



2013 ASSEMBLY BILL 365

September 13, 2013 - Introduced by Representatives RICHARDS, WACHS, KOLSTE, BERNARD SCHABER, MASON, SINICKI, BERCEAU, WRIGHT, SMITH, JORGENSEN, OHNSTAD, HEBL and BILLINGS. Referred to Committee on Health.

1 **AN ACT to repeal** 49.45 (23) (d), 49.46 (1) (cr), 49.46 (2) (b) 19., 49.46 (2) (br),
2 49.471 (4) (e), 49.471 (6) (a) 4., 49.471 (7) (d), 49.471 (8) (cr), 49.471 (8) (ct),
3 49.471 (8) (fm), 49.471 (10) (b) 3m. and 49.471 (11r); **to amend** 49.46 (1) (c)
4 (intro.), 49.46 (1) (cg), 49.46 (1) (co) 1., 49.46 (1) (co) 2., 49.471 (4) (a) 7., 49.471
5 (5) (b) 2. (intro.), 49.471 (5) (b) 3. a., 49.471 (6) (a) 1., 49.471 (6) (a) 2., 49.471 (7)
6 (c) (intro.), 49.471 (8) (b) (intro.), 49.471 (8) (d) 1. a., 49.471 (8) (g) (intro.), 49.471
7 (10) (b) 2., 49.471 (10) (b) 4. (intro.), 49.471 (10) (b) 5. and 49.471 (11) (intro.);
8 and **to repeal and recreate** 49.46 (1) (c) (intro.), 49.471 (4) (a) 7. and 49.471
9 (10) (b) 5. of the statutes; **relating to:** eliminating certain proposed changes to
10 the Medical Assistance program and BadgerCare Plus that have not been
11 approved by the federal government.

Analysis by the Legislative Reference Bureau

Currently, the Department of Health Services (DHS) administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws,

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including services provided through the BadgerCare Plus (BC+) and BadgerCare Plus Core (BC+ Core) programs. Current law requires DHS to study potential changes to the MA state plan and waivers of federal Medicaid law for certain purposes. If DHS determines that revision of existing statutes or rules would be necessary to advance any of the purposes for which the study was conducted, DHS may propose a policy that would add to or change current law regarding the MA program. Before implementing a policy that conflicts with a state statute, DHS must submit the proposed change to the Joint Committee on Finance (JCF). If the proposed change is not rejected by JCF, DHS must submit to the federal Department of Health and Human Services (federal DHHS) the amendment or waiver request, to the extent necessary to implement its policy. If the federal DHHS does not allow the amendment or does not grant the waiver, DHS may not implement the policy. Currently, DHS has proposed changes that, having not been rejected by JCF, have been submitted to the federal DHHS for approval. Some of these changes pertain to BC+ and BC+ Core and may have been implemented following approval by the federal DHHS. Some of these changes have not yet received approval by the federal DHHS, and these proposed changes are incorporated into the statutes in 2013 Wisconsin Act 20, pending federal approval. This bill eliminates some of those changes.

Under current law, certain children are presumptively eligible for benefits under BC+, meaning that they are eligible for benefits beginning on the day on which a qualified entity determines, based on preliminary information, income eligibility for BC+. Current law allows DHS to refuse to provide presumptive eligibility for those children if the federal DHHS approves. This bill eliminates the ability for DHS to refuse to provide presumptive eligibility.

Under current law, certain individuals are retroactively eligible for BC+ benefits for any of the three months before the month of application for BC+ if the individual met the eligibility criteria in that month. Adults who are not pregnant, not disabled, and not elderly and whose income exceeds 133 percent of the federal poverty line (FPL) are not eligible retroactively for BC+ under current law. With federal approval, current law allows DHS to eliminate retroactive eligibility for all adults who are not disabled. This bill removes the ability for DHS to eliminate retroactive eligibility for adults other than those whose income exceeds 133 percent of the FPL and who are not pregnant, not disabled, and not elderly.

Certain individuals, under current law, are eligible for transitional MA because of becoming ineligible for another public assistance program. With federal DHHS approval, DHS may charge a premium for certain recipients of transitional MA benefits or eliminates transitional MA benefits. The bill prohibits the charging of a premium for transitional MA benefits and elimination of transitional MA benefits.

Only if the federal DHHS approves, DHS may apply certain calculations to the determination of family income for eligibility for BC+ and BC+ Core. With federal approval, DHS counts, for an individual who is not disabled, the income of all adults residing in the home for at least 60 days excluding the income of certain grandparents. DHS must exclude from a calculation of family size an individual who is only included in the family income calculation, if the federal DHHS approves.

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Under the bill, DHS may not perform these special income calculations for BC+ or BC+ Core eligibility determinations.

Under current law, an individual whose family income exceeds 150 percent of the FPL is not eligible for BC+ if, during certain times, the individual has coverage provided by an employer for which the employer pays at least 80 percent of the premium or coverage under the state health plan, or if the individual has access to employer coverage or coverage under the state health plan. Currently, adults who are not disabled and not pregnant and whose family income exceeds 133 percent of the FPL are ineligible for BC+ if, during certain times, the adult has access to individual or family health coverage provided by an employer that does not exceed 9.5 percent of the family's monthly income or access to coverage under the state employer health plan. Current law also adds, if the federal DHHS approves, to the types of individuals for whom access to certain insurance coverage will result in ineligibility all of the following: children who are not disabled and whose family income is at a level set by DHS but no lower than 133 percent of the FPL; adult parents and adult caretaker relatives whose family income is at a level set by DHS but no lower than 100 percent of the FPL; adults, including pregnant women, who are under 26 years of age, who are eligible to be covered under a parent's employers coverage, whose income is at a level determined by DHS but no lower than 100 percent of the FPL, and who meet other qualifications. The bill prohibits DHS from considering ineligible for BC+ due to insurance coverage those type of individuals for whom DHS would need federal DHHS approval to make them ineligible.

Under current law, if the federal DHHS approves, certain individuals are ineligible for BC+ if the insurance coverage to which they have access is private major medical insurance in which the monthly premium does not exceed 9.5 percent of the family's monthly income. The bill eliminates private major medical insurance as a type of insurance coverage for which individuals with access to that coverage are ineligible for BC+.

Under current law, the following individuals who had health insurance coverage but no longer have the coverage are ineligible for BC+ for three months following the month in which the insurance coverage ended without a good cause reason: individuals with a family income that exceeds 150 percent of the FPL; unborn children or mothers of unborn children; certain pregnant women; and adults who are not disabled and not pregnant and whose family income exceeds 133 percent of the FPL. The following individuals are also subject to three months of ineligibility under current law if the federal DHHS approves: individuals who are not disabled and who are children of an individual whose family income is at a level determined by DHS but not lower than 133 percent of the FPL and adult parents or adult caretaker relatives who are not disabled and not pregnant and whose family income is at a level determined by DHS but no lower than 100 percent of the FPL. The bill prohibits DHS from subjecting to a three-month period of ineligibility those individuals for whom imposing eligibility requires approval of the federal DHHS.

Under current law, certain individuals are required to pay premiums for BC+. If the federal DHHS approves, a child who is not disabled and whose family income is at a level determined by DHS but at least 150 percent of the FPL must pay a

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premium for BC+. The bill eliminates the ability of DHS to require, with federal approval, a premium for BC+ from children who are not disabled and whose family income is at least 150 percent of the FPL.

Under current law, if an individual who is required to pay a premium does not pay or requests termination of coverage under BC+, the coverage is terminated and the individual is ineligible for BC+ for a specified period. For children, the current ineligibility period is three months, except for any month in which the child's family income does not exceed 150 percent of the FPL. With federal DHHS approval, DHS may apply to children an ineligibility period of up to 12 months. The bill eliminates the ability for DHS to apply to children an ineligibility period longer than three months.

If allowed by the federal DHHS, current law allows DHS to provide to certain adults an alternate benefits package that provides benefits similar to those benefits provided in a commercial, major medical insurance policy. The bill eliminates the ability for DHS to provide such an alternate benefits package.

Current law allows DHS to enroll, with federal DHHS approval, a child who is receiving services through the early intervention program in a special plan. The bill eliminates the special plan in which DHS may enroll children receiving early intervention program services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.45 (23) (d) of the statutes, as created by 2013 Wisconsin Act 20,
2 is repealed.

3 **SECTION 2.** 49.46 (1) (c) (intro.) of the statutes, as affected by 2013 Wisconsin
4 Act 20, section 1072, is amended to read:

5 49.46 (1) (c) (intro.) Except as provided under par. (co) ~~or (er)~~, a family that
6 becomes ineligible for aid to families with dependent children under s. 49.19 because
7 of increased income from employment or increased hours of employment or because
8 of the expiration of the time during which the disregards under s. 49.19 (5) (a) 4. or
9 4m. or (am) apply shall receive medical assistance for:

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1 **SECTION 3.** 49.46 (1) (c) (intro.) of the statutes, as affected by 2013 Wisconsin
2 Act 20, section 1072b and 2013 Wisconsin Act (this act), is repealed and recreated
3 to read:

4 49.46 (1) (c) (intro.) A family that becomes ineligible for aid to families with
5 dependent children under s. 49.19 because of increased income from employment or
6 increased hours of employment shall receive medical assistance for 6 calendar
7 months, or, if required under federal law, up to 12 months, following the month in
8 which a parent, caretaker, or dependent child of the family becomes ineligible for aid
9 to families with dependent children if all of the following apply:

10 **SECTION 4.** 49.46 (1) (cg) of the statutes, as affected by 2013 Wisconsin Act 20,
11 is amended to read:

12 49.46 (1) (cg) ~~Except as provided under par. (cr),~~ medical Medical assistance
13 shall be provided to a dependent child, a relative with whom the child is living or the
14 spouse of the relative, if the spouse meets the requirements of s. 49.19 (1) (c) 2. a. or
15 b., for 4 calendar months beginning with the month in which the child, relative or
16 spouse is ineligible for aid to families with dependent children because of the
17 collection or increased collection of maintenance or support, if the child, relative or
18 spouse received aid to families with dependent children in 3 or more of the 6 months
19 immediately preceding the month in which that ineligibility begins.

20 **SECTION 5.** 49.46 (1) (co) 1. of the statutes, as affected by 2013 Wisconsin Act
21 20, section 1074, is amended to read:

22 49.46 (1) (co) 1. Except as provided under subd. 2. ~~or par. (cr),~~ medical
23 assistance shall be provided to a family for 12 consecutive calendar months following
24 the month in which the family becomes ineligible for aid to families with dependent
25 children because of increased income from employment.

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1 **SECTION 6.** 49.46 (1) (co) 2. of the statutes, as affected by 2013 Wisconsin Act
2 20, section 1075, is amended to read:

3 49.46 (1) (co) 2. If a waiver under subd. 3. is granted ~~and except as provided~~
4 ~~in par. (er)~~, the department may select individuals to receive medical assistance
5 benefits as provided under par. (c), rather than under subd. 1., as a control group for
6 part or all of the period during which the waiver is in effect.

7 **SECTION 7.** 49.46 (1) (cr) of the statutes, as affected by 2013 Wisconsin Act 20,
8 is repealed.

9 **SECTION 8.** 49.46 (2) (b) 19. of the statutes, as created by 2013 Wisconsin Act
10 20, is repealed.

11 **SECTION 9.** 49.46 (2) (br) of the statutes, as created by 2013 Wisconsin Act 20,
12 is repealed.

13 **SECTION 10.** 49.471 (4) (a) 7. of the statutes, as affected by 2013 Wisconsin Act
14 20, section 1100, is amended to read:

15 49.471 (4) (a) 7. Individuals who qualify for a medical assistance eligibility
16 extension under s. 49.46 (1) (c), (cg), or (co) when their income increases above the
17 poverty line, ~~except as provided in s. 49.46 (1) (er)~~.

18 **SECTION 11.** 49.471 (4) (a) 7. of the statutes, as affected by 2013 Wisconsin Act
19 20, section 1100b, and 2013 Wisconsin Act ... (this act), is repealed and recreated to
20 read:

21 49.471 (4) (a) 7. Individuals who qualify for a medical assistance eligibility
22 extension under s. 49.46 (1) (c) or (cg) when their income increases above the poverty
23 line.

24 **SECTION 12.** 49.471 (4) (e) of the statutes, as created by 2013 Wisconsin Act 20,
25 is repealed.

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1 **SECTION 13.** 49.471 (5) (b) 2. (intro.) of the statutes, as affected by 2013
2 Wisconsin Act 20, is amended to read:

3 49.471 **(5)** (b) 2. (intro.) Except as provided in sub. (6) (a) 2., a child who is not
4 an unborn child is eligible for the benefits described in s. 49.46 (2) (a) and (b) during
5 the period beginning on the day on which a qualified entity determines, on the basis
6 of preliminary information, that the child's family income does not exceed any of the
7 following and ending on the applicable day specified in subd. 3., ~~unless the federal~~
8 ~~department of health and human services approves the department's request to not~~
9 ~~extend eligibility to children during this period:~~

10 **SECTION 14.** 49.471 (5) (b) 3. a. of the statutes, as affected by 2013 Wisconsin
11 Act 20, is amended to read:

12 49.471 **(5)** (b) 3. a. If the woman or child applies for benefits under sub. (4)
13 within the time required under par. (d), the benefits specified in subd. 1. or 2.,
14 whichever is applicable, end on the day on which the department or the county
15 department under s. 46.215, 46.22, or 46.23 determines whether the woman or child
16 is eligible for benefits under sub. (4), ~~except that a child who is not an unborn child~~
17 ~~is not eligible for benefits described in s. 49.46 (2) (a) and (b) during that time if the~~
18 ~~federal department of health and human services approves the department's request~~
19 ~~not to provide those benefits during that time.~~

20 **SECTION 15.** 49.471 (6) (a) 1. of the statutes, as affected by 2013 Wisconsin Act
21 20, is amended to read:

22 49.471 **(6)** (a) 1. ~~Except as provided in subd. 4., any~~ Any pregnant woman,
23 including a pregnant woman under sub. (5) (b) 1., is eligible for medical assistance
24 under this section for any of the 3 months prior to the month of application if she met
25 the eligibility criteria under this section in that month.

ASSEMBLY BILL 365**SECTION 16**

1 **SECTION 16.** 49.471 (6) (a) 2. of the statutes, as affected by 2013 Wisconsin Act
2 20, is amended to read:

3 49.471 **(6)** (a) 2. Except as provided in subd. 3. ~~or 4.~~, any child who is not an
4 unborn child, including a child under sub. (5) (b) 2., parent, or caretaker relative
5 whose family income is less than 150 percent of the poverty line is eligible for medical
6 assistance under this section for any of the 3 months prior to the month of application
7 if the individual met the eligibility criteria under this section and had a family
8 income of less than 150 percent of the poverty line in that month.

9 **SECTION 17.** 49.471 (6) (a) 4. of the statutes, as created by 2013 Wisconsin Act
10 20, is repealed.

11 **SECTION 18.** 49.471 (7) (c) (intro.) of the statutes, as affected by 2013 Wisconsin
12 Act 20, section 1122, is amended to read:

13 49.471 **(7)** (c) (intro.) When calculating an individual's family income, the
14 department shall do all of the following, ~~subject to par. (d):~~

15 **SECTION 19.** 49.471 (7) (d) of the statutes, as created by 2013 Wisconsin Act 20,
16 is repealed.

17 **SECTION 20.** 49.471 (8) (b) (intro.) of the statutes, as affected by 2013 Wisconsin
18 Act 20, is amended to read:

19 49.471 **(8)** (b) (intro.) Except as provided in pars. (c), (cg), ~~(cr)~~, ~~(ct)~~, and (d), an
20 individual whose family income exceeds 150 percent of the poverty line is not eligible
21 for BadgerCare Plus if any of the following applies:

22 **SECTION 21.** 49.471 (8) (cr) of the statutes, as created by 2013 Wisconsin Act
23 20, is repealed.

24 **SECTION 22.** 49.471 (8) (ct) of the statutes, as created by 2013 Wisconsin Act
25 20, is repealed.

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1 **SECTION 23.** 49.471 (8) (d) 1. a. of the statutes, as affected by 2013 Wisconsin
2 Act 20, is amended to read:

3 49.471 (8) (d) 1. a. A pregnant woman, ~~except as provided in pars. (cr) 1. c. and~~
4 ~~(fm) 4.~~

5 **SECTION 24.** 49.471 (8) (fm) of the statutes, as created by 2013 Wisconsin Act
6 20, is repealed.

7 **SECTION 25.** 49.471 (8) (g) (intro.) of the statutes, as affected by 2013 Wisconsin
8 Act 20, is amended to read:

9 49.471 (8) (g) (intro.) Any of the following is a good cause reason for purposes
10 of ~~pars. par. (f) and (fm):~~

11 **SECTION 26.** 49.471 (10) (b) 2. of the statutes, as affected by 2013 Wisconsin Act
12 20, is amended to read:

13 49.471 (10) (b) 2. Except as provided in ~~subds. 3m. and subd. 4.~~, a recipient who
14 is a child whose family income is greater than 200 percent of the poverty line shall
15 pay a premium for coverage of the benefits described in sub. (11) that does not exceed
16 the full per member per month cost of coverage for a child with a family income of
17 300 percent of the poverty line.

18 **SECTION 27.** 49.471 (10) (b) 3m. of the statutes, as created by 2013 Wisconsin
19 Act 20, is repealed.

20 **SECTION 28.** 49.471 (10) (b) 4. (intro.) of the statutes, as affected by 2013
21 Wisconsin Act 20, is amended to read:

22 49.471 (10) (b) 4. (intro.) None of the following shall pay a premium, ~~except as~~
23 ~~provided in subd. 3m.:~~

24 **SECTION 29.** 49.471 (10) (b) 5. of the statutes, as affected by 2013 Wisconsin Act
25 20, section 1151, is amended to read:

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1 49.471 (10) (b) 5. If a recipient who is required to pay a premium under this
2 paragraph or under sub. (2m) or (4) (c) either does not pay a premium when due or
3 requests that his or her coverage under this section be terminated, the recipient's
4 coverage terminates. If the recipient is an adult, the recipient is not eligible for
5 BadgerCare Plus for 12 consecutive calendar months following the date on which the
6 recipient's coverage terminated, except for any month during that 12-month period
7 when the recipient's family income does not exceed 133 percent of the poverty line.
8 If the recipient is a child, the recipient is not eligible for BadgerCare Plus for 3
9 consecutive calendar months, ~~or up to 12 consecutive calendar months if the federal~~
10 ~~department of health and human services approves~~, following the date on which the
11 recipient's coverage terminated, except for any month during that period when the
12 recipient's family income does not exceed 150 percent of the poverty line. This period
13 of ineligibility for a child does not apply to any child who has paid the outstanding
14 premiums.

15 **SECTION 30.** 49.471 (10) (b) 5. of the statutes, as affected by 2013 Wisconsin Act
16 1152, and 2013 Wisconsin Act ... (this act), is repealed and recreated to read:

17 49.471 (10) (b) 5. If a recipient who is required to pay a premium under this
18 paragraph or under sub. (2m) either does not pay a premium when due or requests
19 that his or her coverage under this section be terminated, the recipient's coverage
20 terminates. If the recipient is an adult, the recipient is not eligible for BadgerCare
21 Plus for 12 consecutive calendar months following the date on which the recipient's
22 coverage terminated, except for any month during that 12-month period when the
23 recipient's family income does not exceed 133 percent of the poverty line. If the
24 recipient is a child, the recipient is not eligible for BadgerCare Plus for 3 consecutive
25 calendar months following the date on which the recipient's coverage terminated,

