



Legislative Fiscal Bureau

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January 11, 2012

TO: Representative Jon Richards
Room 118 North, State Capitol

FROM: Bob Lang, Director

SUBJECT: Certification Letter from DOA Secretary Huebsch to DHHS Secretary Sebelius

At its November 10, 2011, meeting, the Joint Committee on Finance approved a number of changes to the state's medical assistance (MA) program that had been proposed by the Department of Health Services (DHS). Several of those proposed changes require a waiver from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) of the maintenance of effort (MOE) requirements imposed on states by the federal Patient Protection and Affordable Care Act (PPACA). PPACA prohibits states, at the risk of losing federal MA matching funds, from having in effect "eligibility standards, methodologies, or procedures" with respect to their MA program or any MA waiver program that are more restrictive than those that were in effect on March 23, 2010. For adults, the MOE requirement is in effect until the DHHS Secretary certifies that a health benefits exchange is fully operational in a state, which is assumed to be January 1, 2014. For children under age 19, the MOE requirement runs through September 30, 2019.

PPACA creates a limited exception to the MOE requirement for non-pregnant, non-disabled adults who are eligible for MA at the state's option and whose family income exceeds 133% of the federal poverty level (FPL). [Under Wisconsin's BadgerCare Plus program, such adults are currently eligible for coverage if their income does not exceed 200% of the FPL, and they meet the program's other eligibility criteria.] This MOE exception is available to a state through December 31, 2013, if the state certifies to the DHHS Secretary that "with respect to the State fiscal year in which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit." This provision further states that "Upon submission of such a certification to the Secretary, [the MOE requirement] shall not apply to the State with respect to any remaining portion of the period described in the preceding sentence."

In a letter to DHS dated December 9, 2011, CMS provided a preliminary response to several of the proposals approved by the Finance Committee and submitted by DHS. Specifically, CMS indicated that, "As we have noted in our previous MOE guidance, States that submit certifications of a budget deficit can either fully eliminate eligibility for non-disabled, non-pregnant adults with incomes over 133 percent of the FPL or they can design targeted restrictions in eligibility for such adults." Accordingly, CMS indicated that it was prepared to approve the following DHS proposals as applied to non-disabled, non-pregnant adults with incomes above 133% of the FPL:

- Application of the 9.5 percent affordability test with respect to employer sponsored insurance that meets the minimum benefit standards;
- Premium increases for the adult family members up to 5 percent of family income (noting that the DHS proposal was to apply these premium increases to non-disabled, non-pregnant adults with income above 150% of the FPL); and
- A 12-month restrictive re-enrollment period for Medicaid eligibility for the adults who fail to make a premium payment.

In addition, CMS approved the Department's proposal to end coverage for BadgerCare Plus recipients whom the state has determined are ineligible 10 days after they have received an adverse action notice (rather than extend coverage through the end of the month as is the Department's current practice). Unlike the three other proposals identified above, approval of this item was not conditioned on the state's certification to CMS that it has a state budget deficit.

The Department estimates that the changes specifically referenced in the December 9, 2011 letter from CMS would generate savings to the MA program of approximately \$23 million GPR during the 2011-13 biennium. That represents approximately 18% of the \$129.4 million GPR savings the Department estimated would occur in the 2011-13 biennium if all of the program changes approved by the Finance Committee at the November 10, 2011 meeting were implemented.

On December 29, 2011, the Secretary of the Department of Administration (DOA) sent a letter to DHHS Secretary Kathleen Sebelius indicating that the state would have a budget deficit based on generally accepted accounting principles (GAAP) during state fiscal years 2011-12 and 2012-13 if the PPACA MOE requirements applied in Wisconsin with respect to non-pregnant, non-disabled adults whose income exceeds 133% of the FPL. In the Budget in Brief that accompanied the Governor's 2011-13 budget message, the administration projected that the GAAP deficit for the state would be \$2.99 billion in 2011-12 and \$3.02 billion in 2012-13. In the most recent Comprehensive Annual Fiscal Report prepared by DOA (December, 2011), the state's general fund is shown as having a deficit of \$2.99 billion in 2010-11, when the financial statement is presented in conformity with GAAP.

At the time of the December 29 letter to DHHS, it was estimated that the gross balance in the state's general fund would be \$69.2 million in 2011-12 and \$68.2 million in 2012-13 based upon the cash-based accounting principles that the state uses for budgeting purposes.

A copy of the December 29 letter is attached to this memorandum. Staff from CMS has indicated to this office that it expects to formally respond to the DOA letter within the next several weeks.

BL/lb
Attachment



WISCONSIN DEPARTMENT OF
ADMINISTRATION

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December 29, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

The requirements under section 1902(gg)(3) of the Social Security Act, as amended by the Affordable Care Act, provide states an exception to the prohibition on making certain changes to Medicaid eligibility standards, methodologies or procedures under the state plan or any waiver of the state plan by certifying that the state has a budget deficit in the current fiscal year or projects to have a budget deficit in the succeeding fiscal year.

As indicated below, this letter is to certify that Wisconsin would have a budget deficit, based on generally accepted accounting principles, during state fiscal years 2012 and 2013 if the maintenance of effort requirements under section 1902(gg) applied in Wisconsin with respect to nonpregnant, nondisabled adults eligible for Medicaid under the State Plan and whose income exceeds 133 percent of the poverty line applicable to a family of the size involved.

In accordance with and for the purposes of section 1902(gg)(3) of the Social Security Act, as amended by the Affordable Care Act, I certify that the State of Wisconsin:

- Has or projects to have a budget deficit during the state fiscal year 2012 representing the period January 1, 2012, through June 30, 2012.

- Projects a budget deficit for the state fiscal year 2013 representing the period July 1, 2012, through June 30, 2013, following the state fiscal year in which this certification is submitted.

December 29, 2011

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As Secretary of the Wisconsin Department of Administration, which develops and implements Wisconsin's state budget, I am the appropriate official to make this certification. Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Huebsch".

Mike Huebsch
Secretary