introduced would make the following changes to coverage for pregnant women under BadgerCare Plus.

*Income Eligibility Limits.* Reduce income eligibility limits for full MA coverage for pregnant women from 300% to 133% of the FPL. In addition, revise the current statutory definition of the term "unborn child" for purposes of determining an unborn child's eligibility for prenatal care benefits under BadgerCare Plus to include situations where the unborn child and the unborn child's mother meet all other applicable eligibility requirements for MA except the mother's family income exceeds 133% of the FPL. These changes would go into effect January 1, 2014.

*Spend-Down Eligibility for Pregnant Women.* Repeal provisions that currently allow pregnant women with family incomes greater than 300% of the FPL to qualify for coverage under the benchmark plan if they incur medical costs or personal health insurance premiums in amounts at least equal to the difference between their family income and 300% of the FPL. Instead, reduce that "spend-down" income eligibility limit to 133% of the FPL. This change would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination.

*Presumptive Eligibility for Pregnant Women.* Under current law, a pregnant woman can qualify for presumptive eligibility under BadgerCare Plus if a qualified health care provider or entity determines, based on preliminary information, that her family income does not exceed 300% of the FPL. The woman then has until the last day of the month following the month in which that preliminary determination was made to apply for BadgerCare Plus. During her period of presumptive eligibility, DHS pays allowable charges on behalf of the woman only for ambulatory prenatal care services under the standard plan (if her family income does not exceed 200% of the FPL) or the benchmark plan (if her family income exceeds 200% of the FPL). The bill would reduce the income limit for presumptive eligibility for pregnant women from 300% to 133% of the FPL. These changes would go into effect January 1, 2014.

*Retroactive Eligibility for Pregnant Women.* Under current law, pregnant women can

obtain coverage for services they received during the three months prior to the month they applied for BadgerCare Plus if they met the program's eligibility requirements during those three months. Due to the other eligibility changes described above, the bill would effectively reduce the income eligibility limit for retroactive eligibility for pregnant women from 300% to 133% of the FPL, effective January 1, 2014.

### **Children in BadgerCare Plus**

*Buy-In for Children in Families with Income Greater than 300% of the FPL.* The bill would repeal a provision that currently allows a child who is not an unborn child in a family with income greater than 300% of the FPL to obtain coverage under the benchmark plan if their families pay monthly premiums on behalf of the child in an amount equal to the full per member per month cost of coverage.

*Children Under Age One Whose Mothers, When Pregnant, Had Family Income Between 200% and 300% of the FPL and Were Determined to be Eligible for BadgerCare Plus.* Under current law, a child under age one is continuously eligible for coverage under the benchmark plan if their mother, while pregnant, had family income between 200% and 300% of the FPL and was determined to be eligible for the program, and the child lives with his or her mother in this state. The bill would repeal this provision effective January 1, 2014.

*Spend-Down Eligibility for Children.* Under current law, children in families with incomes greater than 150% of the FPL who are ineligible for the program due to other insurance coverage may qualify for BadgerCare Plus if the difference between their family's income and 150% of the FPL is obligated or expended on behalf of the child or any member of the child's family for medical care or personal health insurance premiums. The bill would add a provision that allows children in families with incomes greater than 300% of the FPL to qualify for BadgerCare Plus if the difference between their family's income and 150% of the FPL is obligated or expended on behalf of the child or any member of the child's family for the above-stated purposes. This change would go into effect January 1, 2014.

*Presumptive Eligibility for Children.* Under current law, a child who is not an unborn child is eligible for presumptive eligibility under BadgerCare Plus if a qualified health care provider or entity determines, based on preliminary information, that their family income does not exceed 150% of the FPL. During their period of presumptive eligibility, a child is eligible for coverage under the standard plan.

The bill would retain the current presumptive eligibility income limits for children ages six through age 18, and increase the presumptive eligibility limits for other children as follows: (1) from 150% of the FPL to 185% of the FPL for children ages one through five; and (2) from 150% of the FPL to 300% of the FPL for children under age one. These changes would codify temporary program changes DHS implemented under Act 32.

The bill would further amend current law to specify that a child who is not an unborn child is not eligible for presumptive eligibility benefits if the federal Department of Health and Human Services (DHHS) approves the Department's request not to provide those benefits.

These are JFC-approved Act 32 program changes that require federal approval to implement.

### **MA Coverage for Former Foster Children**

Under current law, an individual who was born on or after January 1, 1990, and who, on his or her 18th birthday, was in a foster care placement under the responsibility of this state, as determined by DHS, is eligible for coverage under the standard plan, regardless of their family income, until the last day of the month in which they turn age 21, unless they otherwise lose eligibility sooner.

The bill would amend this provision to make the following individuals eligible for the standard plan: "An individual who, regardless of family income, was born on or after January 1, 1988, and who, on his or her 18th birthday, was in a foster care placement under the responsibility of this state, or at the option of the department, under the responsibility of another state, and enrolled in Medical Assistance under this subchapter or a Medicaid program, as determined by the department. The coverage for an individual under this subdivision ends on the last day of the month in which the individual becomes 26 years of age, unless he or she otherwise loses eligibility sooner." These changes would go into effect January 1, 2014.

### **Transitional MA**

Under the bill, individuals currently eligible for transitional MA would no longer be eligible for MA if the federal DHHS approves a request from DHS to deny all or some transitional MA benefits to that individual or family, if such approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement. The bill would also repeal obsolete references to earned income disregards from the current transitional MA statute.

### **Retroactive Eligibility**

Under current law, a child who is not an unborn child, their parents, and caretaker relatives can obtain coverage for services they received during the three months prior to the month they applied for BadgerCare Plus if their family income was less than 150% of the FPL during those three months. The bill would amend these rules to provide that an adult who is not disabled, not elderly, not pregnant, and whose family income exceeds 133% of the FPL is not eligible for retroactive benefits. These changes would codify temporary program changes DHS implemented under Act 32.

In addition, the bill specifies that to the extent allowed by the federal DHHS, the following individuals, if they are not disabled, would not qualify for retroactive eligibility: pregnant women, children who are not unborn children, parents, and caretakers. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Counting Income for Purposes of Determining BadgerCare Plus Eligibility**

*Redefine "Family Income" as "Household Income."* Current law defines "family income"

for BadgerCare Plus eligibility purposes as the total gross earned and unearned income received by all members of a family. The bill would amend the term "family income" in this context to mean "household income" as the latter term is defined in federal law regarding application of modified adjusted gross income (MAGI) for purposes of determining MA eligibility. Those federal law provisions define "household income," with some exceptions, as the sum of the MAGI-based income of every individual included in the individual's "household" minus an amount equivalent to five percentage points of the FPL for the applicable family size. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014, or the actual date of the redetermination of eligibility.

The bill would require DHS to apply the federal definition of the term "household" when determining family income for BadgerCare Plus eligibility purposes. In addition, it would require DHS, when determining the family size for a pregnant woman, to include the pregnant woman and the number of babies she is expecting. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination of eligibility.

*Include Income of all Adults Residing in the Home.* In addition to other income-counting requirements, the bill would require DHS to do all of the following: (1) when calculating the family income of a member of a household who is not disabled, include the income of all adults residing in the home for at least 60 consecutive days but exclude the income of a grandparent in a household containing three generations, unless the grandparent applies for or receives benefits as a parent or caretaker relative; and (2) when determining the size of a family for purposes of determining income eligibility, exclude from family size an adult whose income is included in a calculation of family income solely under (1). The changes to income-counting described in (1) and (2) would apply only to the extent the federal DHHS approves the income eligibility calculation methods, if approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement.

The bill would also require DHS to apply the federal definition of "household income" when establishing family income for purposes of determining MA eligibility for the following: (1) individuals infected with tuberculosis who meet the income and resource eligibility requirements for the federal supplemental security income program; and (2) individuals under age 21 who reside in an intermediate care facility, skilled nursing facility, or inpatient psychiatric hospital. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination of eligibility.

### **Premiums under BadgerCare Plus**

*Premiums for Parents and Caretakers.* The bill would specify that except as otherwise provided in statute, a recipient who is an adult parent or an adult caretaker relative who is not disabled or American Indian, and whose family income exceeds 133% of the FPL shall pay a premium for coverage under BadgerCare Plus in an amount determined by DHS that is based on a formula in which costs decrease for those with lower family incomes and that is no less than 3% of family income but no greater than 9.5% of family income. These changes would codify

temporary program changes DHS implemented under Act 32. They would go into effect on the bill's general effective date, but then be repealed effective January 1, 2014. Taken together, the bill would temporarily codify the new adult premium schedule through December 31, 2013, at which time the new section would be repealed. The administration has requested that the January 1, 2014 repeal of the newly codified adult premium schedule be deleted from the bill. That modification is addressed in the LFB issue on the MA cost-to-continue item.

Also, effective January 1, 2014, the bill would delete from the current statutory provision a reference to premiums paid by parents and caretakers with self-employment whose incomes do not exceed 200% of the FPL after deducting depreciation.

*Premiums for Children.* Under current law, families with incomes greater than 200% of the FPL are required to pay premiums for their child to obtain coverage under the program, while families with incomes less than 200% of the FPL are not. The bill would create a new provision that authorizes DHS to charge premiums to non-disabled children with family incomes of at least 150% of the FPL, as determined by DHS, in an amount determined by DHS, subject to federal DHHS approval, if approval is required. The bill would also repeal a current statutory section that separately authorizes DHS to impose premiums on an unborn child or a pregnant woman with family incomes greater than 200% of the FPL.

*Restrictive Re-enrollment Period.* Under current law, if a BadgerCare Plus recipient who is required to pay a premium does not pay a premium when due, or requests that his or her coverage be terminated, their coverage terminates and they are not eligible for six consecutive calendar months thereafter, except for any month during that six-month period when their family income does not exceed 150% of the FPL. The bill would revise the restrictive re-enrollment period for adults from six consecutive calendar months to twelve consecutive calendar months except for any month during that twelve-month period when the adult's family income does not exceed 133% of the FPL. These changes would codify temporary program changes DHS implemented under Act 32. The bill would also amend the current statute to extend the restrictive re-enrollment period for children from six months to twelve months, if the federal DHHS approves that change. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Alternate Benchmark Plan**

The bill would authorize DHS, if it chooses, to provide an alternate benchmark plan to certain BadgerCare Plus recipients. This alternate benchmark plan would provide coverage for benefits similar to those in a commercial, major medical insurance policy. The bill would authorize DHS to charge copayments to recipients receiving coverage under an alternate benchmark plan that are higher than copayments charged to recipients receiving coverage under the standard plan, but would prohibit DHS from charging a recipient of coverage under the alternate benchmark plan whose family is not greater than 150% of the FPL a copayment that exceeds 5% of the individual's family incomes for all members of the family. Under the bill, DHS may only provide coverage under the alternate benchmark plan to the extent the plan is approved by the federal DHHS.

The bill further provides that if DHS obtains approval from the federal DHHS to provide an alternate benchmark plan, and to the extent the federal DHHS approves, DHS may enroll in the alternate benchmark plan any individual whose family income exceeds 100% of the FPL who is either an adult who is not pregnant or a child, except that DHS shall enroll a child who has a parent who is enrolled in BadgerCare Plus in the same coverage plan as his or her parent. In the event DHS is providing coverage under an alternate benchmark plan, the bill would allow it to discontinue coverage under the existing BadgerCare Plus benchmark plan for individuals eligible for the alternate benchmark plan.

The bill would also allow DHS to provide services to individuals enrolled in the alternate benchmark plan through a medical home initiative similar to the medical home pilot projects described in other sections of the bill. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Coverage for Childless Adults**

The 2007-09 state budget required DHS to request a waiver from the federal DHHS to permit DHS to provide health care coverage for basic primary and preventive care to adults under age 65, who are not otherwise eligible for MA or Medicare, and whose family incomes do not exceed 200% of the FPL. The resulting Core Plan began providing services in January 2009. The program has been closed to new enrollment since late 2009. The current Core Plan waiver expires December 31, 2013.

The bill would amend the existing statute relating to the Core Plan so as to require DHS to request a waiver from the federal DHHS to provide health care coverage for basic primary and preventive care to adults who are under age 65, who are not otherwise eligible for MA or Medicare, and whose income does not exceed 100% of the FPL (rather than 200% of the FPL, as under current law) before application of the ACA's 5% income disregard. The bill would also amend the current Core Plan statute to specify that if the revised waiver is granted and in effect, the demonstration project shall begin on the effective date of the waiver. These changes would go into effect January 1, 2014.

Under current law, Core Plan cost sharing may include an annual enrollment fee not greater than \$75 per year. The bill would provide that, in addition to the current cost-sharing requirements, a childless adult who is eligible to receive benefits under the demonstration project who is not disabled, not pregnant, not an American Indian as defined in federal law, and whose family income exceeds 133% of the FPL, shall pay a premium for coverage under the program in an amount determined by DHS that is based on a formula in which costs decrease for those with lower family incomes and that is no less than 3% of family income but no greater than 9.5% of family income. These changes would codify temporary program changes DHS implemented under Act 32.

Under the bill, DHS would be required to apply the revised definitions of family income and the federal regulations defining "household" to determinations of income for purposes of eligibility under the demonstration project. These changes would go into effect January 1, 2014.

Finally, the bill would require DHS to provide services to individuals who are eligible for the demonstration project through a medical home initiative, as otherwise provided in the bill.

## **DISCUSSION POINTS**

### **Administration's Requested Changes to Bill**

1. The administration requests that the following changes be made to the bill.
2. First, the administration has indicated that the Governor's intent is to maintain current eligibility and coverage levels for pregnant women. To accomplish this, the administration recommends deleting provisions in the bill that would have made the following changes: (a) reduce income eligibility levels for pregnant women to 133% of the FPL; (b) modify the current statutory definition of the term "unborn child" for BadgerCare Plus eligibility purposes to include situations where the unborn child and the unborn child's mother meet all other applicable eligibility requirements except that the mother's family income exceeds 133% of the FPL, and make a non-substantive adjustment to current statutory language; (c) alter current statutory provisions relating to "spend-down" eligibility for pregnant women; (d) alter current statutory provisions relating to presumptive eligibility for pregnant women; (e) repeal a provision that establishes continuous eligibility for certain children of pregnant women, and delete cross-references to that section; and (f) repeal several current statutory provisions relating to other insurance "crowd-out" rules for pregnant women with family incomes greater than 200% of the FPL. To accomplish the administration's requested changes, bill sections 1071, 1086, 1093, 1101 through 1104, 1112, 1113, 1121, 1131, 1135, 1136, 1141, 1150 and 1219 would have to be deleted.
3. Second, the administration indicates that its intent is to provide benefits to the new MA enrollees in the childless adult enrollment group under the standard plan. Accordingly, it recommends deleting the reference to "basic primary and preventive care" in the current statutory sections relating to coverage under the Core Plan. This revised language would go into effect January 1, 2014.
4. Third, the administration indicates that its intent is to provide benefits under the standard plan, rather than the benchmark plan (as is currently the case) for pregnant woman and children with family incomes greater than 200% of the FPL. This revision would go into effect January 1, 2014.
5. Fourth, the administration recommends several changes relating to transitional MA coverage for adults. Under permanent provisions in federal law, states are required to provide four months of transitional MA coverage to individuals in families with dependent children who would otherwise lose their MA eligibility due to increased earned income. Under temporary provisions in federal law, states are required to provide at least six months, and up to twelve months, of transitional MA coverage to these individuals. The temporary federal requirement expires December 31, 2013, absent Congressional reauthorization. As introduced, the bill would codify a DHS policy approved by JFC under the temporary Act 32 process that authorizes DHS to deny transitional MA benefits to an individual or family if the federal DHHS approves, to the extent

federal approval is required. The federal DHHS previously denied the Department's waiver request to eliminate transitional MA in its entirety, but approved a more limited request that temporarily allows DHS to impose the new premium schedule for BadgerCare Plus adults on non-pregnant, non-disabled adults in transitional MA with family incomes greater than 133% of the FPL. That temporary federal approval expires December 31, 2013. The administration has requested a modification to the bill that would do the following: (a) recognize the continued eligibility of individuals who were eligible for transitional MA as of December 31, 2013 until the individual's twelve-month transitional MA period ends; (b) recognize ongoing four-month transitional MA eligibility beginning January 1, 2014; and (c) provide DHS the option to charge premiums to individuals in the four-month transitional MA eligibility group with family incomes greater than 100% of the FPL beginning January 1, 2014, subject to federal approval.

6. Under current law, children in BadgerCare Plus for whom required premiums are not paid when due cannot re-enroll for six months. DHS indicates that proposed federal regulations would limit the restrictive re-enrollment period for children to three months. Accordingly, the administration recommends modifying provisions in the bill relating to a child's restrictive re-enrollment to provide that the period shall be three consecutive calendar months, or up to twelve consecutive calendar months if the federal DHHS approves, following the date on which the child's coverage terminated, except for any month during that period when the child's family's income does not exceed 150% of the FPL. The administration also recommends modifying the bill to specify that this period of non-eligibility would not apply to children for whom outstanding premiums have been paid.

7. The administration recommends modifying a provision in the bill that would repeal the appropriation for the BadgerCare Plus Basic Plan effective January 1, 2014. Under current law, the Basic Plan terminates January 1, 2014, and DHS is prohibited from paying any claim for services provided after December 31, 2013. Due to timing lags in provider's claim submissions, DHS may not receive claims for services rendered prior to January 1, 2014 until after that date. To enable DHS to pay these "wrap up" claims, the administration recommends modifying the bill to delay the repeal of the Basic Plan appropriation until June 30, 2015.

8. Under current law, DHS pays health maintenance organizations (HMOs) access payments funded through the hospital assessment, which the HMOs pass through to eligible hospitals based on the number of inpatient discharges and outpatient visits for HMO enrollees who are MA recipients, except enrollees in the Core Plan. The administration recommends modifying the bill to remove the current prohibition on the payment of hospital assessment access payments for services provided to Core Plan enrollees. This revision would go into effect on the bill's general effective date.

9. For purposes of this paper, references to the Governor's proposal are assumed to incorporate the administration's requested changes described in Discussion Points 2 through 8.

10. While the Governor's proposal would affect many aspects of the MA program, the most significant, immediate changes relate to the eligibility requirements for parents, caretakers, and childless adults. The main purpose of this paper is to present an analysis of those proposed eligibility changes.

## **Affordable Care Act Background**

11. The backdrop to the Governor's proposal is the ACA, which went into effect March 23, 2010. As enacted, the ACA required states to provide MA coverage to virtually all non-elderly adults with family incomes not greater than 133% of the FPL beginning January 1, 2014. This requirement extended not just to parents and caretaker relatives (groups traditionally eligible for MA, albeit at varying levels across the states), but also to non-pregnant, non-elderly adults without dependent children.

12. The ACA also has maintenance of effort requirements that prohibit states, at the risk of losing their federal MA matching funds, from adopting MA eligibility standards that are more restrictive than those that were in place on March 23, 2010. For adults, this MOE requirement remains in effect until the Secretary of the federal DHHS certifies that a health insurance exchange established by the state is fully operational. The ACA's MOE requirement for children remains in effect through September 30, 2019.

13. Following the U.S. Supreme Court's decision in *National Federation of Independent Business v. Sebelius*, the ACA's MA expansion became optional for states. States that implement the expansion are eligible for the enhanced federal matching rates the ACA provides for that purpose. Specifically, if the individuals covered by a state's MA expansion are "newly eligible" for MA, the state can receive an enhanced federal medical assistance percentage (FMAP) for their MA benefit costs of 100% in calendar years 2014, 2015, and 2016, and declining thereafter as follows: 95% in 2017; 94% in 2018; 93% in 2019; and 90% in 2020 and beyond.

14. Given the coverage that was available to parents and caretaker relatives under BadgerCare Plus, the only group whose MA costs could qualify for the ACA's "newly eligible" FMAP in Wisconsin is non-pregnant, non-elderly adults with incomes not greater than 133% of the FPL who do not have dependent children. DHS has indicated to this office its understanding that these individuals, including those who enrolled in the Core Plan before that program stopped accepting new enrollees in late 2009, would be considered "newly eligible" under the ACA. DHS recently reiterated that view following the release of federal rules addressing these issues. Consequently, the analysis presented in this paper assumes the state would receive the ACA's enhanced FMAPs for "newly eligible" enrollees if the state implemented a "full" ACA expansion to non-pregnant, non-elderly childless adults with incomes up to 133% of the FPL.

15. In the months following the Supreme Court's decision, states asked CMS for clarification of a related issue, that being whether something less than a full expansion (for example, one that extended MA coverage to individuals with family incomes up to 100% of the FPL rather than 133% of the FPL) would qualify for the ACA's "newly eligible" FMAP. In December 2012, the Secretary of DHHS indicated that the enhanced FMAP is not available to support "partial expansions" to less than 133% of the FPL.

## **Governor's Proposal**

16. The Governor's MA proposal has two main features. First, it would extend MA coverage to non-elderly childless adults with household incomes up to 100% of the FPL who are

not otherwise eligible for MA under what may be termed a revised Core Plan. The bill seeks to accomplish this by directing DHS to request federal authority to provide healthcare coverage to non-elderly adults who have family incomes not greater than 100% of the FPL before application of the ACA's 5% disregard, and who are not otherwise eligible for MA or Medicare. As introduced, the bill retained current statutory language which describes the Core Plan as providing "basic primary and preventive care." As indicated in Discussion Point 3, the administration has requested that this language be deleted to enable DHS to provide standard plan benefits to these childless adults. These provisions would take effect January 1, 2014, and DHS would be required to begin the demonstration project on the effective date of the federal waiver.

17. Second, the bill would reduce eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 100% of the FPL. This change would also go into effect January 1, 2014.

18. Funding in the bill assumes that the net fiscal effect of these and several other program changes included in this item would reduce GPR expenditures by approximately \$3.0 million in the 2013-15 biennium. That was based on the assumption that savings generated by some aspects of the proposal (primarily, the eligibility reduction for parents and caretakers to 100% of the FPL) would slightly more than offset the additional costs associated with extending MA coverage to childless adults with incomes up to 100% of the FPL.

19. To the latter, DHS has developed an enrollment projection model that it used to estimate the number of childless adults who would enroll in the revised Core Plan beginning January 1, 2014. DHS developed that model by reviewing Census Bureau data and other sources that compile information regarding rates and types of insurance coverage for people in Wisconsin at various incomes. The model then applies estimated MA "take-up" rates for different eligibility groups, depending upon their current insurance coverage. For instance, the model assumes that 65% of uninsured childless adults with incomes less than 100% of the FPL will enroll in the revised Core Plan over the first year. The model also estimates other ACA-related enrollment effects, such as the MA enrollment impact of switching to MAGI-based income determinations, the "woodwork/welcome mat" effect under which some individuals who are currently eligible for but not enrolled in MA, would enroll in the program, and the estimated percentage of employers who may drop insurance coverage for their employees beginning January 1, 2014. The MA enrollment estimates presented in this paper utilize the Department's updated ACA enrollment projection model.

20. Using that model, the bill assumes a total of 98,800 childless adults with family incomes not greater than 100% of the FPL will enroll in the revised Core Plan by December 2014. That projected total includes approximately 16,100 current Core Plan enrollees with incomes up to 100% of the FPL. Because this would not be a "full expansion" under the ACA, the state would not receive the enhanced FMAPs for these enrollees' benefits costs. Accordingly, the bill assumes the state will receive its standard federal matching rate of approximately 59% for services provided to these enrollees starting January 1, 2014.

21. As to aspects of the Governor's proposal expected to reduce MA costs, the most significant is the reduction in MA eligibility for parents and caretakers from 200% to 100% of the

FPL. Funding in the bill assumes approximately 98,900 such adults would lose their program eligibility effective January 1, 2014 due to this change. Broadly stated, the bill assumes that savings realized by removing these individuals from the program will offset the cost of extending MA coverage to childless adults under the revised Core Plan in the 2013-15 biennium.

22. Based on additional review by this office and DHS, several of the bill's assumptions should be adjusted. As noted, the bill assumes savings from ending MA coverage for 98,900 parents and caretakers effective January 1, 2014. That estimate was based on the income distribution of BadgerCare Plus adults as of March 2012. Since then, the number of adults in the program with family incomes greater than 100% of the FPL has declined, largely due to the premium changes DHS implemented in July 2012. The current figure, which continues to decline each month, is approximately 88,500. Because there are fewer adults in the program with incomes greater than 100% of the FPL, less state savings would be realized by terminating their coverage on January 1, 2014.

23. Furthermore, that current enrollment figure of 88,500 includes approximately 19,300 adults in transitional MA with incomes above 100% of the FPL. The bill assumed all these adults would lose their MA eligibility on January 1, 2014, despite permanent provisions in federal law that require states to provide four months of transitional MA benefits. In recognition of this federal requirement, the administration has recommended the changes to the bill described in Discussion Point 5. It has also adjusted its cost projections for this item accordingly.

24. The bill also misallocated the projected total cost of the Governor's MA proposal between the MA cost-to-continue item and this item. This related to the manner in which the bill accounted for projected ACA-related enrollment effects. While this did not change the total funding in the bill for the Governor's proposal, it had the effect of assigning too great a share of those costs to the cost-to-continue item, and too little to this item. The modification to the MA cost-to-continue item is addressed in a separate LFB issue paper.

25. In addition, the bill incorrectly accounted for prisoner inpatient hospital costs transferred from the Department of Corrections to the MA program. Normally, inmates of a correctional facility are not eligible for MA while they are incarcerated. There is an exception for inpatient hospital services provided outside the correctional institution. Because the bill would extend MA coverage to non-elderly childless adults with incomes up to 100% of the FPL, these prisoner inpatient hospital costs were transferred to the MA program under the assumption that the state would be able to claim federal MA matching funds for those costs. In doing so, the bill incorrectly assumed the state would receive the ACA's "newly eligible" FMAP toward those costs, rather than the standard rate that would apply under the Governor's "partial expansion."

26. Finally, the bill assumed GPR savings from claiming higher federal matching rates for prenatal care services to pregnant women with family incomes greater than 133% of the FPL. That assumption stemmed from the bill's original provisions regarding changes to BadgerCare Plus eligibility for pregnant women. The administration has recommended the deletion of those changes from the bill.

27. The revised estimate for the Governor's combined MA proposal (the MA cost-to-

continue and this item) is \$734.1 million GPR in the 2013-15 biennium. That is \$73.5 million GPR higher than the funding provided for those two items in the bill. Table 1 shows how this combined GPR increase is allocated between the reestimated MA cost-to-continue item and the revised cost estimate for this item.

**TABLE 1**

**Adjusted GPR Cost Projections, Governor's MA Proposal 2013-15  
(\$ in Millions)**

	AB 40 <u>(Change to Base)</u>	Revised Estimates <u>(Change to Base)</u>	Difference <u>(Change to Bill)</u>
MA Cost-to-Continue	\$663.6	\$685.0	\$21.4
BadgerCare Plus Eligibility Changes Item	<u>-3.0</u>	<u>49.1</u>	<u>52.1</u>
Combined MA Proposal	\$660.6	\$734.1	\$73.5

28. Although the Governor's proposal is not a "full expansion" under the ACA, it represents a major commitment of additional state resources toward providing MA coverage to low-income childless adults. These are individuals who, for the most part, are not able to receive MA benefits today due to closed enrollment in the Core Plan, which had 18,700 enrollees in April 2013. In addition, these individuals will not be eligible for premium assistance tax credits or cost-sharing subsidies under an ACA insurance exchange starting in 2014 because that federal assistance is not available to individuals with family incomes less than 100% of the FPL. By expanding MA coverage to these low-income childless adults, the Governor's proposal may also help address issues related to uncompensated care and cost-shifting that currently occur within the system if these individuals are uninsured.

29. As for the bill's proposed reduction in eligibility for BadgerCare Plus parents and caretakers from 200% to 100% of the FPL, the administration argues that to the extent these individuals are covered by private coverage through an exchange rather than through MA, providers should receive higher reimbursement for their services. The administration also maintains that switching these adults from a public entitlement program to private coverage will encourage greater personal responsibility as these individuals would select their own coverage, pay regular monthly premiums, and have a personal financial stake in the level of health care services they utilize. In these respects, the administration views the proposal as part of its larger entitlement reform initiative.

30. The administration also notes that even with the reduction in MA eligibility for parents and caretakers, the proposal would enable almost every non-elderly adult in Wisconsin to have access either to MA coverage (if their family income is less than 100% of the FPL) or to subsidized coverage through the exchange (if their family income is between 100% and 400% of the FPL and they otherwise qualify for those subsidies). This distinguishes the Governor's plan from proposals in other states that are not implementing a "full expansion" under the ACA. In some of those states, many individuals with incomes below 100% of the FPL will not be eligible for MA or

insurance subsidies under an ACA exchange.

### **Alternative Eligibility Options**

31. The Committee may wish to consider several alternatives to the Governor's MA proposal. One alternative would include reducing income eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 133% of the FPL, and implementing a "full expansion" to non-elderly childless adults with family incomes up to 133% of the FPL. For ease of reference, this is called the "133/133 alternative."

32. The Governor's proposal and the 133/133 alternative are similar in many respects. Under both, pregnant women and children with family incomes up to 300% of the FPL would be eligible for MA. Also under both, parents, caretakers, and non-elderly childless adults with family incomes up to 100% of the FPL would be eligible for MA, while those with incomes greater than 133% of the FPL would not.

33. The main difference between the two proposals, in terms of MA eligibility, is the status of non-pregnant, non-elderly adults with family incomes between 100% and 133% of the FPL. Under the 133/133 alternative, these individuals would be eligible for MA. Under the bill, they would not be eligible for MA, but they could qualify for subsidized coverage under an ACA health insurance exchange beginning January 1, 2014.

34. In addition, under the Governor's proposal, the state would receive its standard MA matching rate (approximately 59%) for all childless adults enrolled under the "partial expansion." Under the 133/133 alternative, the state would receive the ACA's enhanced FMAP (100% in 2014 thru 2016, declining to 90%, in 2020) for all childless adults enrolled under the "full expansion."

35. Table 2 shows the differences in projected GPR costs and projected MA enrollment between the Governor's proposal and the 133/133 alternative. The projections shown for each proposal are based on the revised MA cost-to-continue estimates, adjusted to incorporate projected MA enrollment levels generated by the Department's ACA enrollment projection model.

**TABLE 2****Projected MA Enrollment and Estimated GPR Costs,  
Governor's MA Proposal and the 133/133 Alternative****Projected Average Monthly Enrollment, 2013-14**

	<u>BC+ Children</u>	<u>BC+ Pregnant Women</u>	<u>BC+ Parents/ Caretakers</u>	<u>Childless Adults</u>	<u>Total</u>
Governor's MA Proposal	494,700	20,600	216,900	47,900	780,100
133/133 Alternative	<u>494,700</u>	<u>20,600</u>	<u>242,600</u>	<u>59,700</u>	<u>817,600</u>
Difference	0	0	25,700	11,800	37,500

**Projected Average Monthly Enrollment, 2014-15**

	<u>BC+ Children</u>	<u>BC+ Pregnant Women</u>	<u>BC+ Parents/ Caretakers</u>	<u>Childless Adults</u>	<u>Total</u>
Governor's MA Proposal	525,000	20,600	181,900	98,600	826,100
133/133 Alternative	<u>525,000</u>	<u>20,600</u>	<u>235,600</u>	<u>129,600</u>	<u>910,800</u>
Difference	0	0	53,700	31,000	84,700

**Projected Funding (Change-to-Base) for GPR Share of  
MA Benefit Expenditures, 2013-15 (\$ in Millions)**

	<u>2013-14</u>	<u>2014-15</u>	<u>Biennium</u>
Governor's MA Proposal	\$276.3	\$457.8	\$734.1
133/133 Alternative	<u>249.8</u>	<u>365.3</u>	<u>615.1</u>
Difference	-\$26.5	-\$92.5	-\$119.0

36. As Table 2 indicates, the administration estimates that, on average, 37,500 more individuals would be enrolled in BadgerCare Plus and the revised Core Plan in 2013-14 under the 133/133 alternative than under the Governor's proposal. In 2014-15, the administration estimates there would be, on average, 84,700 more individuals enrolled under the 133/133 alternative than under the Governor's proposal. These additional enrollees would be non-elderly adults with family incomes between 100% and 133% of the FPL.

37. Despite these additional enrollees, the projected GPR costs in 2013-14 are \$26.5 million less under the 133/133 alternative than under the Governor's proposal. The reason is that beginning January 1, 2014, the childless adults under the 133/133 alternative would qualify for the ACA's "newly eligible" FMAP, whereas the childless adults with family incomes up to 100% of the FPL under the Governor's proposal would not. The projected GPR costs in 2014-15 are \$92.5 million less under the 133/133 alternative than under the Governor's proposal, again due to the ACA's enhanced FMAP for childless adults. Over the 2013-15 biennium, the estimated GPR costs

for the 133/133 alternative are approximately \$119.0 million less than the Governor's proposal.

38. The revised estimates also indicate that the state would receive approximately \$489.0 million in additional federal MA matching funds in the 2013-15 biennium under the 133/133 alternative than under the Governor's proposal. This projected FED increase is greater than the projected GPR difference between the two proposals because the additional FED would stem not just from the ACA's enhanced FMAP for the childless adults projected to enroll in MA under both proposals, but also from the following: (a) the ACA's 100% federal match for the additional childless adults projected to enroll in MA under the 133/133 alternative, compared to the Governor's proposal; and (b) the federal matching funds (at the state's standard FMAP) for costs associated with the additional parents and caretakers projected to participate in MA under the 133/133 alternative.

39. There are many other factors members may weigh when considering these or other alternatives. One is the potential impact on current MA enrollees. Unlike the 133/133 alternative, the Governor's proposal would eliminate MA coverage for parents and caretakers with family incomes between 100% and 133% of the FPL. As of April 2013, there were approximately 51,000 such individuals enrolled in BadgerCare Plus, including 14,000 transitional MA enrollees. Arguably, these are the current MA enrollees who would be most impacted by the Governor's proposal because they do not currently pay premiums under BadgerCare Plus and their cost-sharing requirements are nominal. Under the exchange, they would be required to pay premiums for coverage, though premium assistance tax credits could limit those costs to 2% of family income. For a single parent in a three-person family with income of 125% of the FPL, that would equate to a monthly premium of approximately \$41. They would also have greater cost-sharing obligations than they currently have under MA. Federal cost-sharing subsidies under the ACA would limit their total annual out-of-pocket costs (not including premiums) to \$2,100 for single coverage. An individual's actual cost-sharing will depend on the benefit design of the coverage they select and their utilization of services.

40. Parents and caretakers with family incomes greater than 133% of the FPL would also have higher cost-sharing obligations under the exchange than under MA, but they would not necessarily face higher premiums, given that the new adult premium schedule DHS implemented in July 2012 is intended to mirror the premiums individuals would pay for coverage through the exchange.

41. Members may also have concerns about the federal government's ability to sustain its obligations under the ACA, particularly the act's enhanced federal matching rates for newly eligible MA enrollees. In response, CMS has indicated that the ACA's MA expansion is optional and states that expand can decide later to drop the coverage.

42. If members are concerned about the state's ability to claim the ACA's enhanced FMAP for "newly eligible" individuals in the 2013-15 biennium or after (in the event Wisconsin decides to implement a "full expansion"), one option would be to require DHS to reduce eligibility for non-pregnant, non-elderly childless adults who are not otherwise eligible for MA from 133% to 100% of the FPL if either of the following occurs: (a) CMS determines that the state cannot claim the ACA's "newly eligible" FMAP for these individuals; or (b) the ACA's FMAP for "newly eligible" individuals is repealed or reduced (not including the scheduled decline in that FMAP

beginning in 2017). (Alternative 6)

43. A related concern with respect to federal funding is that after 2016, the ACA's enhanced FMAP for newly eligibles is scheduled to decline to 95% in 2017, then to 94% in 2018, 93% in 2019, and 90% in 2020 and beyond. Therefore, states that expand MA today will face an increasing share of the costs for those expansion populations starting in 2017.

44. It is difficult to project MA expenditures into the next decade. Based on the revised estimates cited above, however, the GPR share of MA benefit expenditures in the 2015-17 biennium would be approximately \$170.0 million less under the 133/133 alternative than the Governor's proposal. That projection is based on the estimated GPR cost difference between the two proposals in 2014-15 (\$92.5 million), doubled to reflect a two-year biennium, and adjusted to incorporate the scheduled decline in the ACA's enhanced FMAP to 95% starting January 1, 2017. Thereafter, the projected GPR cost difference between the proposals narrows to \$110.3 million in the 2017-19 biennium and \$60.5 million in 2019-21. These multi-biennia projections are based on assumptions incorporated in the revised estimates for 2013-15, and are subject to all of the variables that impact the MA program on a month-to-month and year-to-year basis.

45. Using a similar analysis, the 133/133 alternative is projected to generate approximately \$708.1 million in additional federal MA matching funds in the 2015-17 biennium, compared to the Governor's proposal. That projection is based on the estimated FED difference between the proposals in 2014-15 (\$361.5 million), doubled, then adjusted to reflect the decline in the ACA's enhanced FMAP starting January 1, 2017. Thereafter, the FED difference between the proposals is projected to narrow to \$648.1 million in 2017-19 and \$598.2 million in 2019-21, as the ACA's enhanced FMAP declines to 90% in 2020 and beyond. These projections are subject to the limitations identified above.

46. Another way to view the potential fiscal effects of the proposals is in terms of total public expenditures, rather than differentiating between GPR and FED. In that regard, the main difference between the proposals with respect to MA eligibility is their treatment of non-pregnant, non-elderly adults with family incomes between 100% and 133% of the FPL. Under the 133/133 alternative, these adults would be eligible for publicly-financed MA benefits. Under the Governor's proposal, they could qualify for publicly-financed premium assistance tax credits and cost-sharing subsidies through the exchange.

47. Members may also want to consider issues related to uncompensated care and provider reimbursement. On the one hand, MA provider reimbursement rates are acknowledged as being lower than rates typically paid by private insurance. Therefore, to the extent people are covered through an exchange rather than MA, hospitals and other providers should receive higher reimbursement for their services. Among other things, this may help mitigate the cost-shifting that occurs between public health insurance programs and private payers. On the other hand, if individuals who lose their MA eligibility do not purchase coverage through the exchange, and become uninsured, providers may experience higher levels of uncompensated care.

48. The Department's ACA enrollment model assumes that 93% of parents and caretaker relatives with family incomes between 100% and 150% of the FPL who lose MA

coverage under the Governor's proposal would purchase private coverage through the exchange. For parents and caretakers between 150% and 200% of the FPL, the assumed take-up rate is 90%. If these assumptions bear out, concerns about increased levels of uncompensated care under the Governor's proposal would be overstated.

49. The Department's assumption that 93% of parents and caretakers with incomes less than 133% of the FPL will purchase coverage through the exchange appears unreasonably optimistic. The Department's own experience is informative. When DHS imposed new premiums on parents and caretakers with family incomes between 133% and 150% of the FPL in July 2012, nearly 18% left the program in the first month due to non-payment of premiums. There will also be logistical issues associated with enrolling in the exchange that, at least in the short run, further limit the number of former MA enrollees obtaining private coverage.

50. A 90% private insurance take-up rate for parents and caretakers with incomes between 150% and 200% of the FPL, on the other hand, appears more reasonable, given that these individuals currently pay premiums in BadgerCare Plus that are designed to replicate the premiums they would pay for private coverage under the exchange.

51. Adding to concerns about uncompensated care is the question of whether, and how well, a federally facilitated exchange will be operating on January 1, 2014, the date on which the bill terminates MA coverage for parents and caretakers with incomes above 100% of the FPL. The first issue is whether the DHHS Secretary will determine that an exchange is "fully operational" by that date. This is a necessary step to any planned reduction in MA eligibility because the ACA's maintenance of effort requirement for adults stays in effect until the federal Secretary makes that determination. The bill as introduced does not condition the reduction in parents' MA eligibility to the federal Secretary's determination. At a minimum, the bill should be modified to condition the reduction in parents' and caretakers' MA eligibility upon the federal DHHS Secretary's determination that an exchange is fully operational in Wisconsin. (Alternative 4)

52. The Committee may also wish to premise the bill's "partial expansion" to non-elderly childless adults with incomes not greater than 100% of the FPL on that federal determination, given that the savings realized by reducing parents' and caretaker's MA eligibility are intended to fund the GPR costs of that partial expansion. (Alternative 5) From a state budgeting perspective, the federal determination would not be required to implement the full MA expansion to childless adults with incomes up to 133% of the FPL, since that expansion would be 100% federally funded through calendar year 2016.

53. A second issue is how effectively the exchange may be operating on January 1, 2014, even if there is a federal determination that it is fully operational. To the extent members share these concerns, they could further premise any reduction in MA eligibility, and in the case of the Governor's proposal, any "partial expansion" of MA coverage to childless adults with incomes up to 100% of the FPL, upon a determination by DHS or OCI that certain criteria regarding the exchange have been satisfied. Members could make that either an affirmative requirement (where the bill's eligibility changes would not occur absent that state determination), or a negative requirement (where the eligibility changes would occur unless there is a state determination that the exchange is not operational). The Committee may also wish to have any such determination subject

to JFC review and approval.

54. The potential for increased levels of uncompensated care due to reductions in MA eligibility is greater under the Governor's proposal than the 133/133 alternative. As of April 2013, there were approximately 88,500 parents and caretakers with family incomes greater than 100% of the FPL enrolled in BadgerCare Plus (including 19,300 adults in transitional MA). Less than half of these adults (approximately 37,500, including 5,300 adults in transitional MA) had family incomes greater than 133% of the FPL.

55. If the Committee adopts the 133/133 alternative as outlined above, it should require DHS to seek the necessary federal approval to implement the 133/133 alternative and to comply with all federal requirements relating to eligibility, benefits, premiums, and cost-sharing to enable the state to receive the ACA's enhanced FMAP for "newly eligible" individuals for the costs associated with the non-pregnant, non-elderly childless adults with family incomes not greater than 133% of the FPL who would receive MA benefits under this alternative. (Alternative 2)

56. One other option members could consider if they are concerned about issues related to uncompensated care and the operation of the exchange would be to maintain current eligibility levels for parents and caretakers at 200% of the FPL, and direct DHS to implement a full MA expansion to non-elderly childless adults with household incomes up to 133% of the FPL. The 200/133 alternative is projected to be more costly than the 133/133 alternative, both in the 2013-15 biennium and beyond (due to maintaining parents' and caretakers' eligibility at 200% of the FPL). It would also negate the administration's policy objective of transferring some individuals from the MA entitlement program to the private insurance market as part of its larger entitlement reform initiative.

57. Table 3 compares projected enrollment levels and projected GPR expenditures for the three alternatives outlined above: (a) the Governor's proposal; (b) the 133/133 alternative; and (c) the 200/133 alternative.

58. MA administrative costs, including funding to support county income maintenance consortia and Milwaukee Enrollment Services, would also vary under the alternatives summarized in Table 3. Specifically, projected administrative costs under the 133/133 alternative are \$5,917,400 (\$3,076,900 GPR and \$2,840,200 FED) higher than under the Governor's proposal in 2013-15. For the 200/133 alternative, the estimated MA administrative costs would be \$11,916,100 (\$6,196,400 GPR and \$5,719,700 FED) higher than the Governor's proposal in 2013-15. These and other issues related to MA costs associated with the ACA are addressed in a separate LFB issue paper.

**TABLE 3****Projected MA Enrollment and Estimated GPR Costs,  
Governor's Proposal, the 133/133 Alternative, and the 200/133 Alternative****Projected Average Monthly Enrollment, 2013-14**

	<u>BC+</u> <u>Children</u>	<u>BC+ Pregnant</u> <u>Women</u>	<u>BC+ Parents/</u> <u>Caretakers</u>	<u>Childless</u> <u>Adults</u>	<u>Total</u>
Governor's MA Proposal	494,700	20,600	216,900	47,900	780,100
133/133 Alternative	494,700	20,600	242,600	59,700	817,600
200/133 Proposal	494,700	20,600	256,300	59,700	831,300

**Projected Average Monthly Enrollment, 2014-15**

	<u>BC+</u> <u>Children</u>	<u>BC+ Pregnant</u> <u>Women</u>	<u>BC+ Parents/</u> <u>Caretakers</u>	<u>Childless</u> <u>Adults</u>	<u>Total</u>
Governor's MA Proposal	525,000	20,600	181,900	98,600	826,100
133/133 Alternative	525,000	20,600	235,600	129,600	910,800
200/133 Proposal	525,000	20,600	274,200	129,600	949,400

**Projected Funding (Change-to-Base) for GPR Share  
of MA Benefit Expenditures, 2013-15 (\$ in Millions)**

	<u>2013-14</u>	<u>2014-15</u>	<u>Biennium</u>
Governor's MA Proposal	\$276.3	\$457.8	\$734.1
133/133 Alternative	249.8	365.3	615.1
200/133 Proposal	258.7	399.6	658.3

59. Finally, if members would prefer to not reduce eligibility for parents and caretakers in BadgerCare Plus and to not expand MA coverage for non-elderly childless adults until additional information is available regarding the operation of an ACA health insurance in Wisconsin, they could delete those eligibility changes from the bill. The Committee could also require DHS to seek an extension of federal authority to continue operating the Core Plan under current program rules (including the current enrollment freeze) through the 2013-15 biennium, absent future legislative action. (Alternative 7)

**ALTERNATIVES**

1. Governor's Proposal. Adopt the Governor's proposal as modified by Discussion Points 2 through 8. Increase funding in the bill by \$24,492,800 (\$17,755,100 GPR, -\$241,600 FED, and \$6,979,300 PR) in 2013-14 and \$84,313,000 (\$34,361,000 GPR, \$40,393,500 FED, and \$9,558,500 PR) in 2014-15 to reflect revised estimates of the costs of the Governor's MA proposal

in the 2013-15 biennium.

<b>ALT 1</b>	<b>Change to Bill Funding</b>
GPR	\$52,116,100
FED	40,151,900
PR	<u>16,537,800</u>
Total	\$108,805,800

2. 133/133 Alternative. Adopt the Governor's proposed statutory changes, as modified by Discussion Points 2 through 8, with the following exceptions. Delete provisions that would reduce eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 100% of the FPL effective January 1, 2014, and amend the bill to reduce eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 133% of the FPL, effective January 1, 2014. Delete provisions that would authorize or direct DHS to implement a "partial expansion" of MA coverage to non-elderly adults with family incomes not greater than 100% of the FPL who are not otherwise eligible for MA, and amend the bill to require DHS to provide health care coverage to non-pregnant, non-elderly adults who are not otherwise eligible for MA or Medicare and whose family incomes do not exceed 133% of the FPL, effective January 1, 2014. Further, require DHS to seek any federal approval necessary to comply with this requirement, and to comply with all federal requirements to enable the state to claim the ACA's enhanced FMAP for newly eligible individuals for the cost of providing health care coverage to these individuals. Increase funding in the bill by \$126,017,200 (-\$8,758,100 GPR, \$127,796,000 FED, and \$6,979,300 PR) in 2013-14 and by \$353,141,100 (-\$58,161,600 GPR, \$401,744,200 FED, and \$9,558,500 PR) in 2014-15 to reflect these changes to the bill.

<b>ALT 2</b>	<b>Change to Bill Funding</b>
GPR	- \$66,919,700
FED	529,540,200
PR	<u>16,537,800</u>
Total	\$479,158,300

3. 200/133 Alternative. Adopt the Governor's proposed statutory changes, as modified by Discussion Points 2 through 8, with the following exceptions. Delete provisions that would reduce eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 100% of the FPL effective January 1, 2014. Delete provisions that would authorize or direct DHS to implement a "partial expansion" of MA coverage to non-elderly adults with family incomes not greater than 100% of the FPL who are not otherwise eligible for MA, and amend the bill to require DHS to provide health care coverage to non-pregnant, non-elderly adults who are not otherwise eligible for MA or Medicare and whose family incomes do not exceed 133% of the FPL, effective January 1, 2014. Further, require DHS to seek any federal approval necessary to comply with this requirement, and to comply with all federal requirements to enable the state to claim the ACA's enhanced FMAP for newly eligible individuals for the cost of providing health care coverage to

these individuals. Increase funding in the bill by \$160,612,000 (\$125,800 GPR, \$141,694,200 FED, and \$18,792,000 PR) in 2013-14 and by \$464,261,500 (-\$23,837,200 GPR, \$454,096,800 FED, and \$34,001,900 PR) in 2014-15 to reflect these changes to the bill.

<b>ALT 3</b>	<b>Change to Bill Funding</b>
GPR	- \$23,711,400
FED	595,791,000
PR	<u>52,793,900</u>
Total	\$624,873,500

4. In addition to Alternative 1 or Alternative 2, require that the Secretary of the federal DHHS determine that a health insurance exchange is fully operational in the state before any reduction in eligibility for parents or caretaker relatives in BadgerCare Plus can occur.

5. In addition to Alternative 1, require that the Secretary of the federal DHHS determine that a health insurance exchange is fully operational in the state before DHS can expand MA coverage to non-elderly adults with incomes not greater than 100% of the FPL who are not otherwise eligible for MA.

6. In addition to Alternative 2 or Alternative 3, require DHS to reduce eligibility for non-pregnant non-elderly adults in the expansion group from 133% to 100% of the FPL if either of the following occurs: (a) CMS determines that the state cannot claim the ACA's "newly eligible" FMAP for MA costs associated with these individuals; or (b) the ACA's FMAP for "newly eligible" individuals is repealed or reduced (not including the scheduled reductions beginning in 2017).

7. Adopt the Governor's proposed statutory changes, as modified by Discussion Points 2 through 8, with the following exceptions. Delete provisions that would reduce eligibility for parents and caretaker relatives in BadgerCare Plus from 200% to 100% of the FPL effective January 1, 2014, and delete provisions that would authorize or direct DHS to implement a "partial expansion" of MA coverage to non-elderly adults with family incomes not greater than 100% of the FPL who are not otherwise eligible for MA. Require DHS to seek an extension of federal authority to continue operating the Core Plan under current program rules (including the current enrollment freeze) through the 2013-15 biennium, absent future legislative action. Increase funding in the bill by \$46,973,800 (\$8,608,100 GPR, \$17,526,400 FED, and \$20,839,300 PR) in 2013-14 and \$39,487,800 (-\$5,603,900 GPR, \$6,995,100 FED, and \$38,096,600 PR) in 2014-15.

<b>ALT 7</b>	<b>Change to Bill Funding</b>
GPR	\$3,004,200
FED	24,521,500
PR	<u>58,935,900</u>
Total	\$86,461,600

Prepared by: Eric Peck and Sam Austin  
Attachment

## ATTACHMENT

### **Governor's Proposed Eligibility and Other Changes to BadgerCare Plus, the BadgerCare Plus Core Plan, and other MA-Related Programs**

Assembly Bill 40 (AB 40) would make a number of statutory changes relating to the state's MA and MA-related programs, as summarized below. Some of the changes are intended to codify changes the Department of Health Services (DHS) made to the MA program under temporary authority provided to DHS under the 2011-13 state budget (Act 32). Under current state law, these temporary changes and the authority under which they were implemented is repealed effective January 1, 2015. The following summary refers to these sections of the bill as codifying temporary program changes implemented under Act 32.

In other cases, the bill would revise existing statutes to reflect MA program changes DHS recommended and JFC approved under the temporary Act 32 process, but which have not received the requisite federal approval. The bill would revise current statutes to reflect these changes, while noting that their implementation requires federal approval. The following summary refers to these sections of the bill as JFC-approved Act 32 changes that require federal approval to implement.

Unless otherwise noted, the proposed changes would go into effect on the bill's general effective date.

#### **Parents and Caretaker Relatives in BadgerCare Plus**

*Income Eligibility Limits.* Reduce income eligibility limits for parents and caretaker relatives under BadgerCare Plus from 200% to 100% of the FPL. Specify that the new income limit of 100% of the FPL is before application of the 5% income disregard established under the Patient Protection and Affordable Care Act (ACA) for purposes of determining eligibility for MA. These changes would go into effect January 1, 2014.

*Require Child be a "Dependent Child" For Parents and Caretakers to Qualify for BadgerCare Plus.* Under current law, the term "child" is defined as a child under age 19 for purposes of establishing BadgerCare Plus eligibility for parents and caretaker relatives. The bill would replace the term "child" for these purposes with the term "dependent child," and would define a "dependent child" as an individual who is under age 18, or who is age 18 and is a full-time student in secondary school or equivalent vocational or technical training if before attaining age 19 the individual is reasonably expected to complete the school or training. These changes would go into effect January 1, 2014.

*Repeal Provisions Related to Treatment of Depreciation for Individuals with Self-Employment Income.* Under current law, if an adult family member has self-employment income, their "net self-employment earnings" are included when determining a parent's or caretaker relative's eligibility for BadgerCare Plus. In such instances, the parent or caretaker can qualify

for the BadgerCare Plus standard plan if their family income does not exceed 200% of the FPL without deducting depreciation, and they can qualify for the BadgerCare Plus benchmark plan if their family income exceeds 200% of the FPL before deducting depreciation but does not exceed 200% of the FPL after deducting depreciation. The bill would repeal these provisions effective January 1, 2014. Thereafter, the bill would make parents and caretakers with self-employment income eligible for BadgerCare Plus if their family income does not exceed 100% of the FPL as calculated using the income counting methodologies that would be created in the bill (see "Counting Income for Purposes of Determining BadgerCare Plus Eligibility" below). Those revised methods for determining income go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility for these parents and caretakers on the later of April 1, 2014 or the actual date of the redetermination.

### **Pregnant Women in BadgerCare Plus**

The bill as introduced would make the following changes to coverage for pregnant women under BadgerCare Plus.

*Income Eligibility Limits.* Reduce income eligibility limits for full MA coverage for pregnant women under BadgerCare Plus from 300% of the FPL to 133% of the FPL. In addition, revise the current statutory definition of the term "unborn child" for purposes of determining an unborn child's eligibility for prenatal care benefits under BadgerCare Plus to include situations where the unborn child and the unborn child's mother meet all other applicable eligibility requirements for MA except the mother's family income exceeds 133% of the FPL. These changes would go into effect January 1, 2014.

*Spend-Down Eligibility for Pregnant Women.* Repeal provisions that currently allow pregnant women with family incomes greater than 300% of the FPL to qualify for coverage under the BadgerCare Plus benchmark plan if they are obligated or they expend for any member of their family, for medical care, personal health insurance premiums, or both, the difference between their family income and 300% of the FPL. Instead, provide that pregnant women with family incomes greater than 133% of the FPL will not be certified as being eligible for MA until their family income in excess of 133% of the FPL has been obligated or expended for the above-described costs. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination.

*Presumptive Eligibility for Pregnant Women.* Under current law, pregnant women can qualify for "presumptive eligibility" under BadgerCare Plus if a qualified health care provider or entity determines, based on preliminary information, that her family income does not exceed 300% of the FPL. The woman then has until the last day of the month following the month in which the preliminary eligibility determination was made to apply for BadgerCare Plus. During her period of presumptive eligibility, DHS pays allowable charges on behalf of the woman only for ambulatory prenatal care services under the standard plan (if her family income does not exceed 200% of the FPL) or the benchmark plan (if her family income exceeds 200% of the FPL). The bill would reduce the income limit for presumptive eligibility for pregnant women from 300% of the FPL to 133% of the FPL, and specify that these pregnant women would be

eligible for ambulatory prenatal care under the standard plan during their period of presumptive eligibility. These changes would go into effect January 1, 2014.

*Retroactive Eligibility for Pregnant Women.* Under current law, pregnant women can obtain coverage for services they received during the three months prior to the month they applied for BadgerCare Plus if they met the program's eligibility requirements during those months. Due to the other eligibility changes described above, the bill would reduce the income eligibility limit for retroactive eligibility for pregnant women from 300% of the FPL to 133% of the FPL, effective January 1, 2014.

Following the bill's introduction, the administration indicated that the above-described changes to coverage for pregnant women should be deleted to reflect the Governor's intent to maintain the program's current coverage levels for pregnant women. The Governor's revised proposals with respect to pregnant women, along with several other revisions to the bill that the administration has requested, are described at the end of this summary.

### **Children in BadgerCare Plus**

*Buy-In for Children in Families with Income Greater than 300% of the FPL.* The bill would repeal a provision that currently allows a child who is not an unborn child in a family with income greater than 300% of the FPL to obtain coverage under the BadgerCare Plus benchmark plan if their families pay monthly premiums on behalf of the child in an amount equal to the full per member per month cost of coverage.

*Children Under Age One Whose Mothers, When Pregnant, Had Family Income Between 200% and 300% of the FPL and Were Determined to be Eligible for BadgerCare Plus.* Under current law, a child under age one is continuously eligible for coverage under the BadgerCare Plus benchmark plan if their mother, while pregnant, had family income between 200% and 300% of the FPL and was determined to be eligible for the program, and the child lives with his or her mother in this state. The bill would repeal this provision, as well as various statutory cross-references to the provision. These changes would go into effect January 1, 2014.

*Spend-Down Eligibility for Children.* Under current law, children in families with incomes greater than 150% of the FPL who are ineligible for the program due to other insurance coverage may qualify for BadgerCare Plus if the difference between the child's family's income and 150% of the FPL is obligated or expended on behalf of the child or any member of the child's family for medical care or personal health insurance premiums. The bill would amend spend-down eligibility for children by adding a provision that allows children in families with incomes greater than 300% of the FPL to qualify for BadgerCare Plus if the difference between the child's family's income and 150% of the FPL is obligated or expended on behalf of the child or any member of the child's family for the above-stated purposes. These changes would go into effect January 1, 2014.

### **MA Coverage for Former Foster Children**

Under current law, an individual who was born on or after January 1, 1990, and who, on

his or her 18th birthday, was in a foster care placement under the responsibility of this state, as determined by DHS, is eligible for coverage under the BadgerCare Plus standard plan, regardless of their family income, until the last day of the month in which they turn age 21, unless they otherwise lose eligibility sooner.

The bill would amend this provision to make the following individuals eligible for the BadgerCare Plus standard plan: "An individual who, regardless of family income, was born on or after January 1, 1988, and who, on his or her 18th birthday, was in a foster care placement under the responsibility of this state, or at the option of the department, under the responsibility of another state, and enrolled in Medical Assistance under this subchapter or a Medicaid program, as determined by the department. The coverage for an individual under this subdivision ends on the last day of the month in which the individual becomes 26 years of age, unless he or she otherwise loses eligibility sooner." These changes would go into effect January 1, 2014.

### **Transitional MA**

*Eliminate Transitional MA.* Under the bill, individuals currently eligible for transitional MA would no longer be eligible for MA if the federal Department of Health and Human Services (DHHS) approves a request from DHS to deny all or some transitional MA benefits to that individual or family, if such approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement. The bill would also repeal obsolete references to earned income disregards from the current transitional MA statute.

### **Presumptive Eligibility for Children**

*Children.* Under current law, a child who is not an unborn child is eligible for presumptive eligibility under BadgerCare Plus if a qualified health care provider or entity determines, based on preliminary information, that their family income does not exceed 150% of the FPL. During their period of presumptive eligibility, a child is eligible for coverage under the standard plan.

The bill would retain the current presumptive eligibility income limits for children ages six through age 18, and increase the presumptive eligibility limits for other children as follows: (1) from 150% of the FPL to 185% of the FPL for children ages one through five; and (2) from 150% of the FPL to 300% of the FPL for children under age one. These changes would codify temporary program changes DHS implemented under Act 32.

The bill would further amend current law to specify that a child who is not an unborn child is not eligible for presumptive eligibility benefits if the federal DHHS approves the Department's request not to provide those benefits. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Retroactive Eligibility**

Under current law, a child who is not an unborn child, their parents, and caretaker relatives can obtain coverage for services they received during the three months prior to the

month they applied for BadgerCare Plus if their family income was less than 150% of the FPL during those three months. The bill would amend these provisions to provide that an individual who is not disabled, not elderly, not pregnant, who is an adult and whose family income exceeds 133% of the FPL is not eligible for retroactive eligibility benefits. These changes would codify temporary program changes DHS implemented under Act 32.

In addition, the bill specifies that to the extent allowed by the federal DHHS, the following individuals, if they are not disabled, would not qualify for retroactive eligibility: pregnant women, children who are not unborn children, parents, and caretakers. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Counting Income for Purposes of Determining BadgerCare Plus Eligibility**

*Redefine "Family Income" as "Household Income."* Current law defines "family income" for BadgerCare Plus eligibility purposes as the total gross earned and unearned income received by all members of a family. The bill would amend the term "family income" in this context to mean "household income" as the latter term is defined in federal law regarding application of modified adjusted gross income (MAGI) for purposes of determining MA eligibility. Those federal law provisions define "household income," with some exceptions, as the sum of the MAGI-based income of every individual included in the individual's "household" minus an amount equivalent to five percentage points of the FPL for the applicable family size. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014, or the actual date of the redetermination of eligibility.

The bill would require DHS to apply the federal definition of the term "household" when determining family income for BadgerCare Plus eligibility purposes. In addition, it would require DHS, when determining the family size for a pregnant woman, to include the pregnant woman and the number of babies she is expecting. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination of eligibility.

*Include Income of all Adults Residing in the Home.* In addition to other income-counting requirements, the bill would require DHS to do all of the following: (1) when calculating the family income of a member of a household who is not disabled, include the income of all adults residing in the home for at least 60 consecutive days but exclude the income of a grandparent in a household containing three generations, unless the grandparent applies for or receives benefits as a parent or caretaker relative; and (2) when determining the size of a family for purposes of determining income eligibility, exclude from family size an adult whose income is included in a calculation of family income solely under (1). The changes to income-counting described in (1) and (2) would apply only to the extent the federal DHHS approves the income eligibility calculation methods, if approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement.

The bill would also require DHS to apply the federal definition of "household income" when establishing family income for purposes of determining MA eligibility for the following: (1) individuals infected with tuberculosis who meet the income and resource eligibility

requirements for the federal supplemental security income program; and (2) individuals under age 21 who reside in an intermediate care facility, skilled nursing facility, or inpatient psychiatric hospital. These changes would go into effect January 1, 2014, and would first apply to redeterminations of MA eligibility on the later of April 1, 2014 or the actual date of the redetermination of eligibility.

### **Rules Pertaining to Other Insurance Coverage for BadgerCare Plus Recipients**

Under current state statute, individuals with family incomes greater than 150% of the FPL may not be eligible for coverage under BadgerCare Plus if they had access to, or if they currently have access to or coverage under, either of the following: (a) coverage provided by an employer for which the employer pays at least 80% of the premium; or (b) coverage under the state employee health plan. Certain individuals, including pregnant women and children under age one, are exempt from these rules. The bill would make the following changes to the program's "other insurance" rules.

Specify that unless otherwise provided in the bill, an individual whose family income exceeds 150% of the FPL remains subject to the current BadgerCare Plus other insurance rules.

Provide that an individual who is not disabled and not pregnant, who is over age 18, and whose family income exceeds 133% of the FPL, is not eligible for BadgerCare Plus if all of the following apply: (1) they have access to individual or family health coverage provided by an employer in which the monthly premium that an employee would pay for an employee-only policy does not exceed 9.5% of the family's monthly income, or to individual or family health coverage under the state employee health plan; (2) access to such coverage existed during any of the following times: (a) the twelve months before the first day of the month they apply for BadgerCare Plus; (b) the three months after the last day of the month in which they apply for BadgerCare Plus; or (c) the month including the date of their annual MA eligibility determination; and (3) the individual does not have as a reason for not obtaining health insurance any of the good cause reasons provided in law. These changes would codify temporary program changes DHS implemented under Act 32.

Disqualify the following individuals from BadgerCare Plus if they had access to the types of other insurance during any of the periods described above, unless any of the good cause reasons recognized in state law is the reason the individual did not obtain health insurance coverage: (1) the individual is not disabled and is a child, or an unborn child, of an individual whose family income is at a level determined by DHS but no lower than 133% of the FPL; (2) the individual is an adult parent or an adult caretaker relative who is not disabled, not pregnant, and whose income is at a level determined by DHS but no lower than 100% of the FPL; or (3) the individual is an adult, including a pregnant woman, who is under age 26, who is eligible to be covered under coverage a parent receives from an employer, and whose family income is at a level determined by DHS but no lower than 100% of the FPL. Provide that an individual identified under (3) is not ineligible for BadgerCare Plus if either of the following good cause reasons apply: (a) the parent of the individual is no longer employed by the employer through which the parent was eligible for coverage and the parent does not have current coverage; or (b) the employer of the parent of the individual discontinued providing health benefits to all

employees. Specify that DHS may apply the changes to the program's "other insurance" rules described in this paragraph only if the federal DHHS approves, if such approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement.

Provide that if the federal DHHS approves the Department's request to add private major medical insurance as a type of insurance which causes ineligibility, an individual who is not disabled, not pregnant, whose family income exceeds 133% of the FPL, and who has coverage under private major medical insurance for which the monthly premium does not exceed 9.5% of the family's monthly income is not eligible for BadgerCare Plus. These are JFC-approved Act 32 program changes that require federal approval to implement.

In addition, provide that if the federal DHHS approves, the following individuals would not be eligible for BadgerCare Plus if he or she has the private major medical insurance coverage described in the preceding paragraph: (1) an individual who is not disabled and who is a child, or an unborn child, of an individual whose family income is at a level determined by DHS but no lower than 133% of the FPL; or (2) an adult parent or an adult caretaker relative who is not disabled, not pregnant, and whose family income is at a level determined by DHS but no lower than 100 % of the FPL. These are JFC-approved Act 32 program changes that require federal approval to implement.

Amend, as follows, current statutory sections which identify individuals who are exempt from the program's other insurance rules: (1) clarify that a pregnant woman remains exempt from several of the program's other insurance rules except to the extent that she is a non-disabled adult under age 26 who is eligible to be covered under coverage a parent receives from an employer, as provided in the bill and subject to federal DHHS approval; (2) repeal, effective January 1, 2014, the exemption for children under age one whose mothers, when pregnant, had family income between 200% and 300% of the FPL and who were determined eligible for the program; (3) create an exemption for an adult who is disabled, and define the term "disabled" when referring to an adult for purposes of the BadgerCare Plus program, including in this context, as an adult who meets the disability standard for federal supplemental security income; (4) create exemptions in cases where the otherwise disqualifying insurance coverage is owned by someone not residing with the family and continuation of the coverage is beyond the family's control, and where the insurance only covers services provided in a service area that is beyond a reasonable driving distance. The change described in (3) would codify temporary program changes DHS implemented under Act 32. The changes described in (1) and (4) are JFC-approved Act 32 program changes that require federal approval to implement.

Repeal the current requirement that a pregnant woman with health insurance coverage and family income greater than 200% of the FPL maintain the health insurance coverage as a condition of eligibility for BadgerCare Plus. In addition, repeal references to pregnant women with family incomes greater than 200% of the FPL in existing statutory sections that disqualify certain individuals from BadgerCare Plus for the three calendar months following the month in which their other insurance coverage ended without a good reason as defined in statute.

Provide that certain individuals who had the following types of health insurance coverage are not eligible for BadgerCare Plus for the three calendar months following the month in which

the coverage ended without one of the good cause reason provided in statute: (1) individual or family health coverage provided by an employer in which the monthly premium that an employee would pay for an employee-only policy does not exceed 9.5% of the family's monthly income, or individual or family health coverage under the state employee health plan; or (2) private major medical insurance for which the monthly premium does not exceed 9.5% of the family's monthly income. Apply this other insurance rule to non-pregnant, non-disabled adults whose family incomes exceed 133% of the FPL. These changes would codify temporary program changes DHS implemented under Act 32.

In addition, if the federal DHHS approves, apply the three-month ineligibility period described in the preceding paragraph to the following individuals: (1) non-disabled children whose family incomes are at a level determined by DHS but no lower than 133% of the FPL; (2) adult parents and adult caretaker relatives who are not disabled, not pregnant, and whose family incomes are at a level determined by DHS but no lower than 100% of the FPL; and (3) non-disabled adults under age 26, including pregnant women, who are eligible to be covered under coverage a parent receives from an employer, and whose family incomes are at a level determined by DHS but no lower than 100% of the FPL. These are JFC-approved Act 32 program changes that require federal approval to implement.

Create the following good cause exemptions from the other insurance rules that would otherwise disqualify certain individuals for the three calendar months following the month in which the other insurance coverage ended: (a) the insurance coverage is owned by someone not residing with the family and continuation of the coverage is beyond the family's control; or (b) the insurance coverage only covers services provided in a service area that is beyond a reasonable driving distance. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Premiums under BadgerCare Plus**

Under current state statutes, a BadgerCare Plus recipient who is an adult, who is not pregnant, and whose family income is greater than 150% of the FPL but not greater than 200% of the FPL is required to pay a premium for coverage under the program that does not exceed 5% of his or her family income. Current statutes further provide that if the recipient is a parent or caretaker relative with self-employment income who is eligible for BadgerCare Plus because their family income is less than 200% of the FPL after deducting depreciation, the premium may not exceed 5% of family income calculated before depreciation was deducted.

The bill would repeal the reference to parents and caretaker relatives with self-employment income from this section of the statutes, effective January 1, 2014.

In addition, the bill would make the above-cited statutory section regarding BadgerCare Plus premiums subject to the following newly created provisions.

Specify that except as otherwise provided in statute, a recipient who is an adult parent or an adult caretaker relative who is not disabled or American Indian, and whose family income exceeds 133% of the FPL shall pay a premium for coverage under BadgerCare Plus in an amount

determined by DHS that is based on a formula in which costs decrease for those with lower family incomes and that is no less than 3% of family income but no greater than 9.5% of family income. Specify that if the recipient is a parent or caretaker relative with self-employment income who is eligible for BadgerCare Plus because their family income is less than 200% of the FPL after deducting depreciation, the premium may not exceed 5% of family income calculated before depreciation was deducted. These changes would codify temporary program changes DHS implemented under Act 32. The bill would repeal this newly created section effective January 1, 2014.

Under current law, children in families with income greater than 200% of the FPL, including unborn children, are required to pay premiums for coverage under the BadgerCare Plus benchmark plan that do not exceed the full per member per month costs of coverage. Children in families with incomes less than 200% of the FPL are not currently required to pay premiums. The bill retains this provision, but would make it subject to a newly-created provision that would authorize DHS to charge premiums to non-disabled children with family incomes of at least 150% of the FPL, as determined by DHS, in an amount determined by DHS, subject to federal DHHS approval, if approval is required. The bill would also repeal a current statutory section that separately authorizes DHS to impose premiums on an unborn child or a pregnant woman with family incomes greater than 200% of the FPL.

Amend sections that currently exempt certain BadgerCare Plus recipients from paying premiums, as follows: (1) make the current exemptions subject to the bill's new premium requirements for non-disabled children with family incomes of at least 150% of the FPL; and (2) repeal the current exemption that applies to children under age one whose mothers, when pregnant, had family income between 200% and 300% of the FPL and who were determined eligible for the program, effective January 1, 2014.

*Restrictive Re-Enrollment Period.* Under current state statute, if a BadgerCare Plus recipient who is required to pay a premium does not pay a premium when due, or requests that his or her coverage be terminated, their coverage under the program terminates and they are not eligible for six consecutive calendar months following the date on which their coverage terminated, except for any month during that six-month period when their family income does not exceed 150% of the FPL.

The bill would revise the restrictive re-enrollment period for adults from six consecutive calendar months to twelve consecutive calendar months except for any month during that twelve-month period when the adult's family income does not exceed 133% of the FPL. These changes would codify temporary program changes DHS implemented under Act 32.

The bill would also amend the current statute to extend the restrictive re-enrollment period for children from six months to twelve months, if the federal DHHS approves that change. These are JFC-approved Act 32 program changes that require federal approval to implement.

In addition, the bill would amend the current restrictive reenrollment statute by deleting a reference to certain premium-paying parents and caretaker relatives with self-employment income. These changes would go into effect January 1, 2014.

### **Alternate Benchmark Plan**

The bill would authorize DHS to provide, if it chooses, an alternate benchmark plan to certain BadgerCare Plus recipients. This alternate benchmark plan would provide coverage for benefits similar to those in a commercial, major medical insurance policy. The bill would also provide the following with respect to the alternate benchmark plan. Authorize DHS to charge copayments to recipients receiving coverage under an alternate benchmark plan that are higher than copayments charged to recipients receiving coverage under the BadgerCare Plus standard plan. Prohibit DHS from charging a recipient of coverage under the alternate benchmark plan whose family is not greater than 150% of the FPL a copayment that exceeds 5% of the individual's family incomes for all members of the family. Stipulate that DHS may only provide coverage under the alternate benchmark plan to the extent the plan is approved by the federal DHHS.

The bill further provides that if DHS obtains approval from the federal DHHS to provide an alternate benchmark plan, and to the extent the federal DHHS approves, DHS may enroll in the alternate benchmark plan any individual whose family income exceeds 100% of the FPL who is either an adult who is not pregnant or a child, except that DHS shall enroll a child who has a parent who is enrolled in BadgerCare Plus in the same coverage plan as his or her parent. In the event DHS is providing coverage under an alternate benchmark plan, the bill would allow it to discontinue coverage under the existing BadgerCare Plus benchmark plan for individuals eligible for the alternate benchmark plan.

The bill would also allow DHS to provide services to individuals enrolled in the alternate benchmark plan through a medical home initiative similar to the medical home pilot projects described in other sections of the bill. These are JFC-approved Act 32 program changes that require federal approval to implement.

### **Benchmark Plan for Children Receiving Early Intervention Services**

The bill would authorize DHS to offer a benchmark plan, subject to federal DHHS approval, to any child who is receiving services through the early intervention program under s. 51.44 of the statutes (the Birth-to-3 program) and to enroll any such child in the benchmark plan, but prohibit DHS from requiring such a child to enroll in the benchmark plan. These are JFC-approved Act 32 program changes that require federal approval to implement.

The bill would also create a new category of covered services under the BadgerCare Plus standard plan for services provided by early intervention teachers, home trainers, parent-to-parent mentors, and developmental specialists to children enrolled in the benchmark plan described in the preceding paragraph. Under the bill, DHS would be prohibited from charging a copayment to a child enrolled in such a benchmark plan for these services.

### **Medical Home Pilot Projects**

The bill would authorize DHS to administer the medical home initiative as a service delivery mechanism to provide and coordinate care for individuals who are eligible for an MA

program under Subchapter IV ("Medical Assistance") of Chapter 49 of the statutes that provides services under a fee-for-service model. It would also permit DHS to administer a medical home initiative to serve individuals who are members of any of the following populations: (1) children who are in out-of-home care or are receiving adoption assistance under 42 USC 670-679c; (2) pregnant women; (3) individuals who are exiting mental health facilities or correctional facilities; (4) individuals with a diagnosis of serious mental illness or substance abuse disorder; (5) adults with two or more chronic medical conditions; and (6) other groups of individuals with conditions DHS determines would benefit from services through a medical home.

Under the bill, DHS would be required to provide individuals through any such medical home initiative the benefits under the BadgerCare Plus standard plan. In addition, the bill would permit DHS to provide such individuals benefits in addition to those offered under the standard plan that are targeted to the population receiving services through the medical home. The bill would add the latter category of services to the list of services covered by the BadgerCare Plus standard plan.

The bill would authorize DHS to administer any such medical home initiative in a limited geographical area, and permit DHS to make an all-inclusive payment to the provider offering services through a medical home.

The bill specifies that if the federal DHHS approves the Department's request to administer a medical home initiative, DHS shall automatically enroll an individual who is eligible for a medical home initiative authorized under these sections in the medical home initiative. The bill further provides that at any time after the first six months of enrollment in the medical home initiative, the individual may opt out of participation in the initiative.

The preceding paragraphs, as they pertain to a medical home pilot project for foster children, would codify temporary program changes DHS implemented under Act 32. As the preceding paragraphs pertain to medical home pilot projects for the other groups indicated, they represent JFC-approved Act 32 program changes that require federal approval to implement.

### **Coverage for Childless Adults**

The 2007-09 biennial budget required DHS to request a waiver from the federal DHHS to permit the Department to provide health care coverage for basic primary and preventive care to adults under age 65, who are not otherwise eligible for MA or Medicare, and whose family incomes do not exceed 200% of the FPL. The resulting Core Plan began providing services in January 2009, and eligibility expanded statewide in July 2009. The program has been closed to new enrollment since late 2009. The current Core Plan waiver expires December 31, 2013.

The bill would amend the existing statute relating to the Core Plan so as to require DHS to request a waiver from the federal DHHS to provide health care coverage for basic primary and preventive care to adults who are under age 65, who are not otherwise eligible for MA or Medicare, and whose income does not exceed 100% of the FPL (rather than 200% of the FPL, as under current law) before application of the ACA's 5% income disregard. The bill would also amend the current Core Plan statute to specify that if the revised waiver is granted and in effect,

the demonstration project shall begin on the effective date of the waiver. These changes would go into effect January 1, 2014.

The bill would then repeal and recreate these amended sections of the Core Plan statute effective January 1, 2015. The recreated statute would delete references to the Department's temporary policymaking authority under Act 32, which expires January 1, 2015.

Current law authorizes DHS to promulgate rules defining the health care benefit plan provided to Core Plan recipients, including more specific eligibility requirements and cost-sharing requirements. Current law also states that Core Plan cost sharing may include an annual enrollment fee not greater than \$75 per year. In addition to these current cost-sharing requirements, the bill would provide that a childless adult who is eligible to receive benefits under the demonstration project who is not disabled, not pregnant, not an American Indian as defined in federal law, and whose family income exceeds 133% of the FPL, shall pay a premium for coverage under the program in an amount determined by DHS that is based on a formula in which costs decrease for those with lower family incomes and that is no less than 3% of family income but no greater than 9.5% of family income. These changes would codify temporary program changes DHS implemented under Act 32.

The bill would specify that when calculating the family income of a member of a household who is not disabled for purposes of determining eligibility for the demonstration project, DHS shall do all the following: (1) include the income of all adults residing in the home for at least 60 consecutive days but exclude the income of a grandparent in a household containing three generations, unless the grandparent applies for or receives benefits as a parent or caretaker relative; and (2) when determining the size of a family for purposes of determining income eligibility, exclude from family size an adult whose income is included in a calculation of family income solely under (1). Specify that the changes to income-counting described in (1) and (2) apply only to the extent the federal DHHS approves the income eligibility calculation methods, if approval is required. These are JFC-approved Act 32 program changes that require federal approval to implement.

Under the bill, DHS would be required to apply the revised definitions of family income and the federal regulations defining "household" to determinations of income for purposes of eligibility under the demonstration project. These changes would go into effect January 1, 2014.

Finally, the bill would DHS to provide services to individuals who are eligible for the demonstration project through a medical home initiative, as otherwise provided under the bill.

### **BadgerRx Gold**

The bill would repeal current statutory sections authorizing DHS to establish and administer a pharmacy benefits purchasing pool (BadgerRx Gold), and repeal references to this pharmacy benefits purchasing pool in various statutory appropriations which currently authorize DHS to administer and contract with an entity to operate a pharmacy benefits purchasing pool. These changes would go into effect January 1, 2014.

## **BadgerCare Plus Basic Plan**

The bill also repeals current statutory sections, including statutory appropriations, authorizing DHS to operate the BadgerCare Plus Basic Plan. The BadgerCare Plus Basic Plan was created in 2010 to provide limited health care coverage to childless adults on the waitlist for services under the BadgerCare Plus Core Plan. These changes would go into effect January 1, 2014. Under current law, the Basic Plan terminates January 1, 2014.

## **Other Provisions**

*Community Recovery Services.* Current statutes relating to community recovery services covered by the MA program refer to amendments to the state MA plan submitted under 42 USC 1396n(i). The administration indicates these references can be repealed because DHS has submitted the applicable state plan amendments under different sections of federal law. These changes would codify temporary program changes DHS implemented under Act 32.

*Medically Needy Income Eligibility.* Under current law, MA eligibility under the medically needy criteria exists if the individual's family income does not exceed 133 and 1/3% of the maximum AFDC cash assistance level, or the combined benefit amount under federal supplemental security income and state supplemental security income, whichever is higher. This eligibility standard is currently subject to a federal law provision that caps the income level for purposes of qualifying for federal financial participation at 133 and 1/3% of the AFDC cash assistance level. The administration indicates that under the ACA, amounts eligible for federal financial participation would now exceed 133 and 1/3% of the AFDC cash assistance level. To maintain the program's current eligibility levels under the medically needy criteria, the bill would do the following: (1) re-define the income eligibility level to not exceed 133 and 1/3% of the maximum AFDC cash assistance level, or the combined benefit amount under federal supplemental security income and state supplemental security income, whichever is lower (rather than higher, as in current statute); and (2) repeal the current reference to the federal financial participation provisions. These changes would go into effect January 1, 2014.

## **ADMINISTRATION'S RECOMMENDED CHANGES TO AB 40**

Following the introduction of AB 40, the administration requested that the following revisions be made to the bill. First, the administration has indicated that the Governor's intent is to maintain current eligibility and coverage levels for pregnant women. To accomplish this, the administration recommends deleting provisions in AB 40 that would have made the following changes: (a) reduce income eligibility levels for pregnant women to 133% of the FPL; (b) modify the current statutory definition of the term "unborn child" for BadgerCare Plus eligibility purposes to include situations where the unborn child and the unborn child's mother meet all other applicable eligibility requirements except that the mother's family income exceeds 133% of the FPL, and make a non-substantive adjustment to current statutory language; (c) alter current statutory provisions relating to "spend-down" eligibility for pregnant women; (d) alter current statutory provisions relating to presumptive eligibility for pregnant women; (e) repeal a provision that establishes continuous eligibility for certain children of pregnant women, and delete cross-

references to that section; and (f) repeal several current statutory provisions relating to other insurance "crowd-out" rules for pregnant women with family incomes greater than 200% of the FPL. To accomplish the administration's requested changes, bill sections 1071, 1086, 1093, 1101 through 1104, 1112, 1113, 1121, 1131, 1135, 1136, 1141, 1150 and 1219 would have to be deleted.

Second, the administration indicates that its intent is to provide benefits to the new MA enrollees in the childless adult enrollment group under the standard plan. Accordingly, it recommends deleting the reference to "basic primary and preventive care" in the current statutory sections relating to coverage under the Core Plan. This revised language would go into effect January 1, 2014.

Third, the administration indicates that its intent is to provide benefits under the standard plan, rather than the benchmark plan (as is currently the case) for pregnant woman and children with family incomes greater than 200% of the FPL. This revision would go into effect January 1, 2014.

Fourth, the administration recommends several changes relating to transitional MA coverage for adults. Under permanent provisions in federal law, states are required to provide four months of transitional MA coverage to individuals in families with dependent children who would otherwise lose their MA eligibility due to increased earned income. Under temporary provisions in federal law, states are required to provide at least six months, and up to twelve months, of transitional MA coverage to these individuals. The temporary federal requirement expires December 31, 2013, absent Congressional reauthorization. As introduced, AB 40 would codify a DHS policy approved by JFC under the temporary Act 32 process that authorizes DHS to deny transitional MA benefits to an individual or family if the federal DHHS approves, to the extent federal approval is required. The federal DHHS previously denied the Department's waiver request to eliminate transitional MA in its entirety, but approved a more limited request that temporarily allows DHS to impose the new premium schedule for BadgerCare Plus adults on non-pregnant, non-disabled adults in transitional MA with family incomes greater than 133% of the FPL. That temporary federal approval expires December 31, 2013. The administration has requested a modification to AB 40 that would do the following: (a) recognize the continued eligibility of individuals who were eligible for transitional MA as of December 31, 2013 until the individual's twelve-month transitional MA period ends; (b) recognize ongoing four-month transitional MA eligibility beginning January 1, 2014; and (c) provide DHS the option to charge premiums to individuals in the four-month transitional MA eligibility group with family incomes greater than 100% of the FPL beginning January 1, 2014, subject to federal approval.

Under current law, children in BadgerCare Plus for whom required premiums are not paid when due cannot re-enroll for six months. DHS indicates that proposed federal regulations would limit the restrictive re-enrollment period for children to three months. Accordingly, the administration recommends modifying provisions in AB 40 relating to a child's restrictive re-enrollment to provide that the period shall be three consecutive calendar months, or up to twelve consecutive calendar months if the federal DHHS approves, following the date on which the child's coverage terminated, except for any month during that period when the child's family's

income does not exceed 150% of the FPL. The administration also recommends modifying AB 40 to specify that this period of non-eligibility would not apply to children for whom outstanding premiums have been paid.

The administration recommends modifying a provision in AB 40 which would repeal the appropriation for the BadgerCare Plus Basic Plan effective January 1, 2014. Under current law, the Basic Plan terminates January 1, 2014, and DHS is prohibited from paying any claim for services provided after December 31, 2013. Due to timing lags in provider's claim submissions, DHS may not receive claims for services rendered prior to January 1, 2014 until after that date. To enable DHS to pay these "wrap up" claims, the administration recommends modifying AB 40 to delay the repeal of the Basic Plan appropriation until June 30, 2015.

Under current law, DHS pays health maintenance organizations (HMOs) access payments funded through the hospital assessment, which the HMOs pass through to eligible hospitals based on the number of inpatient discharges and outpatient visits for HMO enrollees who are MA recipients, except enrollees in the Core Plan. The administration recommends modifying AB 40 to remove the current prohibition on the payment of hospital assessment access payments for services provided to Core Plan enrollees. This revision would go into effect on the bill's general effective date.