

## **Inconsistencies between the BadgerCare Changes and the Affordable Care Act**

April 30, 2012

Late on April 27<sup>th</sup> Wisconsin received word from federal officials that the Department of Health Services (DHS) may proceed with a portion of the proposed changes to BadgerCare. DHS immediately initiated the process of putting those changes into effect, beginning on July 1, 2012.

The modified plan is expected to cause about 17,000 adults to lose their BadgerCare coverage, and many more will have higher costs for their coverage. Because of modifications to the plan we don't have precise figures yet, but it appears that the cost-cutting measures will mean that:

- According to DHS, about 48,000 adults will have higher premiums. (Later this year about 300,000 BadgerCare participants could have much higher co-pays and more limited benefits under a separate state proposal, which is further from federal approval.)
- Higher premiums will result in roughly 10,000 adults dropping out of BadgerCare because they can no longer afford it.
- About 7,000 adults will lose their BadgerCare eligibility because they or their spouse has an offer of employer coverage with premiums costing less than 9.5 percent of family income (regardless of how much the employee and spouse would have to contribute for deductibles and co-pays).<sup>1</sup>

The original changes proposed by DHS would have resulted in nearly 65,000 people losing their BadgerCare coverage, including over 29,000 children. However, because of the "maintenance of effort" requirements in the Affordable Care Act (ACA), the changes affecting children and many of the adults are not being approved by HHS. The alterations to BadgerCare are allowable under the ACA because it specifically authorizes states to restrict or eliminate Medicaid eligibility of non-pregnant, non-disabled adults in households with income over 133 percent of the federal poverty level, provided that the state certifies that it has a deficit (as Wisconsin did several months ago).

### **Differences between the BadgerCare changes and the Affordable Care Act**

Secretary Smith and other DHS officials have frequently argued that all of the cost-cutting changes they were seeking to make to BadgerCare are consistent with the ACA and provide a test of measures that will take effect nationwide in 2014. Although the changes that were approved by HHS are legally permissible, they are nonetheless inconsistent with the federal law in a number of important details and in the general intent. The differences include the following:

**1. General goals** – The overarching goal of the Affordable Care Act (ACA) is to expand and improve access to quality, affordable health care. The BadgerCare changes do the opposite. They will make an estimated 17,000 adults lose BadgerCare coverage, and most of those people will become uninsured or underinsured. Others will have considerably higher cost-sharing (especially if the proposed Alternative Benchmark Plan is also approved) and will have difficulty retaining their coverage.

**2. Comprehensive reform versus selective contraction of coverage** – Although the Walker Administration says it is applying the standards in the ACA, DHS is very selectively “cherry picking” (or lemon picking) by only implementing standards that reduce health care coverage in Wisconsin. The Governor has supported efforts to have the law struck down and has refused to implement the parts of the bill that would help Wisconsinites get or protect their health care coverage. A good example is that the ACA requires states to expand Medicaid to cover all citizens with incomes below 133 percent of the poverty level. That sets a floor for the level of Medicaid eligibility in all states, and the ACA gives states the option of providing Medicaid coverage above that floor level. In Wisconsin, DHS is seeking to roll back BadgerCare coverage for many adults above the 133 percent standard, effectively making the floor a ceiling on eligibility for many adults. In addition, Governor Walker is resisting efforts to provide new mechanisms (such as the health insurance exchanges authorized by the ACA) to improve access to care for people over that income level.

**3. Treatment of employees with offers of very expensive employer coverage** – DHS purports to be following an ACA policy that restricts subsidies for coverage of adults through an exchange if the adult (or his/her spouse) has an offer of employer sponsored insurance and the premiums for that insurance would cost not more than 9.5 percent of family income. However, the ACA applies that limitation only to exchange subsidies and it adds a significant condition; the restriction doesn’t apply when the employer coverage has very high copays and/or deductibles, if the “actuarial value” of the coverage is less than 60 percent of the cost of the plan. Although Secretary Smith and other state officials say the BadgerCare changes are modeled after these ACA provisions (yet applies them to Medicaid/ BadgerCare rather than to exchange coverage), DHS is not using the 60 percent actuarial standard. As a result, the exclusion from BadgerCare will apply to low-income adults who are offered catastrophic coverage with very high deductibles.

**4. Inconsistent income standards** – Despite the DHS claims that the BadgerCare changes are consistent with the ACA and will provide an early test of changes that will occur nationally in 2014, the way the state calculates income is less generous in several important respects:

- *The 5 percent disregard* – Beginning in 2014, the ACA will use an income definition that includes an automatic 5 percent income disregard, which essentially makes the 133% standard a 138% test. DHS isn’t making that adjustment now, which means the BadgerCare changes will apply to thousands of adults who would be protected if the state was truly following the ACA standards, and premiums will be higher for many other adults.
- *Depreciation* – Wisconsin generally bases BadgerCare eligibility on a family’s adjusted gross income (AGI), as calculated on tax forms, but DHS adds back to that figure any depreciation claimed by farmers or other self-employed individuals.<sup>2</sup> That makes their family income higher than if it were calculated using the ACA’s income definition, which does not add depreciation to their AGI. The result in Wisconsin is that premiums apply to more families and are higher than they would be if Wisconsin used the ACA income definition.
- *Other deductions* – Beginning in 2014, the ACA requires states to use a standardized way of calculating income, referred to as “modified adjusted gross income” (MAGI). That income definition includes more deductions than Wisconsin now allows (such as child support received and various pre-tax expenditures<sup>3</sup>), and it excludes two that Wisconsin does allow (including child support paid).<sup>4</sup> Although those differences cut both ways, it appears that following the ACA income definition would more frequently be advantageous for BadgerCare recipients.

In fairness to DHS, we should note that converting the state's procedures and computer systems to comply with the "MAGI" income standard in the ACA is not simple, and we can appreciate why the state wouldn't want to make that change this year. (The Governor's decision to turn back federal funding from the ACA for computer upgrades exacerbates the problem.) However, that rationale does not excuse DHS from being consistent with the ACA with respect to the depreciation issue (since not adding it back to income simplifies the eligibility process), and adopting the 5 percent income disregard would also be an easy change. By failing to include that disregard, DHS exposes the insincerity of its argument that it is seeking to test portions of the ACA.

## Conclusion

Governor Walker and DHS officials argue that the changes the state plans to make to BadgerCare are consistent with the Affordable Care Act and will provide a test of portions of that act that take effect in 2014. Although it is accurate to say that the imminent changes are allowable under federal law (since it permits states with deficits to restrict eligibility for adults over 133 percent of the poverty level), there are some significant substantive differences between the BadgerCare changes and the ACA. For example, because DHS has not amended Wisconsin's income test to include the 5 percent income disregard that will be required by the ACA in 2014, thousands of additional adults will have to pay significant premiums or will lose eligibility for BadgerCare coverage in 2012 and 2013.<sup>5</sup>

More important than the technical differences is the fundamental divergence between the goals of the ACA and the goals of the Walker Administration's changes. The intent of the federal law is to improve access to quality, affordable care. In contrast, Governor Walker has resisted implementing all the various aspects of the ACA that would advance that goal, while embracing a few narrow portions of the law that allow the state to reduce BadgerCare eligibility. Instead of moving our health system forward, those changes will drive up the number of uninsured Wisconsinites – causing many more people to rely on emergency rooms as their primary source of health care, and increasing the cost of uncompensated care that gets transferred to people with insurance.

Jon Peacock  
WCCF research director

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<sup>1</sup> A non-pregnant spouse of the employee is also ineligible when he or she could be covered by the employer plan, as long as the premiums for employee-only coverage would cost not more than 9.5% of family income, even if including the spouse would push the premiums well above the 9.5% level.

<sup>2</sup> If a self-employed adult exceeds the 200% income ceiling only when depreciation is added back to the family's adjusted gross income, Wisconsin enrolls them (and their children) in the BadgerCare Benchmark Plan, which has narrower benefits and higher co-pays. If Wisconsin did not add depreciation to their income, those parents and their children would be eligible for the standard benefits plan and would have lower cost-sharing, as would self-employed parents with income below 200% without subtracting depreciation.

<sup>3</sup> The new ACA definition of income exempts pre-tax contributions, such as child care, retirement, health care premiums and contributions to flex spending plans.

<sup>4</sup> The second difference is that the state currently excludes Supplemental Security Income (SSI), whereas the new federal definition does not.

<sup>5</sup> Some of those adults (between 133% and 138% of FPL) will become ineligible for BadgerCare because they have an offer of employer coverage (that often won't be affordable for them), while others will remain eligible for BadgerCare but will now have to pay premiums of 3% of their income.