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Childless Adult Employment and Training Waiver (Health Services -- Medicaid Services)

[LFB 2017-19 Budget Summary: Page 209, #6]

CURRENT LAW

BadgerCare Plus, part of the state's medical assistance program (MA), provides health care coverage to individuals and families, including adults without dependent children ("childless adults") with household income of no more than 100% of the federal poverty level (FPL). MA is administered by the Department of Health Services (DHS) under a framework of state and federal law. Coverage of childless adults in Wisconsin is provided under a waiver of federal Medicaid law that allows states to claim federal matching funds for programs and services not generally envisioned or permitted under federal law. In general, the eligibility requirements for childless adults under the waiver are similar to those used for parents with dependent children.

The 2015-17 biennial budget (Act 55) requires DHS to submit to the federal Department of Health and Human Services (DHHS) an amendment to the current childless adults waiver to do all of the following: (a) impose monthly premiums; (b) impose higher premiums for enrollees who engage in behaviors that increase their health risks; (c) require a health risk assessment for all childless adults; (d) limit childless adult eligibility to no more than 48 months; and (e) require enrollees to submit to drug screening, and, if indicated, a drug test. If the amendment is approved, in whole or in part, DHS is required to implement the waiver components, consistent with federal approval.

There are approximately 148,000 childless adults currently enrolled in BadgerCare Plus. In 2015-16, MA benefit expenditures for childless adults (net of drug rebates) totaled $731 million (all funds), which accounted for approximately 10% of total MA benefit expenditures that can be reliably allocated to individual groups.

The eligibility and caseload management functions for MA, as well as several other federal and state programs such as FoodShare and Wisconsin Shares, are performed by "income maintenance" (IM) agencies. In Milwaukee County, these services are provided by Department of Health Services (DHS) staff in Milwaukee Enrollment Services (MilES). In the rest of the state, county employees perform these functions as part of multi-county IM consortia, and tribes perform these services for their members. There are currently 10 multi-county consortia and nine tribes performing IM services. Each year, DHS allocates state and federal funding to support the IM work of the consortia and tribes. The federal funding is matching funding the state receives for eligible state and locally funded administrative services under the MA and FoodShare programs. Funding for MilES is budgeted as part of the DHS budget.

GOVERNOR

Modify a current law provision, enacted as part of the 2015-17 biennial budget, that requires DHS to request an amendment to the current childless adult waiver to impose certain eligibility requirements and restrictions on childless adults participating in BadgerCare Plus, to require DHS to also include in the amendment request a program to provide employment and training services to childless adults. Require DHS to implement the employment and training program, if approved by DHHS, and if the federal government provides federal financial participation for providing employment and training services.

Provide $1,608,000 GPR, 1.0 GPR position, $1,608,000 FED, and 1.0 FED position in 2017-18 and $8,255,500 GPR, 12.0 GPR positions, $8,255,500 FED, and 12.0 FED positions in 2018-19 to implement the childless adult employment and training program. The following table shows the distribution of funding and positions among DHS appropriations.

Childless Adult Employment and Training Program Funding and Positions by Appropriation

	2017-18		2018-19	
	Funding	Positions	Funding	Positions
GPR				
Contracted Employment and Training Services	$0	0.0	$5,471,100	0.0
MA Administrative Contracts	1,502,900	0.0	1,578,100	0.0
State Staff (Including MilES)	105,100	1.0	473,500	12.0
Income Maintenance Administration	0	0.0	732,800	0.0
Total GPR	$1,608,000	1.0	$8,255,500	12.0
FED				
Contracted Employment and Training Services	$0	0.0	$5,471,100	0.0
MA Administrative Contracts	1,502,900	0.0	1,578,100	0.0
State Staff (Including MilES)	105,100	1.0	473,500	12.0
Income Maintenance Administration	0	0.0	732,800	0.0
Total FED	$1,608,000	1.0	$8,255,500	12.0

DISCUSSION POINTS

1. The 2015-17 biennial budget (Act 55) required DHS to request an amendment to the state's childless adult demonstration wavier, allowing the state to impose several program eligibility conditions for childless adults that would not otherwise be allowed under federal law. The Governor's 2017-19 budget bill would amend the Act 55 provision to also require DHS to include in the waiver amendment a request to allow the state to receive federal Medicaid matching funds for an employment and training program for childless adults in BadgerCare Plus.

2. On April 19, 2017, the Department released a draft of a proposed amendment to the federal waiver. In addition to including the elements that were required by 2015 Act 55, the proposal has other elements not included in Act 55, including the request to use federal administrative Medicaid matching funds (50% of eligible costs) to support an employment and training program for childless adults, as would be required under the bill. The Department has solicited public comments on the draft proposal and anticipates submitting a final waiver request at the end of May.

3. In approving the waiver provisions in the 2015-17 budget bill, the Legislature included a requirement that the Department present a report to the Joint Committee on Finance that includes a summary and an estimate of the fiscal effect of the proposed waiver amendment prior to the submittal to DHHS, as well as a separate report following approval if the waiver amendment were approved. However, the Governor vetoed these reporting requirements.

4. Although the Department has now progressed further in the waiver amendment development and implementation process than when the Committee considered these issues during the 2015-17 budget deliberations, the Committee still has options with respect to legislative oversight of the proposed MA program changes. The decisions made in regards to the waiver amendment will have implications for the cost of MA benefits, the cost of administering MA programs (including the proposed employment and training program), and the extent of MA coverage. Consequently, oversight of the final decisions on the waiver amendment could be considered part of the Legislature's role. This paper provides several alternatives for legislative oversight of the implementation of the waiver amendment.

5. While the Department's draft waiver amendment includes general information on the proposed changes, many of the more detailed implementation issues are not included in the draft request. The Department has indicated that it will continue to work on implementation issues in response to public comments and as part of the negotiation process with the federal Centers for Medicare and Medicaid Services (CMS), the unit of DHHS that reviews waiver applications and amendments.

6. This remainder of this paper provides a discussion of waiver amendment issues in four sections. The first provides a description and discussion of the proposed childless adult employment and training program and a related BadgerCare Plus eligibility requirement tied to participating in a minimum number of hours or work or training. The second section provides an overview and discussion of other components of the Department's waiver amendment request. The third section relates to the funding that the bill would provide for implementing the work and training program

and the related eligibility requirement. Finally, the fourth section outlines alternatives for the Committee to consider with respect to both the MA eligibility and program changes, and the funding for implementation.

Employment and Training Waiver amendment Requirement

7. The administration indicates that the intent of the bill's employment and training provision would be to modify eligibility criteria for childless adults in BadgerCare Plus to include a work or job training requirement. The bill would not create such an eligibility requirement in statute or require DHS to include such an eligibility change in a waiver amendment request. Instead, DHS would be required only to request approval to administer an employment and training program, with federal financial participation. The Department would only be required to implement such a program if DHHS agrees to provide federal financial participation.

8. Although the bill would not require that the amendment request include an eligibility requirement tied to employment and training, the draft waiver amendment request does include such a provision. Under the Department's draft amendment, the employment or training requirement would apply to childless adults ages 19 through 49, and would be incorporated into a 48-month time limit on program enrollment (a separate requirement included in the Act 55 waiver provision). Under the time limit policy, only months in which the beneficiary does not meet the work or training requirement would count toward the 48-month limit. Consequently, no childless adult would lose MA coverage as a result of failing to meet the employment and training requirement until at least 48 months following the implementation of the policy.

9. Under the proposed waiver amendment, childless adults would meet the work requirement by having at least 80 hours per month in employment or training, which is the same standard currently used for work requirements for able-bodied adults without dependent children (ABAWDs) under the FoodShare program. As with the FoodShare program, a person without employment that meets the minimum standards could enroll in a state-sponsored employment and training program as a means of meeting the work requirement. The administration anticipates that the current FoodShare employment and training (FSET) program would be expanded to also serve childless adults in BadgerCare Plus.

10. Under FSET, the Department contracts with vendors to provide services on a regional basis, with 11 workforce development regions. In addition, eight tribes administer services for tribal members. FSET vendors provide the following types of services: (a) job search services to equip participants with the tools and skills needed for effective job search; (b) work experience to expose participants to different kinds of employment to clarify job interests and career goals; (c) education, which could include obtaining a General Educational Development (GED), English as a second language, adult basic education, vocational literacy, and short-term technical training, which may include enrollment in a technical or trades program if there is a direct link to employment that is in demand; (d) workfare to provide participants with the opportunity to learn new job skills and establish work references at a nonprofit work site; (e) self-employment support such as technical assistance to develop realistic business plans and sound financial and marketing plans, as well as assistance in obtaining financial support from grants, financial institutions, or other service providers; and (f) job retention, which may be provided for up to 90 days for employment that is

obtained resulting from FSET participation, and includes participant reimbursement for initial expenses like transportation, uniforms, and childcare.

11. In addition to imposing the time limit and work requirement, the waiver amendment would seek federal financial participation for the cost of the employment and training program. The administration anticipates that, if approved, the employment and training program costs would be eligible for a 50% federal match. If CMS does not approve this part of the waiver amendment, then DHS would not be required to administer a employment and training program under provisions of the bill, but could retain the work requirement if that element of the waiver amendment request is approved.

12. When asked about how the state would proceed if federal financial participation for the work and training program is not approved, the administration declined to indicate how the Department would respond, indicating that the Department was operating under the assumption that the request would be approved.

13. As with the FoodShare work requirement for ABAWDs, childless adults could be exempted from the work or training requirement for certain reasons. The draft amendment specifies that a person would be exempt from the work requirement (and the associated 48-month time limit) if he or she: (a) is diagnosed with a mental illness; (b) receives Social Security Disability; (c) is the primary caregiver for a person would cannot care for himself or herself; (d) is physically or mentally unable to work; (e) is receiving or has applied for unemployment insurance; (f) is taking part in an alcohol or other drug abuse treatment program; (g) is enrolled in an institution of higher learning at least half-time; or (h) is a high school student age 19 or older, attending high school at least half-time.

14. Under the proposed waiver amendment, a childless adult would be disenrolled from BadgerCare Plus after accumulating 48 months in which he or she fails to meet the work or training requirement. The 48 months may be successive or nonsuccessive. A person who loses eligibility under the time limit provision would be allowed to reenroll after a six-month period, at which point the 48-month time limit would begin again.

15. The administration and other advocates of work requirements for Medicaid argue that public benefits programs should provide only temporary assistance to individuals who could otherwise become self-sufficient. A work or training requirement would ensure that those who can find employment will either do so, or else lose coverage.

16. Proponents of the policy also argue that by requiring childless adults to work toward self-sufficiency to exit the program the state should be able to reduce the cost of MA benefits. These cost savings would allow state funds to be allocated to other purposes, including providing coverage for those who remain on the program.

17. Finally, proponents note that the waiver amendment proposal includes safeguards that allow persons who have various barriers related to physical or mental health, addiction, or household situation to be exempted. The work requirement is designed to impact only those childless adults who are able to work.

18. Opponents of establishing minimum work or training requirements as a condition of eligibility for medical assistance make several counter arguments. They argue that whether or not a person is able to work to achieve self-sufficiency is frequently determined by structural factors outside the reasonable control of individuals. Likewise, the number of hours a person is able to work is often determined by an employer, rather than the employee.

19. Opponents may also note that a significant share of MA beneficiaries already exit the program without the need for work requirements or work and training programs. This point can be shown by tracking changes in enrollment status over time. Total enrollment of childless adults was approximately 148,000 at the beginning of 2015-16 (July, 2015). At the end of the fiscal year, overall enrollment had not changed substantially, declining slightly to 146,600 in June, 2016. However, the composition of individuals had changed more significantly. Of those childless adults enrolled in July, 2015, 43% were no longer enrolled in MA as childless adults in June, 2016. Most of the decrease (88%) was due to individuals completely exiting MA, but some (12%) qualified under other eligibility categories (primarily the elderly, blind, and disabled MA, parents, or pregnant women categories). After 18 months (January, 2017), 50% of the childless adults that were enrolled in July, 2015, were no longer enrolled as childless adults. While the work requirement policy may be designed to limit long-term reliance on the program, it is perhaps likely that those childless adults who remain on the program for longer periods of time would have more substantial barriers to employment and, therefore, more likely to qualify for exemptions anyway. The work requirement and the work and training program, therefore, may add cost and complexity to the program, while affecting a relatively small share of the childless adult population.

20. Opponents also have expressed concerns regarding the effectiveness of the FoodShare employment and training program, the model that would be used for the childless adult employment and training program. It is not known, for instance, how many of the individuals who enroll in the program and obtain employment could have obtained employment without assistance. Consequently, it is not possible to evaluate the cost effectiveness of the program.

21. The bill would not reduce funding for MA benefits as the result of the employment and training requirement. The administration indicates no reduction in childless adult enrollment was assumed since no person would be adversely impacted by the provision until at least 48 months following implementation of the work requirement.

22. It is possible that childless adult enrollment could be affected by the work requirement for other reasons besides the failure to meet the requirement. If the policy has the effect of encouraging some childless adults to accept a job or increase work hours leading to an increase in earnings, those individuals could become ineligible for the program because of having a higher income. Or, some childless adults may choose not to apply for MA because of perceived or actual complexity of the work requirements and the work and training program. The bill does not assume an impact on enrollment for these or other reasons.

23. The eventual impact on childless adult enrollment resulting from the work requirement is unknown and any estimate would be somewhat speculative. Although several states have sought federal waivers to impose a work requirement for eligibility for Medicaid, CMS has not approved any of these requests, and no state has yet implemented such a requirement. Furthermore, the

proposed work requirement, if approved, may be implemented along with the other program changes included in the waiver amendment, so it would be difficult to isolate the impact of that particular requirement from these other changes.

24. Since the Department indicates that it will allow at least one year following approval of the waiver amendment to implement the changes, any impact on MA enrollment and the MA budget would occur relatively late in the 2017-19 biennium.

Other Waiver Amendment Provisions

25. As noted above, the proposed work requirement would be integrated with the 48-month time limit, a component of the Act 55 waiver provision. This section provides a description of the other elements of the draft amendment request, some of which were required by Act 55 and some of which were not included in the Act 55 provision. With each element, in addition to the description, information is provided on the administration's rationale for including the program change, arguments that are made by opponents of the change, and any pertinent information regarding implementation of the provision.

Monthly Premiums

26. The Department's draft waiver amendment application would require childless adults who have a household income above 20% of the federal poverty level (FPL) to pay a monthly premium as a condition of eligibility. The premium would be levied on a per-household basis and would vary by income level, as shown in the following table.

Proposed Monthly Premiums for Childless by Income Range

Income Level	Income Range for Individual*	Monthly Premium
0% to 20% of the FPL	$0 to $201	None
21% to 50% of the FPL	$202 to $502	$1
51% to 80% of the FPL	$503 to $804	$5
81% to 100% of the FPL	$805 to $1,005	$10

*Monthly income ranges are based on the 2017 federal poverty guidelines for a single-person household.

27. Under the proposed waiver amendment, failure to pay the premium would result in disenrollment. A person who is disenrolled for failure to pay a premium would be eligible to reenroll after a six month lockout period, or once past due premiums are paid. Premiums would be billed to the MA enrollee, but payment of monthly premiums could be made on behalf of the beneficiary by third parties, such as other family members, non-profit organizations, medical providers, or MA health maintenance organizations (HMOs).

28. The Department indicates that some implementation issues related to the collection of premiums have yet to be determined. However, it is anticipated that premiums would be billed and

collected by the state's MA fiscal agent. The fiscal agent performs various administrative functions related to MA, including provider enrollment and claims payment. Currently, premiums paid by individuals who are eligible for transitional medical assistance (TMA) are collected by the fiscal agent. [TMA provides time-limited coverage for certain persons whose income increases above the eligibility threshold. Parents and some children are eligible for TMA, but childless adults are not.]

29. The Department's draft waiver amendment request argues that requiring MA beneficiaries to pay a monthly premium would allow these individuals to become accustomed with the requirements associated with purchasing private insurance, and to take some responsibility for their own healthcare. The Department also notes that the premiums would be no more than 1.25% of household income, which would be less as a percentage than persons who purchase insurance in the individual market on the insurance exchange are required to pay under provisions of the federal Affordable Care Act (ACA).

30. Opponents of the premium requirement have made several arguments against the proposal. They note, for instance, that although the premiums would be small as a percentage of a person's household income, a person whose income is below the poverty line often does not have sufficient money for basic necessities. In this case, the person may not be able to pay even a small premium without sacrificing other needs. Furthermore, even if a childless adult is able to afford the monthly premium, there may be other barriers to making regular payments. Individuals living in poverty may not have a bank account or may incur financial fees associated with making payments.

31. Opponents may also note that since the premium could be paid by third parties, it is questionable whether the policy goal of having individuals take some responsibility for their healthcare coverage would be met. If, for instance, BadgerCare Plus HMOs decide that it would be better to pay the premium rather than lose the monthly capitation payments associated with the disenrollment of a beneficiary, the beneficiary may not face any new requirement associated with the premium. In this case, imposing a monthly premium may not be worth the additional cost and program complexity associated with implementing the policy.

32. As with the work requirement, the administration did not assume any changes to childless adult enrollment or MA benefit costs associated with the premium requirement. By way of comparison, approximately 20% of adults who become eligible for transitional medical assistance are disenrolled for some period of time due to nonpayment of premiums. However, this rate of disenrollment may or may not be indicative of the impact of the proposal to impose premiums at a lower income level. If, for instance, the third-party payment option is used extensively, the enrollment impact could be much less or minimal.

Health Risk Assessment and Healthy Behavior Incentives

33. The waiver amendment proposes to create a requirement that childless adults complete an annual health risk assessment, which would be used to evaluate the health risk of each enrolled individual. Assessments would be conducted at the time of initial enrollment and upon annual renewal. Childless adults completing the assessment will be asked to indicate whether they are engaging in certain behaviors or have characteristics that are considered to increase health risks, identified as alcohol consumption, high body weight, illicit drug use, failure to use a seatbelt, and

tobacco use.

34. The Department indicates that the health risk assessment would replace the health needs assessments for childless adults currently conducted by HMOs for new enrollees. The state's current HMO contract requires HMOs to conduct a health needs assessment upon enrollment for childless adults, with a goal of conducting an assessment of at least 35% of enrolled members per year, or increasing the percentage of enrollees for whom a health needs assessment is conducted from the prior year. HMOs that fall short of the goals are subject to financial penalties. The health needs assessment is intended to identify some of the same risks that would be targeted with the health risk assessment, but also includes a broader examination of health status and life situation. HMOs are encouraged to use the health needs assessment to develop care plans and provide case management services for individuals who are likely to have high medical costs. Approximately 80% to 85% of childless adults are enrolled in an HMO and so are potentially subject to a health needs assessment.

35. The Department proposes to use the health risk assessment as a mechanism to encourage healthy behaviors. Childless adults would be eligible for a 50% reduction in their monthly premium under the following three circumstances: (a) they do not engage in or have any of the health risk behaviors or characteristics; (b) they engage in or have one or more of the health risk behaviors or characteristics, but attest to actively managing their behavior; or (c) they engage in or have one or more of the health risk behaviors or characteristics but attest to having a condition beyond their control.

36. The purpose of the health risk assessment is to encourage childless adults to recognize their behaviors that may be detrimental to their health. By providing incentives to change unhealthy behaviors, this element of the waiver amendment is intended to lower healthcare costs. However, as noted above, the MA program is already engaging with HMOs to address some of these issues. Although not all childless adults are enrolled in an HMO, and not all HMO members are receiving a health needs assessment, the health risk assessment would be similar to current efforts to identify health risks for many, if not most, childless adults.

37. The proposed waiver amendment would not result in disenrollment for failure to complete a health risk assessment. Consequently, although it would add some complexity to the application and renewal process, it would not likely have a substantial impact on program enrollment.

Drug Screening, Testing, and Treatment

38. The draft waiver amendment request would seek authorization to require, as a condition of MA eligibility, that childless adults complete a drug screening questionnaire, and if indicated, a drug test. An individual who is required to take a drug test and who tests positive for the presence of a controlled substance without evidence of a valid prescription would not be disqualified from enrollment, but would be enrolled under the condition that the individual complete a substance abuse treatment program. If a person is required to participate in a substance abuse program, but refuses to do so, he or she would be disenrolled from MA for a six-month period. If, however, a substance abuse treatment program is not immediately available, the person would not

be disenrolled from MA for failure to complete the substance abuse treatment program.

39. Drug tests are generally considered to be searches for the purposes of the Fourth Amendment of the United States Constitution and Section 11 of the Wisconsin Constitution. Historically, courts have found that in order for a search to be reasonable, it must be based upon individualized suspicion or a special need (or important governmental interest) that goes beyond the need for law enforcement, such as public safety. The draft waiver amendment proposes that drug testing of childless adult applicants would be based upon individualized suspicion depending on the answers given to the screening questionnaire.

40. In addition to requiring the Department to submit a waiver amendment to allow drug screening for childless adults in MA, Act 55 included provisions to require drug screening for FSET participants as well as for participants in certain work experience programs administered by the Department of Children and Families. DHS is in the process of promulgating administrative rules pertaining to the FSET drug screening and testing program. Under the draft rules, the IM agencies (including MilES in Milwaukee County) would be responsible for administering the drug screening and would be responsible for the cost of drug testing. The Department anticipates that the IM agencies would also administer the childless adult drug screening and testing program.

41. According to the Department's 2015 mental health and substance abuse needs assessment, it is estimated that only 23% of adults who need substance abuse treatment receive service (estimates based on 2013 data). The reasons that many individuals do not receive treatment are varied. The Department's report identifies a lack of insurance coverage as a primary cause, although ability to access substance abuse treatment providers, unwillingness to participate in a program (due, for instance, to a belief that no treatment is needed or would be ineffective), or the stigma associated with substance abuse are also contributing factors. The administration believes that requiring a drug screening and testing program as a condition of eligibility would help identify childless adults who need treatment and help them access a treatment program.

42. Opponents of the drug screening, testing, and treatment provision argue that the proposed requirements would keep some eligible childless adult who have substance abuse disorders from applying for assistance, either because of the perceived stigma associated with addiction, or out of fear of legal sanctions that they may face with a positive test. If these individuals do not apply for MA, they would be less likely to receive needed treatment, or to receive other needed medical care. Likewise, opponents have also expressed objections to the proposal to withhold benefits for individuals who have a positive drug test until after they complete a drug treatment program. They note that many individuals with addictions need to go through treatment multiple times before achieving success. Under the draft waiver amendment proposal, a person who refuses treatment (including someone who begins treatment but later drops out) would be locked out of coverage for six months, thus restricting access to subsequent treatment attempts during that period.

43. Opponents of drug testing also point to the cost of testing in relation to the number of individuals who are actually identified for treatment. They cite the experience in other states that have implemented drug screening and testing for various public benefit programs, such as cash assistance provided under temporary assistance for needy families (TANF). Either because the drug

screening tools do not reliably identify persons who use illicit drugs or because individuals who use drugs avoid applying for programs that require a drug test, they note that drug testing programs in states that have them result in relatively few positive tests.

44. The Department's fiscal estimate for the FSET drug testing program rules estimates that 3% of FSET applicants who complete a drug screening questionnaire will be required to take a drug test, and approximately 11% of those will test positive, requiring treatment. If these percentages are applied to the childless adult population, approximately 4,400 would be required to take a test, and approximately 500 would test positive and referred for treatment. However, because IM agencies may rely on testing conducted in other programs, such as FSET or W-2, it is likely that some childless adults will have already been screened and tested, reducing the number that would be tested solely for the purpose of MA.

45. The number of persons screened and tested would depend to a large extent on the judgement criteria used for the drug screening questionnaire. In addition, however, the number tested could depend upon the extent to which individuals with substance use disorders avoid applying for MA because of the screening and testing requirement. It is also possible that individuals who are ordered to submit to testing as a result of the drug screen refuse to do so, reducing the number who are actually tested.

46. According to the National Conference of State Legislatures, the following other states have passed legislation requiring drug screening or drug testing as part of public benefit programs: Alabama, Arkansas, Arizona, Florida, Georgia, Kansas, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Utah, and West Virginia. No state, however, has implemented drug testing as a condition of eligibility for Medicaid, or completion of a substance abuse treatment program as a condition of continued eligibility.

47. The impact of drug screening and testing on MA enrollment is uncertain. It is plausible that some individuals may avoid applying for MA because of the requirement, some may refuse to take a drug test if ordered to do so, and some may refuse to participate or complete treatment programs.

Emergency Room Copayment

48. The draft waiver amendment would seek approval to require childless adults to pay a copayment for use of hospital emergency department services. Under the proposal, the first use of the emergency room would require an $8 copayment, while the second or subsequent use in a 12-month period would require a $25 copayment. The amendment indicates that the copayment requirement would be intended to encourage responsible use of hospital emergency room services.

49. Under current federal law, states are allowed to establish an $8 copayment requirement for nonemergency use of hospital emergency department services. Wisconsin does not currently impose an emergency room copayment. For states that elect to do so, the copayment can be levied only if certain conditions are met. Specifically, the hospital must, prior to providing services: (a) conduct a medical screening to determine that the individual does not need emergency services; (b) inform the individual of the copayment requirement; (c) provide the individual with the name and

location of an available and accessible alternative nonemergency services provider; (d) determine that the alternative provider can provide services in a timely manner; and (e) provide a referral to coordinate scheduling for treatment by the alternative provider. As with other copayments imposed under Medicaid, the provider is responsible for collecting the payment, although the provider may choose to reduce or waive the copayment on a case-by-case basis. Hospitals may not deny emergency department services for failure to make a copayment.

50. The draft waiver amendment for emergency room copayments would differ from the federal emergency room copayment provisions in the sense that it would levy a copayment for any use of a hospital emergency room, rather than just nonemergency use. In this case, hospitals would presumably not be required to determine whether a person seeking emergency room treatment faces a medical emergency to levy the copayment.

51. Copayments under Medicaid are considered part of the provider reimbursement, meaning that the standard reimbursement rate is reduced by the amount of the copayment, even if no copayment is collected. For this reason, as well as for the practical barriers to collecting payments from MA beneficiaries, hospitals and other providers have generally expressed opposition to copayment requirements. Hospitals argue that there are other ways to encourage appropriate use of emergency room services, including strengthening care management policies and accessibility to primary care services.

Exemption from Institute for Mental Disease Exclusion for Addiction Treatment

52. The draft waiver amendment request would seek to expand residential and inpatient substance abuse treatment options under medical assistance by allowing Medicaid reimbursement for inpatient substance abuse treatment for nonelderly adults in an institution for mental disease (IMD). With limited exceptions, federal Medicaid law prohibits reimbursement for IMD services for persons between the ages of 21 years and 64 years old. For the purposes of this provision, an IMD is defined as an institution with more than 16 beds that is primarily engaged in the diagnosis, treatment, and care of persons with mental diseases. This so-called "IMD exclusion" has been part of Medicaid law since 1965.

53. The Department's draft waiver amendment would seek federal approval for a limited exception to the IMD exclusion, applying only to MA beneficiaries admitted to an IMD for substance abuse treatment. The Department argues that approval of the waiver amendment would open new possibilities for substance abuse treatment. While general hospitals and smaller residential facilities can currently receive Medicaid reimbursement for substance abuse treatment, many facilities that would otherwise be available for substance abuse treatment for MA beneficiaries are not being utilized because they meet the definition on an IMD.

54. Unlike other elements of the Department's proposed waiver amendment, the IMD provision would apply to all MA beneficiaries, rather than to just childless adults.

55. In recent years, a few exceptions to the IMD exclusion have been allowed, either as the result of federal policy changes, legislation, or through demonstration waivers approved by CMS. In 2016, CMS clarified federal policy with respect to Medicaid reimbursement for capitation payments

made to HMOs that enroll Medicaid enrollees. Under the policy, CMS specified that HMOs may elect (if states approve) to pay for IMD services for their nonelderly adult enrollees in lieu of other services that would otherwise be offered and eligible for full Medicaid reimbursement, provided that the IMD stay is voluntary and is for less than 15 days in a calendar month. The Department has adopted this policy through incorporation in the state's managed care contracts.

56. In 2015, CMS issued guidance to states on improving substance use disorder treatment delivery systems, which includes a discussion of the possibility for states to seek demonstration waivers that involve exemptions from the IMD exclusion. The guidance indicates that CMS would consider such waivers targeted to substance abuse treatment, particularly if IMD inpatient and residential treatment were offered in the context of an overall treatment plan that includes, among other things, a comprehensive evidence-based benefit design, appropriate standards of care, and care coordination standards.

Employment and Training Funding

57. The bill would provide funding for the costs of the childless adult employment and training program, assuming that the state would receive federal matching funds to cover one-half of the estimated cost. In 2017-18, funding and positions would be provided for implementation costs, primarily for making modifications to the system used to track public benefit program data (the client assistance for reemployment and economic support system, or CARES), and for 2.0 positions in the Department's central office for administering the program. In 2018-19, along with costs for completing CARES modifications, the bill would provide funding for initiating program services in January of 2019, which includes: (a) funding for making payments to county and tribal IM agencies for costs associated with program enrollment and management; (b) funding and positions (22.0 positions) for enrollment and management functions conducted by MilES in Milwaukee County; and (c) funding for contracts with employment and training service agencies (starting April, 2019). The following table provides a breakdown of the bill's funding by purpose.

Childless Adult Employment and Training Funding by Purpose
(All Funds)

Purpose	2017-18	2018-19
CARES Modifications	$3,005,800	$3,156,200
DHS Central Office Positions	150,900	181,200
State Staff Development	59,300	0
Employment and Training Agency	0	10,942,200
County and Tribal IM Agency Workload	0	1,465,600
MilES	0	751,700
IM Staff Training	0	14,100
Total	$3,216,000	$16,511,000

58. The administration's estimate for establishing an employment and training program can be divided into costs associated with implementation and IM agency support, and costs associated

with employment and training (ET) agency services. The following points provide a description and discussion of both of these components.

Implementation and IM Agency Support

59. The Department indicates that the program changes relating to the childless adult waiver amendment would be put into effect at least one year following final approval from CMS. During the implementation period, DHS would make changes to CARES to incorporate new eligibility rules, provide training to county and tribal IM agency and MilES, and conduct public outreach and education regarding the new requirements. The Department anticipates that applicants for initial enrollment and renewals would become subject to new requirements around January of 2019.

60. The bill would provide funding for program implementation and IM agency support based on the administration's estimates of costs associated with the work and training component of the waiver amendment, as well as the related 48-month time limit.

61. The funding provided for county and tribal IM agencies would be to account for an anticipated higher workload associated with administering the work and training eligibility requirements, beginning in January of 2019. Corresponding increases would be provided for MilES IM functions. IM agency enrollment staff will be responsible for explaining to childless adult applicants the eligibility requirements, how these requirements relate to the program time limits, and how they could be enrolled in the employment and training program. In addition, it is anticipated that the new program elements would result in more encounters between applicants and enrollment staff, either to verify compliance or answer questions about the requirements.

62. The Department's estimates for the IM agency workload impacts related to the work and training requirements are not based on an analysis of the particular impacts of that specific policy. Rather, the bill would provide additional funding based on the funding supplement that was previously provided to IM agencies for ABAWD referrals made under the FSET program. That is, the amount of the ABAWD supplement payments was divided by the number of ABAWDs who receive a referral by county and tribal IM agencies to generate a per-client average. This average (approximately $90) is multiplied by an estimate of the number of childless adults who would be referred to the employment and training agency by the county and tribal IM agencies to generate an estimate of additional workload costs.

63. The administration's implementation cost estimates do not explicitly take into consideration any elements of the waiver amendment other than the employment and training and 48-month time limit components. The Department indicates that since the operational processes for the other elements of the amendment have not yet been established, no funding for these changes were included in the budget. The Department indicates, further, that the intent would be to incorporate changes associated with the other elements into the implementation of the work and training requirement, and to minimize any additional IM agency workload associated with the other elements.

64. County and tribal IM agencies would likely experience workload impacts associated

with other elements of the waiver amendment. For instance, although the Department has indicated that county and tribal IM agencies would not be responsible for collecting premiums, IM agencies would be responsible for disenrollments and reenrollments resulting from missed payments. In addition, IM agencies would be required to administer additional drug screening questionnaires and, for some individuals, pay for drug tests.

65. To give an example of the additional potential costs, if 4,000 additional individuals are ordered to take a drug test per year as a result of childless adult drug screening and testing requirements, IM agencies would incur drug testing costs of approximately $160,000 annually. Of this amount, approximately two-thirds could be expected to be borne by county and tribal IM agencies and the remainder would be borne by DHS through MilES.

66. Although the state provides funding to county and tribal IM agencies to carry out enrollment functions, performing these functions (outside Milwaukee County) is ultimately the responsibility of counties and tribes. Consequently, any costs not covered by DHS IM payments must be paid by counties and tribes (although they also receive a 50% federal match for their locally funded costs). The state has not established a policy of funding a particular percentage of IM agency costs or of making a per-encounter payment. Likewise, the administration did not base its IM payment on the full additional cost to IM agencies associated with the new waiver amendment requirements. Rather, the proposed increase was designed to be approximately equal to the amount paid to IM agencies, on a per-referral basis, for administering FSET requirements.

67. The actual impact on IM agency workload and costs associated with the proposed waiver amendment is indeterminate. Many of the implementation details have not yet been determined, and there are considerable uncertainties regarding how childless adult applicants for MA would respond to the many new requirements. It is likely that the new requirements would result in additional contacts between applicants and IM agency staff, in order to answer questions and verify that requirements are being satisfied. In addition, to the extent that the new requirements result in disqualification, IM agency staff will be required to process disenrollment and, in some cases, reenrollment once those individuals regain eligibility. On the other hand, it is possible that additional program requirements (or confusion regarding program changes) will keep some potentially eligible childless adults from applying for the program.

Employment and Training Agency Services

68. Approximately one-half of childless adults enrolled in BadgerCare Plus receive FoodShare benefits, and so are either already subject to work requirements under that program, or else have qualified for an exemption under that program. About one-third of the remaining childless adults on BadgerCare Plus are over 50 years old, and so would receive an automatic exemption from the work requirements. The administration assumes that the remainder, or approximately 49,200 childless adults, would be referred to an employment and training (ET) agency. The bill would provide funding for ET agency contracts based on this estimate.

69. The administration assumed that, when fully phased in, the annual cost of the ET agency contracts would be $43.8 million (all funds). Since services are anticipated to begin in April of 2019, the bill provides one-quarter of the employment and training agency funding, or

$10,942,200 ($5,471,100 GPR and $5,471,100 FED). The ET agency cost estimate is based on the approximate amount that the Department budgets for FSET agencies, using the assumption that the number of individuals that would enroll in program services would be similar to the number enrolling in FSET.

70. FSET agencies are required to attempt to contact all persons who are referred for services, although it is not expected that all persons referred to the FSET agency will enroll in FSET program services. For instance, a person who is referred to an FSET agency may qualify for an exemption based on physical or mental barriers to employment. That person would not need to enroll in the FSET programs to maintain FoodShare eligibility and so may choose to forgo enrollment.

71. Although FSET contractors incur some costs associated with all referrals, most FSET program costs are associated with services provided to those who enroll for program services. Consequently, the administration's estimate of ET agency costs for childless adults in MA is based on the assumption that the number who will enroll in the program would be similar to the number of ABAWDs who actually enroll in FSET, rather than the number who are referred. Over the 12-month period from April of 2016 through March of 2017, IM agencies made 72,275 FSET referrals, out of which 22,219, or 31%, enrolled in the program. As noted earlier, the administration assumes that 49,200 childless adults would be referred to the ET agency. In order for the number of program enrollees to be approximately equal to the number of FSET enrollees, 45% of those referred (22,200 out of 49,200) would need to enroll in the program.

72. The Department believes that a higher proportion of MA childless adults who are referred to ET agencies will enroll in program services, in comparison to the proportion of FSET referrals who choose to enroll. This is because, the Department maintains, the relative value of healthcare coverage is greater than the value of FoodShare benefits, meaning that the consequences of losing the benefit because of nonparticipation would be greater. Although this reasoning is plausible, there may also be other factors that would offset this effect and reduce participation. For instance, while the loss of FoodShare benefits would occur after three months of not meeting the work requirement, loss of healthcare benefits would not occur for four years. Some childless adults may not feel the need to participate in employment and training services if they believe that their reliance on BadgerCare Plus coverage is only temporary and that they can find employment without enrolling in the program. Also, while the value of healthcare coverage is greater than the value of FoodShare benefits on average, the healthcare benefit may be less tangible for many, particularly those who are relatively healthy and so do not typically use healthcare services. Some individuals may conclude that they could always access some level of treatment in the event of a medical emergency in a hospital emergency room or through a safety net provider, which effectively reduces the "cost" of losing full healthcare coverage.

73. Even if the childless adult enrollment were known with greater certainty, it is not clear that the estimate of the cost of employment and training services could be more definitively determined. The Department's contracts with FSET agencies give considerable discretion to the agency to determine the type and amount of services provided. The contract then pays the agency based upon its actual costs, up to a maximum specified in the contract. In part because of the

flexibility allowed under the contract, the average amount spent per client between the different FSET agencies varies widely.

74. LFB Issue Paper #345 addresses the administration's cost-to-continue estimate for FSET contracts, with a more detailed discussion of some of the issues arising from the current methods for budgeting for these services. As noted in that paper, while the Department takes into consideration an estimate of the number of clients to be served when estimating the budget for FSET contracts, the contracts themselves do not require that payments be made to agencies on a per-client basis. Consequently, if enrollment is less than expected (as has generally been the case with FSET), the amount paid to FSET agencies on a per-client basis, can be well in excess of the averages used to establish the budget.

75. Because of uncertainties regarding both the number of ET agency referrals and the proportion of those referred who enroll in services, and the type and amount of services provided, estimating the cost of those services is inherently uncertain. The FSET budget estimate for the 2015-17 budget illustrates this point. During budget deliberations, it was estimated that FSET costs would increase by $30.3 million in 2016-17, associated with statewide expansion of the program. In passing the bill, the Legislature placed the GPR portion of this cost, $16.4 million, in the Committee's supplemental appropriation instead of in the Department's appropriation for these costs, specifying that the Department could request those funds once additional information about actual costs was available. However, for a variety of reasons, including implementation delays, actual FSET enrollment and costs are expected to be significantly below budget estimates and DHS does not anticipate making a request for the additional funds.

76. In addition to the uncertainties regarding the caseload for employment and training services and the amount and type of services that would be offered, there is an additional level of uncertainty with respect to federal approval. As noted above, since federal Medicaid law does not allow federal financial participation for broad-based employment and training services, the state would need a waiver to receive federal matching funds for this purpose. By federal policy, demonstration waivers must be budget neutral to the federal government. Consequently, if a state proposes to increase federal spending for some purpose, the state would be required to demonstrate that the increase would be offset by decreased spending in other areas. Since the waiver amendment request in its entirety may reduce childless adult enrollment in MA (for various reasons discussed above), it is possible that reduced federal spending for healthcare services may decrease, offsetting an increase in spending for employment and training services. However, the Department's waiver amendment request proposes to use a per capita spending benchmark for the purposes of the budget neutrality calculation. That is, the Department would need to demonstrate that federal spending *per enrollee* does not increase above the current baseline. In this case, any reduction in federal expenditures resulting from a reduction in caseload would not count as offsetting savings. It is unclear how the Department would be able to demonstrate federal budget neutrality on a per enrollee basis if federal spending for employment and training services is added to baseline expenditures for healthcare services. The actual terms of the budget neutrality calculation will be negotiated between the Department and CMS once the final waiver amendment is submitted.

Discussion of Alternatives

Childless Adult Waiver Amendment Provisions

77. As noted above, the Department plans to submit the final waiver amendment request by the end of May, likely prior to the completion of the Legislature's deliberations on the budget. Therefore, the Legislature will not have an opportunity to make specific changes to the statutory waiver directives in the context of the biennial budget act. However, since the amendment would have implications for the MA budget and the state's MA coverage policies, the Committee may have an interest in retaining oversight over the implementation of the new waiver provisions.

78. One alternative would be to require the Department to submit a report to the Committee following the final approval of the proposed waiver amendment that includes a description of each component of the approved amendment, including any pertinent information on the Department's plan for implementation, as well as an estimate of the impact on MA enrollment and the MA budget of the provisions in the 2017-19 biennium and beyond (Alternative A2).

79. The Committee may also decide that it is in the Legislature's interest to retain the right over final approval or disapproval of the provisions of the waiver amendment, once the state receives final approval from CMS and more information is available regarding implementation details and the potential fiscal impact. Under this alternative, the Committee could require a report, as described in the previous point, but also prohibit the Department from implementing the provisions of the waiver unless the Committee meets under s. 13.10 of the statutes to review the report. The Committee could be authorized to modify the waiver by removing one or more components, and the Department would be required to implement the waiver as approved, with any modifications adopted by the Committee. Finally, the Department would be required to submit a subsequent waiver amendment to CMS consistent with the Committee's actions if necessary to implement the waiver as modified (Alternative A3).

80. Finally, the Committee could decide that one or more of the provisions of the draft waiver amendment are not in the state's policy or fiscal interest. In this case, the Act 55 statutory directives for the waiver amendment could be modified to eliminate the particular provision or provisions (as applicable), and the Department could be prohibited from implementing the provision or provisions (Alternative A4).

Waiver Amendment Implementation Funding

81. Because some implementation policies have not yet been determined, and because the draft waiver amendment proposes implementing several policies that have not before been included in Medicaid programs in this or other states, the full fiscal implications of the waiver amendment are not known and would be difficult to determine. Furthermore, a significant share of the proposed funding for the employment and training initiative is contingent upon federal approval. Often in cases where there is considerable uncertainty regarding budget initiatives, the Committee reserves a portion of the funding in the Committee's appropriation, pending the receipt of more information from the agency.

82. The Committee could provide funding to begin implementation, which includes funding for CARES modifications, training, and central office staff, but withhold GPR funding for either the IM agency costs (Alternative B2a) or employment and training costs (Alternative B2b). The Department could request appropriation supplements once additional information on the costs of these components is known.

83. Given the possibility that the state would not receive approval to use federal matching funds for employment and training programs, the Committee may wish to not budget for the state share of those contract costs at this time (either in the Department's appropriation or in the Committee's appropriation). The Committee could be given authority to approve a GPR appropriation supplement to use as the state's share in the event that the Department's request to receive federal matching funds for those services is approved or if the Department determines that the program would need to be funded with only state funds. Since implementation of the waiver amendment may lead to a reduction in childless adult enrollment (resulting in MA program savings), this supplement could be funded through a transfer from the MA benefits appropriation if it is determined that there would likely be a GPR surplus in that appropriation (Alternative B3).

84. The Committee could also decide not to provide funding for implementation or ongoing administration of the waiver provisions (Alternative B4). In this event, the Department would be required to use base budget resources if it chooses to implement the waiver.

85. LFB Issue Paper #345 presents several alternatives to provide greater legislative direction with respect to FSET agency contracts. The Committee could determine that any employment and training services provided for childless adults also be subject to the same directives that the Committee adopts, if any, for FSET contracts (Alternative C1).

ALTERNATIVES

A. Proposed Waiver Amendment Policies

1. Approve the Governor's recommendation to modify the Act 55 waiver amendment provision, to require DHS to also include in the waiver amendment request a program to provide employment and training services to childless adults and require DHS to implement the employment and training program, if approved by DHHS, and if the federal government provides federal financial participation for providing employment and training services.

2. Require the Department to submit a report to the Joint Committee on Finance no later than three months following the final approval of the proposed waiver amendment by the Centers for Medicare and Medicaid Services. Specify that the report shall include the following: (a) a description of each component of the approved waiver, including any pertinent information on the Department's plan for implementation; and (b) an estimate of the impact on MA enrollment and the MA budget of the waiver provisions in the 2017-19 biennium and beyond.

3. Require the Department to submit a report to the Committee, as described in Alternative A2, but specify, in addition, that the Department may not implement the provisions of

the waiver unless the Committee meets under s. 13.10 of the statutes to review the report and approves the waiver. Specify that the Committee may modify the waiver by removing one or more components. Require the Department to implement the waiver as approved, with any modifications adopted by the Committee. Require the Department to submit a subsequent waiver amendment to CMS consistent with the Committee's actions if necessary to implement the waiver as modified.

4. Prohibit the Department from implementing one or more of the following provisions of the waiver, and repeal the corresponding provisions of Act 55 (as applicable): (a) the work and training requirement and related 48-month time limit; (b) monthly premiums; (c) health risk assessment and healthy behavior incentives; (d) drug screening and testing; (e) emergency room copayment; and (f) exemption from institutes for mental disease exclusion for substance use disorder treatment.

B. Funding for Employment and Training Program Implementation

1. Approve the Governor's recommendation to provide $1,608,000 GPR, 1.0 GPR position, $1,608,000 FED, and 1.0 FED position in 2017-18 and $8,255,500 GPR, 12.0 GPR positions, $8,255,500 FED, and 12.0 FED positions in 2018-19 to implement the childless adult employment and training program.

ALT B1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	$9,863,500	12.00	$0	0.00
FED	9,863,500	12.00	0	0.00
Total	$19,727,000	24.00	$0	0.00

2. Approve the Governor's funding recommendation, with a modification to place the GPR funding allocated for one or both of the following amounts in 2018-19 in the Committee's supplemental appropriation; (a) $1,206,300 GPR for IM agency costs (including MilES); or (b) $5,471,100 GPR for employment and training contracts.

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	$9,863,500	12.00	$0	0.00
FED	9,863,500	12.00	0	0.00
Total	$19,727,000	24.00	$0	0.00

3. Modify the Governor's funding recommendation by deleting $5,471,100 GPR and $5,471,100 FED for employment and training agency services. Specify that the Department may submit a request in the 2017-19 biennium to the Committee under s. 13.10 of the statutes for an appropriation supplement for the purpose of funding employment and training agency services for childless adults enrolled in medical assistance. Specify that the Committee may transfer funding from the GPR appropriation for MA benefits to fund those costs.

ALT A3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	$4,392,400	12.00	- $5,471,100	0.00
FED	4,392,400	12.00	- 5,471,100	0.00
Total	$8,784,800	24.00	- $10,942,200	0.00

4. Delete $1,608,000 GPR, 1.0 GPR position, $1,608,000 FED, and 1.0 FED position in 2017-18 and $8,255,500 GPR, 12.0 GPR positions, $8,255,500 FED, and 12.0 FED positions in 2018-19 to remove funding and positions related to the implementation of the childless adult employment and training program.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	$0	0.00	- $9,863,500	- 12.00
FED	0	0.00	- 9,863,500	- 12.00
Total	$0	0l00	- $19,727,000	- 24.00

C. Employment and Training Contract Directives

1. Apply any legislative directives adopted for FSET contracts under LFB Issue Paper #345 to employment and training contracts for childless adults.

2. Maintain current law, which would allow the Department to establish contract policies for childless adult employment and training contracts independent of FSET contracts.

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