

7.2 Summary of Public Comments and Wisconsin DHS Response

As stated in public hearings and documents, DHS gave all comments received through the various mechanisms the same consideration. To comprehensively address public input, comments are summarized by amendment topic and are followed by a DHS response. Of note, a significant number of comments addressed multiple or all proposed provisions in the waiver amendment. A portion of the comments made substantive comments and specific requests and recommendations. Additionally, there were a number of other comments that were either wholly in opposition or approval of the proposed waiver amendment. A summary of comments categorized by sections, along with a response from DHS, follows.

1. Monthly Premiums

Comment Summary: Many comments stated that the individual or organization shares DHS's goal of encouraging members to engage in their health care. There are concerns that those with incomes starting at 21 percent of the FPL will not be able to afford paying the monthly premiums despite the seemingly nominal amount. Commenters noted that for members living at or near poverty, even one dollar a month is unaffordable given the need to pay for other basic needs, such as food and housing. Additionally, many living at or near poverty do not hold credit cards or bank accounts to be able to make payments to the State. These issues raise the concern that members will lose coverage due to nonpayment of premiums, or nonenrollment due to unaffordability and that it may be more administratively burdensome to collect premiums than to not have them exist at all. To alleviate these concerns, suggestions from many commenters included simplifying the proposed premium tiers and providing an extensive grace period for nonpayment. A number of comments also stated that there are certain populations for whom monthly premiums would be especially unaffordable, and therefore, exemption for these populations should be included in the proposed amendment. These populations include the homeless; individuals with multiple chronic conditions; individuals with cancer, HIV/AIDS, or terminal illness; and domestic violence victims. Comments also acknowledged that the listed exemptions to the 48-month time limit/work component is appreciated and should be extended to the monthly premium requirement as well. Overall, commenters noted that losing coverage for any period of time due to nonpayment should be revised. Alternative consequences suggested include enrolling members into a lesser benefit plan or having members participate in educational programs/case management.

Wisconsin DHS Response: Many comments focused on the unaffordability of the proposed premiums for households with incomes starting above 20 percent of the FPL. Federal regulations do allow cost-sharing of up to 5 percent of household income, and the proposed household premiums are within this capped amount. Additionally, CMS has approved several other states, including Indiana, Iowa, and Montana, to collect monthly premiums from childless adults with incomes below 100 percent of FPL. Approved premium amounts have been up to 2 percent of income. DHS understands these states are Medicaid expansion states covering childless adults with incomes up to 133 percent of the FPL under the Affordable Care Act (ACA). However, Wisconsin is proud to be the only state that did not expand Medicaid under ACA and still has no gaps in coverage for any income population. This is an achievement unmatched by most, if not all, of the expansion states.

DHS has considered commenters' concerns that starting premium requirements could be difficult for those near poverty and that the proposed four premium tiers may be too complex due to frequent changes in income, challenges with collecting premiums at varying amounts, and comprehension of the policy by members. DHS appreciates these concerns and suggestions to simplify the premium tiers. For the reasons mentioned above, DHS restructured the premium tiers. The amendment request now proposes two premium tiers: members with a household income from 0 to 50 percent of FPL will have no monthly premium, and members with a household income from 51 to 100 percent of FPL will have an \$8 monthly premium.

Regarding other common comments, DHS will continue to consider the operational suggestions we have received. These items include identifying allowable payment methods, particularly for members who may not have a bank account. Also, DHS agrees with commenters who expressed that a significant grace period should be in place. In our discussions with CMS and in finalizing operational protocols, DHS intends to consider a grace period of up to 12 months. DHS expects at least a yearlong implementation that will allow time to work further with stakeholders across the state and educate members on any approved policy.

Lastly, DHS would like to clarify that a member will start receiving benefits upon enrollment regardless of a first payment being made.

2. Health Risk Assessment

Comment Summary: Many commenters expressed that a health risk assessment (HRA), which allows providers and health maintenance organizations (HMOs) to better help patients with their health care needs, is overall a good idea. Suggestions for improvement include having members complete the HRA with their providers. Commenters indicated they believe this would help the parties work together to develop an appropriate care plan. Comments also stated that if HMOs are responsible for HRA administration, then this information should be readily available and accessible to members' providers. Some comments also recommended that premiums be completely reduced for members who complete the HRA, regardless of whether they engage in health risk behaviors or not. Lastly, a number of comments raised the concern that the HRA may be duplicative of other types of assessments members are expected to complete, such as the health needs assessment (HNA).

Wisconsin DHS Response: In regard to the duplicative assessments, the HRA will replace the HNA for the childless adults population enrolled in BadgerCare Plus. As processes are in place for the HNA, DHS intends to use these same processes in administering the HRA.

DHS encourages and will continue to encourage members to meet with a provider upon enrollment so a care plan can be developed to address their health risks and so they may receive preventative care.

3. Healthy Behaviors Incentives

a. Lower premiums for members engaging in healthy behaviors

Comment Summary: Comments expressed general acknowledgement that promoting healthy behaviors is a shared goal that individuals and organizations have with DHS. Concerns were raised that paying a higher premium due to engaging in health risk behaviors will result in a barrier for members in enrolling and receiving treatment or medical assistance for their health risk behaviors. As health risk behaviors will be identified based on the HRA, many comments suggested that the HRA should be completed by members and their provider. Comments also suggested that instead of eliminating higher premiums for those who engage in health risk behaviors, members could be required to develop a care plan or receive health education from providers. Moreover, a number of comments also mentioned that health risk behaviors are sometimes a result of an underlying condition and are not easily managed.

Wisconsin DHS Response: DHS respects the concerns and suggestions raised in the submitted comments. The policy provides members with the option of indicating whether or not they are managing their health risk or if an underlying condition exists that impacts a health risk. We encourage members to be honest and to see their provider to address health risks.

Furthermore, DHS has restructured premium tiers after reviewing comments and believes this will also be beneficial to the proposed healthy behavior incentive. The revised requested premium requirement starts at above 50 percent of the FPL. Accordingly, those with incomes at or below 50 percent of the FPL will not be subject to the healthy behavior incentive. The revised premium structure promotes affordability across all incomes, and the healthy behavior incentive further provides an opportunity for members to reduce their required monthly premium by half.

b. Emergency Department (ED) Utilization Graduated Copays

Comment Summary: Comments for this proposed provision included uncertainty on how a member's first and second ED visit would be determined and how this will be done in a timely manner, a perceived high amount of the copays from \$8 to \$25, the methodology for collection of the copay, and worry that members may avoid ED utilization even in cases when that level of care is appropriate. Suggestions submitted include only charging members for non-emergent use of the ED and, accordingly, clearly defining the definition of non-emergent ED utilization, lowering the cost of copays, and developing a collection mechanism that will not burden ED providers in providing care or prevent members from receiving care at the time they are at the ED. Many advocates shared that there are certain populations who are more likely to need necessary ED care due to their conditions and that therefore, they should be exempt from this copay requirement. Populations mentioned often include individuals with multiple chronic conditions, cancer, HIV/AIDS, and those with low or no income. Many comments also stated that they encourage DHS to educate members on the appropriate use of medical facilities.

Wisconsin DHS Response: The majority of comments regarding ED utilization addressed the difficulty in identifying a member’s first and subsequent visits. DHS has revised this request and is now proposing an \$8 copay for each ED visit. One amount will be a clearer policy for all stakeholders to understand and administer. Additionally, this change in policy still provides an opportunity for members to understand health care value and seek care in the appropriate setting. DHS maintains the collection of this copay will appropriately follow federal regulations that cost-sharing not exceed 5 percent of household income.

In regard to providing treatment, DHS would like to clarify that payment is not a requirement for service.

4. 48-month Time Limit with a Work Component

Comment Summary: Commenters expressed concern over posing a time limit on eligibility and disrupting continuity of care for members. Particularly, comments mentioned how certain populations, such as individuals with mental health conditions and those with cancer or terminal illnesses, will not be able to meet the work requirement and therefore will reach the time limit and lose coverage for a period of time. Advocates also note that although members receiving Social Security Disability Insurance (SSDI) are exempt from this proposed policy, the definition of the disability to receive SSDI is much narrower than that found under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. These individuals with disabilities may not qualify as “unable to work” and therefore will lose BadgerCare coverage for some time. It was noted that obtaining SSDI is a process that can take years. Losing coverage, even for six months, is detrimental to the health of the stated populations and will increase ED utilization and uncompensated care in the view of multiple commenters. Overall, commenters argued that losing coverage for any period of time due to nonpayment should be revised. Alternative consequences suggested include enrolling members into a lesser benefit plan or having members participate in educational programs/case management.

Many comments also addressed the work component and whether such a policy is effective, citing national and Wisconsin data. Also, commenters indicated that allowing individuals to maintain health care coverage better allows them to obtain and maintain employment. While some comments suggested completely removing the 48-month time limit and work component, other comments suggested reducing the 80-hour-per-month requirement. Many comments stated an appreciation of the exemption list from the work component and, accordingly, the time limit. However, there were a number of commenters who requested clarification on whether those exempt from the work component are also exempt from the proposed time limit. Additionally, commenters suggested more exemptions, including for individuals who are homeless, have multiple chronic conditions, have cancer, HIV/AIDS, and are domestic violence victims. Furthermore, commenters suggested additions to fulfilling the work component and the inclusion of those actively seeking work and time volunteering.

Wisconsin DHS Response: A significant number of comments addressed this proposed policy and the implications it would have on members. DHS is required to submit a 48-month time limit request as directed by Act 55. The work component has been added in consideration of members who are working but whose income remains below 100 percent of FPL and who do

not have access to health care coverage. DHS has also included exemptions to this policy as we understand there are populations where working may not be feasible. Lastly, DHS included a request with this policy that allows members to regain benefits after six months.

As some commenters noted, a substantial percentage of members work or go to school, and another portion meet the listed exemptions. This leaves a small percentage of members who naturally churn in and out of BadgerCare or who remain on BadgerCare for a longer period of time and are unable to find work. For the latter population, DHS aims to offer support in not only providing health care coverage for these members, but also encouraging them to engage in their communities. With this in consideration, the work requirement can be satisfied through not only actively working, but also job training. Additionally, comments include suggestions to add performing community service and actively seeking work as qualified activities. DHS will consider these items in our discussions with CMS and when developing an operational protocol.

5. Substance Abuse Identification and Treatment

Comment Summary: The majority of commenters acknowledged the addiction crisis in the state and the need to treat individuals with substance use disorder (SUD). A number of commenters expressed that drug screening and testing are unlawful and ineffective ways to identify individuals with substance use disorder. They stated that implementing this requirement as a condition of eligibility further stigmatizes SUD and will be a barrier to individuals obtaining health care coverage and receiving treatment not only for substance abuse, but other medical conditions.

In regard to the methodology used to screen and test individuals, providers and advocates recommend that screening should occur in a provider setting using an established tool, such as the Screening, Brief Intervention, and Referral to Treatment (SBIRT). Some commenters stated that having a provider administer drug screening using an established screening tool creates a safe setting for individuals and will lead to a higher likelihood of identifying those with SUD. As for drug testing, other than opposition to the requirement, suggestions include allowing individuals to use results from other state-mandated testing to avoid duplication of resources and additional burden on individuals.

In regard to treatment, many commenters expressed concern that requiring treatment for individuals who test positive for a drug is a matter of medical ethics and that forcing treatment is an ineffective method to help individuals participate and complete a treatment program. Additionally, advocates and providers indicated that SUD should be treated as a chronic condition and that DHS should not expect an individual who completes one treatment program to be drug free or result in long-term recovery. Similarly, many commenters shared that treatment should be allowed the same priority for individuals who do not screen or test positive but who feel that they need treatment.

A larger issue of treatment capacity in the state was widely mentioned in comments. Commenters noted capacity issues throughout the state and that this needs to be addressed to fulfill the goal that members will be given treatment and not be disenrolled. Often, individuals

must wait to receive treatment, and it would be unfair if this waiting time results in a member losing coverage.

Wisconsin DHS Response: DHS received substantive feedback on this proposed policy. General opposition to drug screening and testing as a condition of eligibility and specific suggestions for improvement were heard. DHS will consider the proposed policy implementation options should the policy be approved.

Advocates and providers stressed that if members lose benefits for six months for refusal to complete a treatment program, this may create a barrier to access care when they may become ready to enter treatment during those six months. In response, DHS has removed the six-month restrictive reenrollment period to address these concerns. This will allow individuals to receive timely treatment when they are ready. Additionally, DHS will follow evidence-based practice and allow members multiple opportunities to enter treatment. Evidence supports that members are much more likely to complete treatment when they enter voluntarily rather than as a condition of eligibility and when they are given multiple opportunities to attempt, fail, and reenter treatment.

Commenters also voiced that those who express a desire to enter treatment should be able to do so regardless of if they screen or test positive. In response, DHS has revised the amendment and is now proposing to allow members who indicate they are ready for treatment on their screening questionnaire to skip the drug test and access treatment. We believe doing so will promote the member's choice to positively address their substance use disorder without subjecting them to an unnecessary test.

6. Expansion of Residential Treatment

Comment Summary: Overall, comments were in support of the amendment's request to expand access to residential services at an IMD. Some advocates, providers, and other stakeholders did note that DHS must continue to invest in behavioral health in the community and address capacity issues through sufficient reimbursement, workforce development, and minimization of administrative burdens. Some comments stated that the IMD waiver should be expanded while others expressed a desire for a narrow focus.

Wisconsin DHS Response: DHS appreciates the support for this proposed waiver expenditure and will continue to work on initiatives to address substance use disorder and behavioral health services in the state.

7.2.1 Tribal Consultation Comment Summary

Comments received during the Tribal Consultation on May 1, 2017, along with comments received throughout the 30-day public comment period from Tribal Governments, are summarized below.

Tribal Government Comment Summary: Comments from tribes were expressive of concerns relating to whether tribal members are exempt from the proposals included in the draft amendment application and the perceived negative impact that the proposals would have on American

Indians/Alaska Natives (AI/AN) Medicaid beneficiaries if there is no exemption. Commenters expressed concern that the proposed amendments will result in tribal members being disenrolled from Medicaid or not applying for Medicaid coverage. Concerns were raised that this will increase reliance on Indian Health Services, which has insufficient funding and relies on Medicaid and Medicare.

Concern was noted regarding the 48-month time limit and work component. Members of the tribes generally live in areas of high unemployment and poor access to state employment programs. It will be especially difficult for tribal members to meet work requirements or demonstrate they meet requirements in the eyes of some commenters. Additionally, tribal governments state that enforcing the work component is inconsistent with federal trust responsibility to provide health care access.

In regard to substance abuse identification and treatment, the tribal governments express that this additional eligibility requirement will steer tribal members from getting Medicaid coverage. The tribal governments agree that substance abuse is an important issue to address and offered a suggestion that the tribes could work with DHS on screening their citizens to identify individuals needing SUD treatment. This process would be voluntary for members and administered by the tribes.

For the proposed policies that impact cost-sharing (monthly premiums and ED copays), the tribes noted that Congress has exempted AI/ANs from cost-sharing and that this amendment proposal should state this exemption as well.

Unrelated to any particular proposed policy in the amendment, tribes that submitted formal letters referenced the CMS State Health Official Letter (SHO) and would like to consult with DHS on ways to increase reimbursement at 100 FMAP for services received through the HIS and tribal health care providers. There were also requests for tribal consultation before the waiver amendment application is submitted.

Wisconsin DHS Response: DHS appreciates all comments from tribes received at the tribal consultation meeting and through other communication modes. DHS will work with tribes to address concerns as discussions occur with CMS and details are worked out for any approved policies.

DHS would like to clarify that current copayment policies for BadgerCare will remain in place, and therefore, tribal members will be exempt from the following proposed cost-sharing policies: monthly premiums and ED copays.

Additionally, a tribal consultation was conducted on May 1, 2017, at Wausau, Wisconsin. The proposed waiver amendment was an agenda item during the quarterly scheduled meetings with tribal health directors. This process follows requirements found in the Section 1115 waiver submission regulations and Wisconsin's approved Medicaid State Plan regarding tribal consultation.

7.2.2 Consideration of Public Comments in Final Waiver

As stated in the previous subsection, each comment that was submitted to DHS through either public hearings, the waiver amendment webpage, mail, or voicemail was reviewed as the final waiver amendment submission was developed. Embedded in our response to the comment summaries, DHS has stated where revisions have been made in the final application as a result of consideration of comments and suggestions received from the public. Below is the list of changes/clarifications that have been made to the final waiver amendment application:

Policy Changes

Table 6. Changes Made in the Final Application

Policy Area	Draft Application	Changes made in the Final Application
Monthly Premiums	Four premium tiers (on household basis): 0-20% FPL: No premium 21-20% FPL: \$1 51-80% FPL: \$5 81-100% FPL: \$10	Two premium tiers (on household basis): 0-50% FPL: No premium 51-100% FPL: \$8
ER Utilization Copay	Graduated copay: \$8 for first ER visit and \$25 for subsequent ER visits within a 12-month period	\$8 copay for any ER visit
Substance Abuse Identification and Treatment	The consequence for refusal to complete drug treatment is the member is ineligible for BadgerCare benefits and may reapply for benefits after a six-month period. Individuals whose answers on the screening questionnaire indicate possible abuse of a controlled substance shall be required to undergo a test for the use of a controlled substance.	The consequence for refusal to complete drug treatment is the member is ineligible for BadgerCare benefits but may reapply for benefits at any time the member consents to treatment. Allow members multiple opportunities to enter treatment and remove the six-month lockout period. Allow individuals who express a desire to enter treatment on the screening questionnaire to skip the drug test and enter treatment.

Policy Clarifications

- Forty-eight-month time limit with work component: Those individuals exempt from the work requirement per the list provided in the application are also exempt from the 48-month time limit.

- Cost-sharing: In following current policy, the AI/AN population is exempt from monthly premiums and ER utilization copays.