MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Ald. Michael J. Murphy and Ald. Robert G. Donovan

From: Richard L. Withers, Fiscal Analyst ext. 8532

Date: February 28, 2011

Subject: Wisconsin Medical Assistance Changes in the Budget Adjustment Bill

The Budget Adjustment Bill (“Repair Bill” – AB 11, SB 11) as proposed by the governor, and as approved by the Joint Finance Committee and the Wisconsin Assembly, gives the Department of Health Services (DHS) broad authority to change Medical Assistance and BadgerCare programs.

The changes could be approved by DHS by rule, but are exempted from the usual rule-making requirements and from conflicting portions of state statutes. The only limits on the department’s options for rewriting the state’s public health care benefits are federal requirements, and the bill would require DHS to seek a waiver exempting the state from the federal restrictions. Failure to receive the federal waiver would trigger draconian reductions in eligibility and services.

I. Exemption from Federal Requirements

The Repair Bill directs DHS to seek exemptions from current federal requirements contained in the Affordable Care Act and other federal statutes. DHS would be required to seek a waiver of federal maintenance of eligibility (MOE) standards. The waiver could allow changes including reduction of income eligibility limits for, tightening of non-income eligibility standards, increase in premiums or other cost sharing, and changing enrollment procedures.

The bill also directs DHS to submit a Medicaid plan amendment, or to seek a federal waiver, to the extent necessary to permit the DHS to change rules that include scope of services required, reimbursement policies, and choice of medical assistance providers. These rule changes could have any of the following purposes:

1. Increasing the cost effectiveness and efficiency of care and care delivery.

2. Limiting switching from private health insurance to Medical Assistance programs.

3. Ensuring the long-term viability and sustainability of Medical Assistance programs.

4. Advancing the accuracy and reliability of eligibility for Medical Assistance programs and claims determinations and payments.

5. Improving the health status of individuals who receive benefits under a Medical Assistance program.

6. Aligning Medical Assistance program benefit recipient and service provider incentives with health care outcomes.

7. Supporting responsibility and choice of medical assistance recipients.

II. Reducing Income Eligibility Limits and Changing Participation Costs and Conditions (AB 11, Section 112)

To the extent allowed by federal law or a federal waiver, the bill authorizes DHS to reduce income eligibility standards by using expedited emergency rulemaking procedures without declaring an emergency. If the state does not receive a waiver by December 31, 2011, the bill directs DHS to reduce eligibility for adults (other than pregnant women and people with disabilities) to 133 percent of the poverty level, beginning on July 1, 2012.

The Wisconsin Legislative Fiscal Bureau estimates that this change could end insurance coverage for more than 63,000 parents and about 6,800 adults without dependent children.

Ambiguous cross references in the bill raise questions about whether the proposed authority for DHS to reduce income eligibility could be exercised before July 1, 2012.

The amendment recommended by the Joint Finance Committee makes a small change by providing that a reduction in income eligibility would revert to the previous level in January 2015, unless the legislature makes a statutory change codifying the lower income limit.

Section 112 of the Repair Bill authorizes DHS to study, and arguably implement, the following changes:

1. Require cost sharing from program benefit recipients up to the maximum allowed by federal law or a waiver of federal law.

2. Allow providers to deny care or services if an enrollee is unable to share costs.

3. Modify existing benefits or establish different benefit packages for different recipients.

4. Revise provider reimbursement models for particular services.

5. Mandate that program benefit recipients enroll in managed care.

6. Restrict or eliminate presumptive eligibility.

7. Impose restrictions on providing benefits for non-citizens.

8. Set standards for establishing and verifying eligibility requirements.

9. Develop methods to assure accurate eligibility determinations and renewals.

10. Reduce income eligibility ceilings to the extent allowed by federal law or waiver.

III. Redeterminations of Eligibility

Under current state law, DHS regularly reviews the eligibility of each Medicaid enrollee every 12 months. However, the statutes also give the department the authority to make investigations of eligibility whenever there is reasonable ground to believe that an applicant or enrollee may not be eligible. As a result of that authority, DHS can and often does remove enrolled individuals or families before their annual review, if their income rises or they gain access to employer-sponsored insurance.

The Repair Bill will allow DHS to require a periodic review every 6 months instead of annually. According to the Wisconsin Council on Children and Families, most states have been moving away from semiannual reviews of eligibility because that system increases administrative expense and the review process creates churning in coverage by frequently knocking eligible families off of subsidized coverage. The Repair Bill would appear to allow DHS to end 12-months continuous eligibility for infants and pregnant women who are assumed to be most in need of continuity of care.

IV. Exemption From Regular Rule-Making

An unusual aspect of the bill is that it exempts the Medicaid emergency rules from the time limits set in the statutes for other emergency rules. This will limit opportunities for public input and legislative oversight that are built into the usual rulemaking procedures.

The rules proposed by DHS would be referred to the Joint Finance Committee (JFC), which would be given an opportunity to review them. If the co-chairs decided within 14 days of receiving the rules to hold a public hearing, then DHS couldn't implement the changes unless or until the committee approved the rule changes. Public review is at the discretion of the JFC co-chairs.

V. Exemptions from Existing Statutes

The bill amends the statutes in at least 24 places to permit the rules adopted by the department to conflict with current statutes. In general, these provisions allow the department's rulemaking (including emergency rules) to supersede the statutes relating to any of the 10 potential subjects of rules noted above. However, the exemptions from the statutes also include some other options for the department, such as:

1. Allowing DHS to alter the share of Medicaid funding the state pays to schools from the federal Medicaid reimbursement for health care services the schools provide.

2. Permitting DHS to change the eligibility of non-citizens for Medicaid benefits, including ending the eligibility of lawfully residing children and pregnant women, as well as prenatal care provided through the "unborn child" coverage for undocumented non-citizens.

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3. Reducing the range of people eligible for family planning services, or Medicaid eligibility of women diagnosed with breast or cervical cancer.

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4. Eliminating presumptive eligibility for pregnant women – a change that could prevent some women from getting cost-effective prenatal care early in their pregnancy.

The language allowing rules to conflict with and supersede the statutes is not inserted in every section of the Repair Bill and the Legislative Reference Bureau interprets the bill to mean that DHS could not issue emergency rules that conflict with statutes establishing Senior Care and Family Care.

VI. Cost Savings

The Medicaid changes described above are not expected to yield any savings in the current fiscal year, and no savings estimates have been shared yet for Medicaid-related spending in the 2011-13 biennium. Because these provisions have no fiscal effect in 2010-11, the Legislative Fiscal Bureau concluded that the proposed Medicaid provisions constitute "non-fiscal policy." The Joint Finance Committee typically strips "non-fiscal policy" from budget bills at the outset of budget deliberation.

VII. Impact on Milwaukee Residents and the Milwaukee Health Department

If waivers are granted to DHS prior to triggering eligibility reductions, it is not clear which services, eligibility levels or other changes in cost participation will be authorized. The City of Milwaukee has a disproportionately high per capita share of the state's eligible population. Through outreach efforts, the MHD has successfully moved clients and patients from the numbers of individuals and families that rely on direct services from MHD clinics. Additionally, MHD has experienced an increased revenue stream for reimbursable services rendered MA and BadgerCare recipients. It is likely that changes to these programs will place a burden on City resources and result in significant unmet need.

If the proposed waiver request is not granted by HHS, then the reduction in income eligibility levels will result in as many as 16,380 adult caretakers and 2,100 additional adult residents of Milwaukee County losing health coverage on July 1, 2012. These initial figures are based on current eligibility numbers and have been estimated by Eric Gass, Public Health Research and Policy Director for MHD, who notes that Milwaukee has the highest proportion of state residents whose incomes are below the 133% of poverty cut-off level.

VIII. Summary

According to the notes of the LRB drafter of the Medical Assistance provisions in the Repair Bill: "…the request would allow DHS to change any Medical Assistance law, for any reason, at any time, and potentially without notice or public hearing."

Please feel free to contact me if you have any questions. I will plan to provide a follow-up analysis on the impact of the Medical Assistance Program changes in the Governor's proposed biennial budget when it is introduced on Tuesday, March 1, 2011.

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