

CR 10-084

**ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health Services proposes **to amend** DHS 138.03 (2), (3) and (14), 138.04 (1) (b) 2. and (d), (2) (a) (intro.) and 7. (Note) and (b), and 138.05 (1) (a) 1. and 2., (b) and (e); and **to create** DHS 138.05 (1) (a) 4. and (dm), rules relating to the subsidy of health insurance premiums for persons with HIV infection.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 252.16 and 252.17, Stats.

Statutory authority: Sections 227.11 (2) (a), 252.16 (6) (c), and 252.17 (6) (c), Stats.

Explanation of agency authority:

Sections 252.16 (6) (c) and 252.17 (6) (c), Stats., require the Department to promulgate rules that define family income; establish a procedure for making health insurance premium payments that ensures that the payments are actually used to pay health insurance premiums; and establish a premium contribution schedule for individuals who have family income, as defined in the rules, that exceeds 200% but that does not exceed 300% of the federal poverty level (FPL).

Related statute or rule: See “Statute Interpreted” section.

Plain language analysis:

In this proposed order, the Department is making technical modifications to ch. DHS 138 to conform with the technical changes to ss. 252.16 and 252.17, Stats., made under 1999 Act 103, 2007 Act 20, and 2009 Act 28. The Department is operating in accordance with the modifications made to ss. 252.16 and 252.17, Stats., under each Act.

Sections 252.16 and 252.17, Stats., require the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, are unable to continue working or must reduce their hours of work or take an unpaid leave from their jobs. Under the program, the Department pays premiums for health insurance coverage of eligible individuals to employers, insurers, or employees, as applicable. The Department has been operating this program since November 1990 under ch. DHS 138.

1999 Wisconsin Act 103 modified s. 252.17, Stats., in several respects. First, it increased the family income eligibility limits under s. 252.17 (3) (b), Stats., from 200% to a maximum of 300% of the FPL. Second, it created s. 252.17 (4) (d), Stats., which specifies that the Department will pay a portion of the

health insurance premium for individuals whose family income is between 200% and 300% of the FPL. It further specifies that the Department will establish the schedule for payment in administrative rule. Act 103 also created s. 252.17 (6) (c), Stats., which requires the Department to establish, in rule, the premium contribution schedule for individuals who have a family income that exceeds 200% but does not exceed 300% of the FPL. In establishing the schedule, the Department is required to take into consideration both income level and family size.

2007 Wisconsin Act 20 modified s. 252.16 (1) (d) and (4) (a), Stats., to permit the Department to pay Part D Medicare premiums.

2009 Wisconsin Act 28 modifies ss. 252.16 (1) (ar) and 252.17 (3) (d), Stats., to include domestic partner in the definition of “dependent” and to allow an eligible individual’s premium contribution to include the cost of coverage of a domestic partner.

The Department’s modification of ch. DHS 138 will address the changes made to ss. 252.16 and 252.17, Stats., by the above mentioned legislation.

Summary of, and comparison with, existing or proposed federal regulations:

There are no existing or proposed federal regulations.

Comparison with rules in adjacent states:

Illinois:

Illinois has a similar program to pay health insurance premiums for persons with HIV and has established administrative rules for the program under 89 ILL Admin. Code 118.150. Eligibility is similar to eligibility under Wisconsin’s program in that the applicant must have physician-documented HIV infection. The Illinois income guideline is at 200% of the FPL whereas Wisconsin’s income limit is at 300% of FPL. Illinois considers assets but Wisconsin does not. Illinois also caps its monthly premium payment at \$300. The Illinois rules do not address payment of premiums during an unpaid medical leave or require a cost share.

Iowa:

Iowa has a similar program operating under 441 IAC 75.22 (249A). Iowa’s eligibility requirements are similar to Wisconsin’s in that they require a physician to state that the applicant is HIV infected and that the applicant must reduce work hours or terminate employment due to HIV related illness. Iowa considers income and assets where Wisconsin only considers income. Both Wisconsin’s and Iowa’s income limit is at 300% of FPL. Iowa’s rules do not address payment of premiums during an unpaid medical leave nor do they require a cost share.

Michigan:

Michigan has a similar program to pay health insurance premiums but does not have administrative rules that govern the program.

Minnesota:

Minnesota has a similar program to pay health insurance premiums under Minn. Stat. s. 256.9365 but does not have administrative rules for the program.

Summary of factual data and analytical methodologies:

The Department reviewed 1999 Act 103, 2007 Act 20, 2009 Act 28, and ss. 252.16 (6) (c) and 252.17 (6) (c), Stats., for this rulemaking. In addition, the Department reviewed program utilization data for SFY 2008 to determine the number of program participants who were on unpaid medical leave with an income greater than 200% FPL and less than 300% FPL. During SFY 2008, of eight program applicants or participants who were on unpaid medical leave, only two had income greater than 200% FPL.

Analysis and supporting documents used to determine effect on small business:

The proposed rules will not directly affect small businesses.

Effect on small business:

The proposed rules will not have a significant economic impact on small businesses.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. DHS 138.03 (2), (3) and (14) are amended to read:

DHS 138.03 (2) “Department” means the Wisconsin department of health ~~and family~~ services.

(3) “Dependent” means a spouse, domestic partner under ch. 770, Stats., or an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(14) “Medicare” means coverage under part A ~~or~~, part B or part D of Title XVIII of the federal ~~social security act~~ Social Security Act, 42 USC 1395 to ~~1395zz1395hhh~~.

SECTION 2. DHS 138.04 (1) (b) 2. and (d), (2) (a) (intro.) and 7. Note and (b) are amended to read:

DHS 138.04 Participation in the health insurance premium subsidy program. (1) (b) 2. For a subsidy under s. 252.17, Stats., have a family income that does not exceed ~~200~~300% of the federal poverty line for a family the size of the individual's family;

(d) Have health insurance coverage under a group health plan ~~or~~, an individual health policy or Medicare part D, or is eligible for health insurance coverage under a group health plan ~~or~~, an individual health policy or Medicare part D;

(2) APPLICATION PROCESS. (a) Any individual who satisfies the eligibility conditions under sub. (1) and wants to participate in the health insurance premium subsidy program shall complete and submit to the department an application form, ~~DOH 4614F-44614~~, which shall provide the following information:

7. Note: To obtain a copy of ~~DOH 4614F - 44614~~, write or phone the Wisconsin Division of Public Health, AIDS/HIV Program, P.O. Box 2659, Madison, WI 53701-2659, (608) 267-5287. The completed form should be returned to the same office.

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, ~~DOH 4614F - 44614~~, that the department will hold until the individual satisfies all the applicable requirements under sub. (1). The department may not contact the individual's employer, former employer or health insurer until the individual satisfies all the applicable requirements under sub. (1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual's HIV infection.

SECTION 3. DHS 138.05 (1) (a) 1. and 2. are amended to read:

DHS 138.05 (1) (a) 1. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium amount owed by the individual due for coverage under a group health plan during an unpaid medical leave; for an individual whose family income does not exceed 200% of the federal poverty line.

2. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium due for health insurance coverage for an individual whose family income does not exceed 200% of the federal poverty ~~level; and~~ line.

SECTION 4. DHS 138.05 (1) (a) 4. and (dm) are created to read:

DHS 138.05 (1) (a) 4. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium, subject to a premium contribution assessment under par. (dm), due for health insurance coverage during an unpaid medical leave for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.

(dm) Upon approval of an application for a subsidy under s. 252.17, Stats., the department shall assess a premium contribution to be paid by an eligible individual whose family income exceeds 200%

but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium prorated for the number of months that the individual is on an unpaid medical leave. The annual policy premium shall be determined by annualizing the first monthly premium that is due for the benefit year.

SECTION 5. DHS 138.05 (1) (b) and (e) are amended to read:

DHS 138.05 (1) (b) The department may not refuse to pay a premium because the health plan coverage that is available to the individual who satisfies s. DHS 138.04 (1) includes coverage of the individual's spouse or domestic partner under ch. 770, Stats., and dependents.

(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation account under s. 20.435 (1) (am), Stats.

SECTION 6. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health Services

Dated: October 15, 2010

Karen E. Timberlake, Department Secretary

SEAL: