



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 1072	Assembly Amendment 1
<i>Memo published:</i> December 11, 2018 (Revised December 11, 2018)	<i>Contact:</i> Andrea Brauer, Staff Attorney Steve McCarthy, Staff Attorney Margit Kelley, Senior Staff Attorney Brian Larson, Senior Staff Attorney

2017 Assembly Bill 1072 relates to the following: (1) legislative authorization and oversight of certain agency requests to the federal government; (2) adjustment of funds for programs supported by the federal Temporary Assistance for Needy Families (TANF) block grant; (3) legislative approval of certain actions related to the Medicaid program; (4) implementation of amendments to BadgerCare Reform, as approved by the federal Department of Health and Human Services (HHS) on October 31, 2018; (5) codification of the Department of Health Services' (DHS) rules relating to drug screening, testing, and treatment requirements under the FoodShare program; (6) Department of Workforce Development (DWD) appropriations for various workforce training programs, commonly referred to as the Fast Forward program; (7) codification of certain DWD rules relating to unemployment insurance; and (8) implementation of the Wisconsin Healthcare Stability Plan (WIHSP). Assembly Amendment 1 modifies some of the bill's provisions, as described below.

AUTHORIZATION AND OVERSIGHT OF REQUESTS TO FEDERAL GOVERNMENT

The Bill

The bill creates a number of requirements related to legislative authorization and oversight of requests made to the federal government by a "state agency," which is defined to mean any office, department, or independent agency in the executive branch of state government, other than the Board of Regents of the University of Wisconsin System. Under the bill, a state agency is prohibited from submitting any of the following requests to a federal agency, unless legislation has been enacted specifically directing submission of the request: (1) a request to a federal agency for a waiver or a renewal, modification, withdrawal, suspension, or termination of a waiver of federal law or rules; or (2) a request to a federal agency for authorization to implement a pilot program or demonstration project.

The bill also creates a process for legislative oversight that applies if legislation enacted on or after January 1, 2011 requires a state agency to make such a request. The major provisions of that process include the following:

- Beginning 60 days after enactment of the legislation or March 1, 2019, whichever is later, the state agency must submit a plan to the Joint Committee on Finance (JCF) describing its plan for submitting the request to the federal agency. The plan must also include an expected timeline for submitting the request within the next 90 days. JCF may grant up to three 90-day extensions to the agency's expected timeline.
- The state agency must obtain JCF approval before submitting the request to the federal agency. While the request is pending, the state agency must contact the federal agency at least biweekly to continue negotiations, submit monthly progress reports to JCF regarding the status of negotiations, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.
- Before final approval by the federal agency, the state agency must submit the proposed approval as negotiated to JCF. JCF may approve or disapprove the proposal, but may not modify it. If JCF disapproves, the state agency must withdraw the request, or renegotiate with the federal agency and resubmit the proposed approval, as renegotiated, to JCF for approval or disapproval.
- The state agency must obtain JCF approval before implementing approved portions of a request, and must submit to JCF an implementation plan for the approved portions beginning 60 days after the date of approval or March 1, 2019, whichever is later. Until an approval is fully implemented, the state agency must submit monthly progress reports to JCF regarding implementation of approved portions of the request, and make a representative available to brief JCF or provide JCF testimony at a committee hearing on a quarterly basis.

The JCF co-chairs may delegate any of the responsibilities in the bullet points above to a standing committee of appropriate subject matter jurisdiction, under terms specified by the JCF co-chairs. The JCF co-chairs determine what constitutes an approval by a standing committee.

The bill also requires state agencies to notify JCF in writing no later than nine months before the expiration of an approved waiver of federal law, pilot program, or demonstration project for which no legislation has been enacted specifying that the waiver, pilot program, or demonstration project must be suspended or terminated. If a state agency intends to request substantive changes to the waiver, pilot program, or demonstration project in its request to the federal agency, the state agency must comply with the process of legislative oversight outlined in the bullet points above. If the state agency intends to renew the approval without substantive changes, it must submit a proposed renewal request to JCF before submitting the renewal request to the federal agency, to be reviewed under JCF's 14-day passive review process.

In addition, the bill authorizes JCF to take certain actions if JCF determines that the state agency: (1) has not made sufficient progress in submitting the request, negotiating with the

federal agency, or implementing an approved portion of the request; or (2) is not acting in accordance with the enacted legislation requiring the submission of the request. In any of those circumstances, JCF may reduce from moneys allocated for state operations or administrative functions the state agency's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time equivalent positions for the state agency related to the program for which the request is required to be submitted.

The Amendment

The amendment does not modify the provisions of the bill that relate to authorization and oversight of requests to the federal government.

FUNDING ADJUSTMENTS FOR TANF FUNDS

The Bill

The bill modifies the process for adjusting certain funding for programs supported by the TANF block grant. Currently, the Department of Children and Families (DCF) can reallocate funding between TANF-funded programs if the secretary of administration approves. In addition, if Wisconsin receives less TANF funds than budgeted, DCF must submit a plan to reduce the money allocated for the TANF-funded programs to the secretary of administration, and DCF may reduce funding for the programs only as approved by the secretary of administration. The bill removes the role of the secretary of administration and replaces it with JCF review of each of the above actions under JCF's 14-day passive review process.

The Amendment

The amendment does not modify the provisions of the bill that relate to funding adjustments for TANF funds.

APPROVAL OF CERTAIN ACTIONS RELATED TO THE MEDICAID PROGRAM

The Bill

The bill generally requires DHS to obtain JCF approval before taking any of the following actions related to the Medicaid program: submitting a Medicaid state plan amendment to HHS; implementing a change to the Medicaid reimbursement rate for a provider; or making a supplemental payment to a provider under the Medicaid program. If the expected fiscal effect of the proposed action is less than \$1 million from all revenue sources over a 12-month period following the implementation date, the proposed action is reviewed under JCF's 14-day passive review process. If the expected fiscal effect is \$1 million or more from all revenue sources over the 12-month period, DHS may take the proposed action only upon JCF approval.

The above requirements do not apply if explicit expenditure authority or funding for the specific change or supplemental payment is included in enacted legislation.

The Amendment

The amendment generally requires DHS to obtain JCF approval before submitting a Medicaid state plan amendment to HHS, implementing a change to the Medicaid reimbursement rate for a provider, or making a supplemental payment to a provider under the Medicaid program. Under the amendment, the proposed action is reviewed under JCF's 14-day passive review process regardless of its expected fiscal effect. The amendment also specifies that JCF approval is not required if explicit expenditure authority or funding for the specific change or supplemental payment is included in enacted legislation.

IMPLEMENTATION OF BADGERCARE REFORM AMENDMENTS

The Bill

The bill requires DHS to comply with the requirements imposed by HHS in its October 31, 2018 approval of Wisconsin's request for an extension and amendment of the BadgerCare Reform demonstration project by no later than November 1, 2019. Under BadgerCare Reform, Wisconsin provides Medicaid coverage to childless adults whose family income does not exceed 100% of the federal poverty limit (FPL).

Upon DHS's request, JCF may grant an unlimited number of extensions to the November 1, 2019 deadline, not to exceed 90 days each. Each request for an extension is reviewed under JCF's 14-day passive review process. In addition, the bill authorizes JCF to reduce from moneys allocated for state operations or administrative functions DHS's appropriation or expenditure authority, whichever is applicable, or change the authorized level of full-time equivalent positions for DHS related to the Medicaid program, if JCF determines that DHS has not complied with: (1) the deadline to implement the reforms by November 1, 2019 (or a later date pursuant to an extension); or (2) provisions related to legislative oversight of implementation of a demonstration project, as described generally in the fourth bullet point on page 2, above.

The bill also specifies that ending no sooner than December 31, 2023, DHS must:

- Require persons, except 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. This requirement begins no sooner than October 31, 2019, if all affected beneficiaries have been adequately notified.
- Require persons with incomes of at least 50% 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. This requirement begins as soon as practicable after October 31, 2018.

- Require completion of a health risk assessment as a condition of Medicaid eligibility. This requirement begins as soon as practicable after October 31, 2019.
- Charge Medicaid recipients an \$8 copayment for nonemergency use of the emergency department, in accordance with federal law. This requirement begins as soon as practicable after October 31, 2018.

DHS is also prohibited from withdrawing, suspending, or terminating the above demonstration project requirements before December 31, 2023, unless legislation has been enacted specifically allowing for the withdrawal, suspension, or termination.

The Amendment

The amendment does not modify the provisions of the bill that relate to implementation of BadgerCare Reform amendments.

DRUG SCREENING, TESTING, AND TREATMENT POLICY FOR PARTICIPANTS IN THE FOODSHARE EMPLOYMENT AND TRAINING PROGRAM (FSET)

The Bill

The bill generally codifies ch. DHS 38, Wis. Adm. Code, in statute. DHS promulgated ch. DHS 38 pursuant to requirements in the 2015-17 Biennial Budget Act to develop and implement a drug screening, testing, and treatment policy for certain able individuals who receive benefits under the FoodShare program. Generally, the bill requires able-bodied adults without dependents who receive FoodShare benefits to comply with drug screening, testing, and treatment requirements as a condition of eligibility to participate in the FSET program. An able-bodied adult without dependents is generally defined under federal law to mean an individual between ages 18 and 50 who is physically and mentally fit for employment, not pregnant, not a parent of or residing in a household with a child under 18, and not otherwise exempt under federal law.¹ [7 C.F.R. s. 273.24.]

Under the bill, such individuals must complete a controlled substance abuse screening questionnaire. If the answers indicate possible use of a controlled substance without a valid prescription, the individual must undergo a test for the use of a controlled substance. If the test results are positive and the individual does not provide evidence of a valid prescription, the

¹ Additional exemptions under federal law exist for food stamp recipients who are receiving unemployment compensation, regularly participating in a drug addiction or alcoholic treatment and rehabilitation program, employed or self-employed for 30 or more hours per week, or enrolled in school at least half time. [7 C.F.R. ss. 273.24 (c) (5) and 273.7 (b).]

individual must participate in treatment. If any of these requirements are not satisfied, the individual is ineligible to participate in FSET.

DHS is required to pay for all costs related to screening and drug testing, as well as the costs of treatment to the extent that treatment is not covered by Medicaid or another insurance plan. In addition, the bill provides that a person who is participating in treatment is exempt from work requirements that would otherwise apply as a condition of FoodShare eligibility.

The Amendment

The amendment does not modify the provisions of the bill that relate to drug screening, testing, and treatment for FSET participants.

DWD WORKFORCE TRAINING PROGRAMS

The Bill

The bill converts the DWD continuing appropriation for various workforce training programs, commonly referred to as the Fast Forward program, into a separate appropriation for each program. The bill appropriates the following amounts for each of the following programs for fiscal year 2018-19: (1) \$3,500,000 for career and technical education incentive grants; (2) \$500,000 for technical education equipment grants; (3) \$0 for teacher development program grants; (4) \$225,000 for apprenticeship programs; (5) \$2,233,700 for local youth apprenticeship grants; (6) \$464,800 for employment transit assistance grants; and (7) \$422,400 for youth summer jobs programs in 1st class cities.

Under the bill, DWD may request that the Joint Committee on Finance transfer moneys from the Fast Forward appropriation account to the appropriation accounts for the teacher development program grants and local youth apprenticeship grants to fund those grant programs. The bill also converts the Fast Forward appropriation from a continuing appropriation to an annual appropriation.

The Amendment

The amendment provides that any moneys encumbered under the Fast Forward appropriation before the effective date of the bill do not lapse and may be expended pursuant to the terms of the encumbrance.

UNEMPLOYMENT INSURANCE

The Bill

Under current law, with certain exceptions, a person who is claiming unemployment insurance benefits is generally required to register for work with Wisconsin Job Service and to make at least four work searches per week. The law allows DWD to define, by rule, any conditions under which a waiver from those requirements could be granted. Currently, DWD's administrative rules waive the registration and work search requirements for any of the

following: (1) a person who has a reasonable expectation of returning to work with the same employer within eight weeks, which may be extended an additional four weeks; (2) a person who has an anticipated start date with a new employer within four weeks; (3) a person who is a trades worker who routinely obtains work through a qualifying union hiring hall; and (4) additional identified circumstances, such as a person who has been called to jury service.

The bill codifies the waivers from DWD's administrative rules and specifies that DWD may modify or establish additional waivers from the registration and work search requirements only if necessary to comply with federal law or as specifically allowed under federal law.

The Amendment

The amendment does not modify the provisions of the bill that relate to unemployment insurance.

WIHSP

The Bill

Current law directs the Office of the Commissioner of Insurance (OCI) to administer a reinsurance program for the state individual insurance market, pursuant to 2017 Wisconsin Act 138, known as WIHSP. Total annual funding for WIHSP is capped at \$200 million; however, on July 29, 2018, the federal government approved a Section 1332 waiver under the Affordable Care Act (ACA), which will allow the state to receive federal funds offsetting approximately three-fourths of the cost of WIHSP, based on expected savings to federal premium tax credits under the ACA.

The bill requires OCI to administer WIHSP in accordance with the specific terms and conditions of the federal approval dated July 29, 2018, and to ensure that sufficient funds are available for the plan to operate as described in the approval. The bill expressly requires OCI to complete and submit any reports, provide any information, and participate in any oversight activities required by the federal government to implement and maintain WIHSP.

Under both the bill and the provisions enacted in Act 138, WIHSP would make reinsurance payments to carriers to offset a portion of the cost associated with certain claims. For the 2019 benefit year, WIHSP must provide a 50% coinsurance rate for claims between \$50,000 and \$250,000 for an enrolled individual's covered benefits for that year. However, the bill would prohibit OCI from adjusting the payment parameters for the 2019 benefit year. The provisions enacted in Act 138 authorize OCI to adjust the payment parameters for the 2019 benefit year if necessary to secure federal approval of the Section 1332 waiver on which WIHSP is based.

Under both the bill and the provisions enacted in Act 138, OCI is authorized to adjust the payment parameters in future benefit years, using a process described in the statute. Also, under both the bill and current law, OCI is authorized to promulgate rules related to WIHSP, as specified in the statute, which may be promulgated as emergency rules without a finding of an

emergency. However, the bill specifically requires any such rule to comply with the terms of the federal approval dated July 29, 2018, and the bill provides that an emergency rule related to WIHSP promulgated before January 1, 2019, will remain in effect until it is superseded by a subsequent permanent rule.

The bill specifies that, before December 31, 2023, OCI may request a renewal - without substantive change - of the Section 1332 waiver upon which WIHSP is based. However, as provided under the bill, no modification, suspension, withdrawal, or termination of the waiver may be requested by OCI before that date, unless legislation has been enacted specifically directing the modification, suspension, withdrawal, or termination.

The bill also repeals a provision that had been enacted in Act 138 requiring OCI to submit a report by December 31, 2018, with recommendations regarding the implementation of the Section 1332 waiver on which WIHSP is based. The effective date of the bill's repeal of this reporting requirement is December 31, 2018.

The Amendment

The amendment does not modify the provisions of the bill that relate to WIHSP.

BILL HISTORY

On December 3, 2018, JCF introduced Assembly Amendment 1 on a vote of Ayes, 12; Noes, 4. On that same day, JCF recommended adoption of Assembly Amendment 1 and passage of 2017 Assembly Bill 1072, as amended, each on a vote of Ayes, 12; Noes, 4.

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