



Implementation of the 2018 BadgerCare Reform Amendments

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BACKGROUND

Wisconsin provides Medicaid coverage to nonpregnant, nondisabled, nonelderly childless adults whose family income does not exceed 100% of the federal poverty level (FPL) through the BadgerCare Reform program. As of October 2019, there were 149,549 childless adults enrolled in the program.¹

BadgerCare Reform is authorized by the federal government as a state “demonstration project” under section 1115 of the Social Security Act and is often referred to as Wisconsin’s childless adult waiver. Federal approval is required because these individuals would not otherwise qualify for Medicaid through age, disability, pregnancy status, or other criteria under federal law. The program is governed by the terms of the federal approval, as negotiated between Wisconsin’s Department of Health Services (DHS) and the Centers for Medicare and Medicaid Services (CMS) within U.S. Department of Health and Human Services (HHS).

PROGRAM APPROVAL AND AMENDMENTS

CMS initially approved the BadgerCare Reform program for January 1, 2014 through December 31, 2018. The 2015-17 and 2017-19 Biennial Budget Acts required DHS to request that CMS authorize an amendment to the program that would grant DHS authority to do all of the following with regard to the childless adult population: (1) impose monthly premiums as determined by DHS; (2) impose higher premiums for enrollees who engage in behaviors that increase their health risks, as determined by DHS; (3) require a health risk assessment; (4) limit eligibility to no more than 48 months, under an eligibility formula determined by DHS; (5) require as a condition of eligibility a drug screening and, if indicated, a drug test, as specified by DHS; and (6) provide employment and training services to childless adults receiving Medicaid.²

On October 31, 2018, CMS simultaneously extended authorization for the BadgerCare Reform program through December 31, 2023, and also approved program amendments in each of the above categories, except for the drug screening and testing category. The approval also authorizes DHS to provide full coverage for residential substance use disorder treatment.³

IMPLEMENTATION REQUIREMENTS

2017 Wisconsin Act 370 explicitly requires DHS to comply with the requirements imposed by CMS in its October 31, 2018 approval by no later than November 1, 2019. However, if DHS requests, the Joint Committee on Finance (JCF) may grant an unlimited number of extensions of this deadline, not to exceed 90 days each. Each request for an extension is reviewed under JCF’s 14-day passive review process.⁴

The act also codified some of the approved waiver provisions in statute. Under s. 49.45 (23b), Stats., DHS is required to do all of the following until at least December 31, 2023 (the date on which CMS’s approval expires):

- Community Engagement. Require persons, unless exempt individuals, who are at least 19 years old but have not attained the age of 50 to participate in, document, and report 80 hours per calendar month of qualifying community engagement activities. If a person does not participate for 48

aggregate months in a required community engagement activity, DHS must disenroll him or her from the Medicaid program for six months.

- Premium Payments. Require persons with incomes of at least 50 percent FPL, except for persons eligible to receive services from an Indian health care provider, to pay a premium of \$8 per month as a condition of Medicaid eligibility. DHS may reduce the premium by up to one-half if a person avoids certain behaviors that increase health risks or attests to actively managing certain unhealthy behaviors. A person who fails to pay a required premium must generally be disenrolled from Medicaid for six months. This must occur at an annual eligibility redetermination, and after the person has received notice and a reasonable opportunity to pay the premium.
- Health Risk Assessment. Require completion of a health risk assessment as a condition of Medicaid eligibility.
- Emergency Department Copayments. Charge Medicaid recipients an \$8 copayment for nonemergency use of the emergency department.

DHS is also prohibited from withdrawing, suspending, or terminating these requirements before CMS's approval expires on December 31, 2023, unless legislation is enacted to specifically allow DHS to do so.⁵

STATUS AND OVERSIGHT OF PROGRAM IMPLEMENTATION

DHS must obtain JCF approval before implementing the BadgerCare Reform amendments and, until the amendments are fully implemented, must submit monthly progress reports to JCF. JCF also has authority to reduce DHS's funding, or change the authorized level of full-time equivalent positions for DHS related to the Medicaid program, if it determines that DHS has not met the deadline for implementing the amendments, has not made sufficient progress towards implementing the amendments, or is not cooperating with JCF's authority to oversee implementation of the demonstration project.⁶

As of November 2019, DHS has submitted final implementation plans to JCF for all of the program components except for the community engagement component. At DHS's request, JCF has granted DHS a 90-day extension to implement the community engagement component and the substance use disorder treatment benefit. DHS began notifying members of the monthly premiums, health risk assessments, and emergency department copayments on November 1, 2019, and has informed JCF that it intends to fully implement those components by February 1, 2020.⁷

¹ Enrollment data is available from DHS on its website at: <https://www.dhs.wisconsin.gov/badgercareplus/bcpstate-oct.pdf>.

² s. 49.45 (23)(g), Stats. The sixth category was added as part of the 2017-19 Biennial Budget Act.

³ Letter from Seema Verma, HHS Secretary, to Casey Himebauch, Wisconsin Deputy Medicaid Director, DHS Division of Medicaid Services Administrator (Oct. 31, 2018), available at: <https://www.dhs.wisconsin.gov/badgercareplus/clawwaiver-approvedapp.pdf>.

⁴ 2017 Wisconsin Act 370, SEC. 44 (3) (a), and s. 49.45 (23b) (d), Stats.

⁵ s. 49.45 (23b) (e), Stats.

⁶ 2017 Wisconsin Act 370, SEC. 44 (3) (b), and ss. 20.940 and 49.45 (23b) (f), Stats.

⁷ DHS's monthly progress reports and requests for JCF approval are available on JCF's website here: https://docs.legis.wisconsin.gov/misc/lfb/jfc/200_reports.