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Joint Committee on Finance

Paper #355

Drug Screening and Testing for Adults without Dependent Children Enrolled in BadgerCare Plus (Health Services -- Medical Assistance -- General)

[LFB 2015-17 Budget Summary: Page 210, #12 (Part)]

CURRENT LAW

BadgerCare Plus, part of the state's medical assistance (MA) program, 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). In 2015, 100% of the FPL equaled annual income of \$11,770 for an individual and \$15,930 for a two-person household.

The Department of Health Services (DHS) administers the program under a framework of state and federal law, as specified in a state Medicaid plan approved by the federal Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services (HHS). Currently, coverage for 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.

BadgerCare Plus participants receive a broad range of medical services, including services for substance use disorders (SUDs).

GOVERNOR

Require DHS to submit to the HHS Secretary an amendment to the existing waiver of federal law that extended coverage to childless adults with household income of up to 100% of the FPL. Specify that the amendment would require, as a condition of eligibility, that a childless adult applying for or enrolled in the program submit to a drug screening assessment, and, if indicated, a drug test, as specified by DHS in the amendment.

If the HHS Secretary approves the amendment in whole or in part, require DHS to do all

the following: (a) implement the changes to the program approved by the HHS Secretary, consistent with that approval; (b) identify in its quarterly report on the MA budget to the Joint Committee on Finance any costs incurred or savings realized in the 2015-17 biennium as a result of the actions taken under this provision, as approved by the HHS Secretary; and (c) in the agency budget request for the 2017-19 biennium, include any future fiscal impact resulting from the actions taken under these provisions, as approved by the HHS Secretary.

DISCUSSION POINTS

1. In addition to authorizing drug tests for certain childless adults BadgerCare Plus, the bill would create drug screening and testing requirements for individuals participating in the FoodShare employment and training program, certain Wisconsin Works subprograms, and the unemployment insurance program. However, the provisions in the bill relating to drug screening and testing for applicants and participants of these programs differ somewhat from each other.

2. The provision relating to drug screening and testing for childless adults participating in BadgerCare Plus is part of a broad set of changes DHS proposes to request to the current waiver agreement with CMS. In addition to implementing drug screening and testing, DHS would be directed to submit an amendment to establish the following requirements applicable to childless adults: (a) assess 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; and (d) limit a childless adult's MA eligibility to no more than 48 months. These provisions will be discussed in a subsequent LFB budget paper.

3. The current BadgerCare Plus waiver agreement between DHS and HHS is in effect until December 31, 2018. As of March, 2015, a total of 159,711 childless adults were enrolled in BadgerCare Plus.

4. The bill would require DHS to submit an amendment to the current waiver to impose drug screening and testing requirements on all childless adults who apply for or are enrolled in the program. As a condition of BadgerCare Plus eligibility, childless adults would have to submit to a drug screening assessment. If indicated by that assessment, the applicant or enrollee would be required to submit to a drug test.

5. The bill would not apply any penalty to an enrollee for failing the drug test. The administration states that the goal of this proposal is to identify individuals with unmet SUD treatment needs, and connect those individuals to treatment. Research conducted prior to the implementation of Medicaid expansion under the Affordable Care Act suggests that an estimated 14.6% of the potential expansion population had a SUD (including alcohol abuse or dependence). In addition, only 46.8% of individuals with a SUD treatment need who were enrolled in Medicaid at that time received treatment in the prior 12 months.¹

¹ Busch, S.H., et al. June, 2013. Characteristics of Adults With Substance Use Disorders Expected to Be Eligible for Medicaid Under the ACA. *Psychiatric Services* 64(6): 520-526.
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3672321/>.

6. Under the current waiver agreement, DHS must submit an amendment if it intends to make any changes related to childless adult eligibility, enrollment, benefits, enrollee rights, or various other changes. CMS must approve all amendments, and the approval may not be applied retroactively. The state must submit any amendment at least 120 days prior to the planned implementation date, and the amendment request must include at least the following items: (a) documentation of compliance with public notice and tribal consultation requirements; (b) a detailed description of the amendment, including impact on beneficiaries, the objective of the change, and desired outcomes; (c) a list and programmatic description of the waivers and expenditure authorities requested; (d) a summary and detailed projections of the change in expenditures that would result from the amendment; and (e) a description of how the evaluation design will be modified to incorporate the amendment.

7. To provide DHS with flexibility when seeking federal approval for the waiver, the administration drafted the bill without specifying the parameters of the potential drug screening or testing. DHS indicates that, if approved by the Legislature, it would begin to work with CMS to develop the amendment to the waiver. Some of the provisions that DHS would presumably have to develop under this waiver process include, but are not limited to, the following: (a) the information considered under the drug screening assessment; (b) the criteria that would determine whether an individual would need to submit to a drug test; (c) the list of drugs that would be included in the test; (d) whether individuals would be subject to a one-time or ongoing tests; and (e) the penalty for not submitting to the drug screening assessment or test (for example, a time-limited lockout period).

8. There would be costs to implement of these provisions, including costs of administering the screening tool and determining which individuals would be required to take a subsequent drug test. DHS has not determined what entities would administer the screening, which could include local income maintenance agencies. No funding is provided in the bill to support these costs.

9. There would also be costs associated with conducting the drug tests themselves. DHS has not determined which entities would conduct the drug tests, what drugs individuals would be tested for, and how often an individual might be required to take a test. Limited cost information on drug testing is available from other state programs. For example, DHS indicates that it costs approximately \$33 for Milwaukee Enrollment Services (MILES) to test each drug felon who applies to participate in the state's FoodShare program. If, hypothetically, 10% of the currently enrolled childless adults (approximately 16,000 people) were tested annually at that cost per test, testing costs would equal approximately \$528,000 annually. However, as previously indicated, the number and frequency of tests that would be conducted is not known. As the waiver request has not been developed, DHS has not estimated any costs relating to implementing this provision, or projected the number of people who would be subject to the requirement.

10. If the drug screening and testing provisions result in identifying more individuals who are in need of substance use treatment services, this provision would likely increase spending on these services from MA and other sources. However, improving the treatment and management of SUDs among childless adults could result in lower Medicaid spending on other health care services (such as decreases in hospital emergency room services) or in other programs (such as potential

diversion in drug-related incarceration in state correctional facilities or local jails).

11. Even though the bill would not authorize DHS to apply a penalty or limit BadgerCare Plus enrollment to an individual who fails to pass a drug test, simply requiring individuals to submit to a drug test may create a perceived barrier to enrollment in BadgerCare Plus. Some individuals may not be aware of the Department's policies with respect failing the test, or may be concerned that other entities might have access to the test results. If the drug screening and testing requirements have the effect of discouraging individuals from enrolling in or maintaining their BadgerCare Plus coverage, BadgerCare Plus benefit costs may decrease, but DHS may not be able to provide substance abuse services to individuals in need of these services who choose not to apply for, or remain in the program.

12. No state has received federal approval for establishing drug testing requirements for persons who apply for, or receive coverage under the MA program. It is not known whether CMS would approve the state's waiver request, since it would potentially create a new requirement for recipients and applicants that is not specified in federal law. However, DHS believes that CMS would be open to considering this proposal, since the stated goal is to identify enrollees in need of substance use treatment and connect them to the necessary services.

13. If the Committee agrees with the administration's proposal to implement certain drug screening and testing requirements on childless adults who apply for, or are enrolled in BadgerCare Plus, it could approve the Governor's recommendation (Alternative 1).

14. The bill would require DHS to include information the costs or savings of the amendment, if approved, in its regular quarterly Medicaid report to the Committee. However the Committee could modify the bill to require DHS to provide additional information to the Committee prior to implementing the provision (but not require Committee action on the report). For example, it could modify the bill to do either or both of the following: (a) require DHS, prior to submitting the waiver amendment to CMS, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of the amendment (Alternative 2a); or (b) require DHS, prior to implementing any approved waiver amendment, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of that amendment (Alternative 2b).

15. Alternatively, if the Committee approves the Governor's proposal, it could add either or both of the following approval requirements: (a) requiring DHS, prior to submitting the amendment, to submit a proposal to the Committee that summarizes the provisions and estimates the fiscal effect of that amendment, and prohibiting DHS from submitting the amendment to CMS unless the Committee approves of the proposal under a 14-day passive review process (Alternative 3a); or (b) requiring DHS, after CMS approves the amendment, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of that amendment, and prohibiting DHS from implementing this policy unless the Committee approves its implementation under a 14-day passive review process (Alternative 3b).

16. The Department's stated goal of this proposal is to help connect individuals with substance use treatment services. The Department could presumably move towards this goal, increase the likelihood of federal approval of the waiver, and decrease the potential costs of the

proposal, if it implemented only the provision that childless adults undergo a drug screening assessment, but did not implement the mandatory drug test component. Based on the results of the screening assessment, the Department could help target substance abuse services or outreach to individuals who may be more likely to benefit from those services, while reducing the risk that drug users would leave the program rather than submit to a drug test. The Committee could delete the provision that requires DHS seek approval for drug testing, but maintain the drug screening assessment component (Alternative 4).

17. If the Committee disagrees with the administration's proposal to subject childless adults in BadgerCare Plus to drug screening and testing requirements, it could delete this provision from the bill (Alternative 5).

ALTERNATIVES

1. Approve the Governor's recommendation.
2. Approve the Governor's recommendation. In addition, adopt one or both of the following provisions related to information DHS would be required to provide to the Joint Committee on Finance:
 - a. Require DHS, prior to submitting an amendment to the current childless adults waiver agreement that would permit drug testing, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of that proposed amendment.
 - b. Require DHS, if CMS approves an amendment to the current childless adults waiver agreement to permit drug testing, and prior to implementing that policy, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of the CMS-approved amendment.
3. Approve the Governor's recommendation. In addition, adopt one or both of the following provisions that would require DHS to report information and seek approval from the Joint Committee on Finance:
 - a. Require DHS, prior to submitting an amendment to the current childless adults waiver agreement to implement the drug testing proposal, to submit a proposal to the Committee that summarizes the provisions and estimates the fiscal effect of that amendment. Prohibit DHS from submitting the amendment to CMS unless the Committee approves of the proposal under a 14-day passive review process.
 - b. Require DHS, if CMS approves an amendment to the current childless adults waiver agreement, to implement the drug testing proposal, and prior to implementing that policy, to submit a report to the Committee that summarizes the provisions and estimates the fiscal effect of that amendment. Prohibit DHS from implementing this policy unless the Committee approves of the implementation under a 14-day passive review process.
4. Delete the provision that a childless adult applying for or enrolled in the program

submit to a drug test if indicated by a drug screening assessment, as specified by DHS in the amendment.

5. Delete provision.

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