

PUBLIC NOTICE
Wisconsin Department of Health Services
Section 1115 BadgerCare Demonstration Waiver

I. Overview

Under federal law, the State of Wisconsin Department of Health Services (DHS) must notify the public of its intent to submit to the Centers for Medicare & Medicaid Services (CMS) any new 1115 demonstration waiver project, extension, or amendment of any previously approved demonstration waiver project, or ending of any previously approved expiring demonstration waiver project, and must provide an appropriate public comment period before submitting to CMS the new, extended, or amended 1115 demonstration waiver application.

This notice serves to meet these federal requirements and to notify the public that the State of Wisconsin intends to submit a request to CMS on or around November 15, 2022, requesting a five-year extension of the current Medicaid 1115 Research and Demonstration Waiver as approved and is not seeking any changes. DHS must obtain approval from CMS to extend the waiver beyond December 31, 2023. You can review the official waiver request, provide comments for the next 32 days (see below), and provide written or verbal statements at the required public hearings.

Due to the public health concerns related to the COVID-19 pandemic, the state will not be conducting in-person meetings as part of the public notice process for this waiver application. CMS has the discretion to exempt the state from completing any aspect of the public notice process. Exemption reasons include demonstration by the state to CMS of the existence of unforeseen circumstances, such as the COVID-19 public health emergency, that directly threaten human lives and warrant an exception to the normal public notice process. Accordingly, the state will hold two webinars in place of in-person hearings.

- **September 21, 2022, 10:00 a.m. – 12:00 p.m.**
 - Join online:
<https://dhs.wi.zoomgov.com/j/1604236001>
 - Join by phone:
 - 669-254-5252
 - 646-828-7666
 - 669-216-1590
 - 551-285-1373
- Webinar ID: 160 423 6601

- **September 28, 2022, 2:00 p.m. – 4:00 p.m.**
 - Join online:
<https://dhs.wi.zoomgov.com/j/1602656786>
 - Join by phone:
 - 669-254-5252
 - 646-828-7666
 - 669-216-1590
 - 551-285-1373
 - Webinar ID: 160 265 6786

Comments will be considered to determine if changes should be made to the waiver request but will not impact proposed or enacted state and federal law. In addition, all public comments will be communicated to HHS as part of the final waiver application.

Accessibility

English

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability, need an interpreter or translator, or need this material in another language or an alternate format, you may request assistance to participate by contacting Bailey Dvorak at 608-267-5210. You must make your request at least seven days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Kim Reniero al número 608-267-7939. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Bailey Dvorak ntawm 608-267-5210. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnub ua ntej qhov hauj lwm ntawd.

II. Background

Wisconsin has a history of successfully providing its residents widespread access to health care. In 1999, Wisconsin implemented BadgerCare, which provided a health care safety net for low-income families transitioning from welfare to work. In addition, BadgerCare Plus expanded coverage to families at income levels that had not previously been covered under the Medicaid program.

In 2008, Wisconsin Medicaid-eligible groups included all uninsured children through age 18, pregnant women with incomes at or below 300% of the FPL, and parents and caretaker relatives with incomes at or below 200% of the FPL.

In 2009, Wisconsin received approval through a Section 1115 Demonstration Waiver to expand coverage to childless adults with incomes at or below 200% of the FPL. This population became eligible for the BadgerCare Plus Core Plan, which provided limited benefits.

In 2011, Wisconsin submitted and received approval to amend the BadgerCare and BadgerCare Plus Core Plan demonstrations, allowing Wisconsin to require nonpregnant, nondisabled adult parents and caretaker relatives whose incomes exceed 133% of the FPL pay a monthly premium.

In 2013, CMS approved a five-year demonstration waiver known as the Wisconsin BadgerCare waiver to provide health care coverage for childless adults between the ages of 19 and 64 years old who have income at or below 100% of the FPL and are not otherwise eligible for Medicaid or receiving Medicare. Under this waiver, the childless adult population received the standard benefit plan, which is the same benefit plan that covers parents, caretakers, and children.

The 2013 waiver also allowed Wisconsin to apply monthly premiums on nondisabled, nonpregnant individuals who qualified for transitional Medicaid assistance (TMA) or four-month extensions with household income above 133% FPL starting from the date of enrollment in TMA, and to nondisabled, nonpregnant TMA Adults with income from 100-133% of the FPL starting after the first six months of TMA coverage. TMA is available to parents, caretakers, and the children under their care when the countable income of the parent or caretaker exceeds 100% of the FPL due to an increase in earned income.

This waiver also allowed Wisconsin to extend eligibility for full Medicaid state plan benefits to former foster care youth under age 26 who were in foster care in another state and enrolled in Medicaid upon attaining 18 years of age and are now applying for Medicaid in Wisconsin. This waiver allowed Wisconsin to extend our existing policy of covering children who were in foster care in another state up to age 21, which is allowed for an optional state plan group.

In 2017, Wisconsin submitted an amendment request prompted by the Wisconsin 2015-2017 Biennial Budget (Act 55), which required the Wisconsin Department of Health Services (DHS) to request an amendment to the BadgerCare waiver to apply new policies to the childless adult population. Act 55 requirements included: establishing monthly premiums, establishing lower premiums for members engaged in healthy behaviors, requiring completion of a health risk assessment, limiting a member's eligibility to no more than 48 months, and requiring as a condition of eligibility that an applicant or member complete a drug screening, and if indicated, a drug test and treatment. However, a drug test as a condition of eligibility and a 48-month limit were not approved by CMS. Additional policies required by 2017 Wisconsin Act 370 that were included in the amendment request included charging an increased copayment for non-emergent use of the emergency department utilization for childless adults, establishing a work or community engagement option for childless adults, and providing full coverage of residential

substance use disorder treatment for all BadgerCare Plus and Medicaid members, all of which were approved by CMS.

Per the demonstration waiver amendment that CMS approved on October 31, 2018, after December 31, 2018, the state no longer has the authority to charge premiums to the TMA Adult population through the demonstration. As such, TMA adults may not be disenrolled for failure to pay premiums.

In 2020, Wisconsin submitted an amendment request, prompted by 2017 Wisconsin Act 271, which required DHS to establish and implement a health savings account program for childless adults with income greater than 50% up to and including 100% of the FPL enrolled in Wisconsin's BadgerCare Plus program. This amendment request is still pending CMS approval.

In 2021, CMS withdrew approval of the community engagement requirement.

III. Project Goals

Wisconsin is committed to implementing policies that result in high-quality health coverage for our citizens, leveraging the state's tradition of strong health outcomes, innovation, and high-quality health care to do so. Wisconsin's original objectives for the BadgerCare waiver were to:

- Ensure every Wisconsin resident has access to affordable health insurance and reduce the state's uninsured rate.
- Provide a standard set of comprehensive benefits for low-income individuals that will lead to improved health care outcomes.
- Create a sustainable program, so Wisconsin's health care safety net is available to those who need it most.

IV. Project Description

The BadgerCare waiver primarily provides a robust benefit package, which includes most state plan benefits to nonpregnant, nondisabled, nonelderly childless adults with incomes of up to and including 100% of the federal poverty level (FPL).

The waiver also allows Wisconsin to implement additional components that apply only to the nonmandatory childless adult (CLA) population, including:

- Implementing premiums on childless adults with incomes greater than 50% up to and including 100% of the FPL.
- Allowing termination and a period of ineligibility as a childless adult for up to six months for childless adults who do not pay the required premium, with on-ramps to reactivate coverage during the non-eligibility period.
- Allowing Wisconsin to vary premiums for childless adults based on the responses on a health risk assessment (HRA) and engagement in healthy behaviors or management of unhealthy behaviors.

- Charging childless adults an \$8 copayment for nonemergency use of the emergency department (ED), consistent with 42 CFR § 447.54(b).
- Requiring full completion of an HRA as a condition of eligibility, as a part of the application for childless adults, to identify healthy behaviors.

The waiver also includes a substance use disorder (SUD) program that expands the SUD benefits package to cover short-term residential services in facilities that qualify as institutions for mental diseases (IMDs) for all Medicaid enrollees.

Wisconsin is requesting to retain the current program operations, including previously approved amendments for which approval was not subsequently withdrawn. We do not request any new program changes in this extension.

V. Demonstration Population, Eligibility, Enrollment, and Cost-Sharing

Demonstration Populations

- *Childless Adult and Transitional Medicaid Assistance Populations* - The BadgerCare waiver provides state plan benefits to childless adults who have family incomes up to 95% of the FPL (effectively 100% of the FPL considering a disregard of 5% of income) and to transitional medical assistance individuals, also known as members on extension, with incomes over 100% of the FPL.
- *Former Foster Care Youth from Another State Population* - Former foster care youth are defined as individuals under age 26 who were in foster care in another state or tribe of such other state when they turned 18 (or such higher age as the state has elected for termination of federal foster care assistance under title IV-E of the Social Security Act, were enrolled in Medicaid at that time or at some point while in such foster care, and are now applying for Medicaid in Wisconsin.
- *Residential Substance Use Disorder (RSUD) Program* - The demonstration permits the state to offer all Medicaid beneficiaries ages 21 through 64 access to additional SUD treatment services provided to individuals with SUD who are short-term residents in residential treatment facilities that meet the definition of an institution for mental diseases (IMD).

Eligibility, Enrollment, and Cost-Sharing

- *Monthly Premiums* - The demonstration permits the state to charge monthly premiums of \$8 per household on childless adults with incomes greater than 50% up to and including 100% of the FPL as a condition of eligibility. This allows for termination of enrollment and a period of non-eligibility as a childless adult for up to six months for childless adults who do not pay the required premium, with on-ramps to reactivate coverage during the non-eligibility period.
- *Health Risk Assessment* - As a part of the application for childless adults, the demonstration permits the state to require the completion of an HRA as a condition of eligibility to identify healthy behaviors. Failure to answer the

substance abuse question on the HRA will result in denial of coverage. The state may vary premiums for childless adults based on their responses on the HRA and engaging in healthy behaviors or managing unhealthy behaviors. The household premium is reduced from \$8 per month to \$4 per month if a member does not endorse engaging in certain health-risk behaviors or reports actively managing certain unhealthy behaviors.

- *Copayment for Nonemergent Use of the Emergency Department* - The demonstration permits the state to charge childless adults an \$8 copayment for nonemergency use of the emergency department (ED), consistent with 42 CFR § 447.54(b).

VI. Implementation

DHS seeks a five-year demonstration extension approval period and intends to continue implementing the demonstration from January 1, 2024, to December 31, 2028, pending CMS approval.

VIII. Budget and Cost-Effectiveness Analysis

Approach to Ensuring Federal Budget Neutrality

Federal policy requires Section 1115 demonstration waivers to be budget neutral to the federal government. This means that a demonstration should not cost the federal government more than what would have otherwise been spent absent the demonstration. Determination of federal budget neutrality for a Section 1115 demonstration application must follow a unique process distinct from federal and state budgeting and health plan rate setting. The processes, methods, and calculations required to demonstrate federal budget neutrality appropriately are for that express purpose only. Therefore, the budget neutrality model shown here should not be construed as a substitute for budgeting and rate setting or imply any guarantee of any specific payment.

To ensure budget neutrality for each federal fiscal year for this extension, Wisconsin uses a per-member per-month (PMPM) based methodology specific to the three waiver populations, the childless adult population with incomes not exceeding 100% of the FPL, Former Foster Care Youth from Another State Population between ages 18 and 26, and individuals treated in the Residential Substance Use Disorder (RSUD) Program. The PMPM calculation has been established in the context of current federal and state law, with appropriate, analytically sound baselines and adjustments. A table included in the draft waiver extension application shows the federal cost of this demonstration each year is no greater than federal costs absent the new demonstration. Therefore the demonstration is budget neutral to the federal government. Historical and projected enrollment information is also included in Appendix H to the draft waiver extension application, posted on the DHS website dhs.wi.gov/medicaid/waiver-badgercare1115.htm.

IX. Evaluation

An interim evaluation report of the demonstration is available in Appendix C of the draft waiver extension application, posted on the DHS website dhs.wi.gov/medicaid/waiver-badgercare1115.htm.

X. Monitoring Reports

Annual and quarterly monitoring reports for eligibility and coverage policies in the BadgerCare waiver, including premiums, healthy behavior incentives, and non-eligibility periods, are available as Appendices to the draft waiver extension application, posted on the DHS website dhs.wi.gov/medicaid/waiver-badgercare1115.htm.

XI. Specific Waiver and Expenditure Authorities

Wisconsin seeks a waiver of the following requirements of the Social Security Act necessary to extend implementation of the BadgerCare 1115 Waiver:

Waiver List

1. *Cost-Sharing – Section 1902(a)(14) insofar as it incorporates 1916 and 1916A*
To the extent necessary to enable Wisconsin to charge an \$8 monthly premium to the childless adult population with household income from 51 through 100% of the FPL.
2. *Comparability – Section 1902(a)(17)/Section 1902(a)(10)(B)*
To the extent necessary to enable Wisconsin to vary monthly premiums for the childless adult population based on health behaviors and health risk assessment completion.
3. *Eligibility – Section 1902(a)(10)(A)*
To the extent necessary to enable Wisconsin to require the childless adult population, as a condition of eligibility, to complete a health risk assessment.
4. *Reasonable Promptness – Section 1902(a)(3)/Section 1902(a)(8)*
To the extent necessary to enable Wisconsin to establish a restrictive re-enrollment period of six months for childless adults who are dis-enrolled for failure to pay premiums within the state-determined grace period
5. *Cost-sharing for Emergency Department (ED) Utilization – Section 1916(f)*
To the extent necessary to enable Wisconsin to establish an emergency department copay of \$8 for the childless adult population.

Expenditure Authorities

1. *Childless Adults Demonstration Population*
Expenditures for health care-related costs for childless, nonpregnant, uninsured adults ages 19 through 64 years who have family incomes up to 95% of the FPL (effectively 100% of the FPL including the 5% disregard), who are not otherwise eligible under the Medicaid State Plan, other than for family planning services or for the treatment of

tuberculosis, and who are not otherwise eligible for Medicare, medical assistance, or the state Children's Health Insurance Program.

Costs Not Otherwise Matchable – Section 1905(a)(29)(B)

- Wisconsin requests that expenditures for residential substance use disorder treatment in an IMD be regarded as expenditures under the state's Medicaid Title XIX State Plan.
- Wisconsin requests that expenditures for residential substance use disorder treatment in an IMD for members enrolled in managed care are allowable to the same extent as those for Medicaid members covered through fee-for-service.

Title XIX Requirements Not Applicable to the Demonstration Population:

1. *Freedom of Choice - Section 1902(a)(23)(A)*

To the extent necessary to enable the state to require enrollment of eligible individuals in managed care organizations.

XI. Copies of Demonstration Project Waiver Documents

Copies of waiver documents, including the final waiver extension application, once complete, may be obtained from DHS at no charge by downloading the documents at DHSDMSbadgercare1115@dhs.wisconsin.gov or by contacting Bailey Dvorak at:

Bailey Dvorak
Division of Medicaid Services
PO Box 309
Madison, WI 53707-0309

Phone: 608-267-5201
Fax: 608-266-3205, Attn: Bailey Dvorak
Email: bailey.dvorak@dhs.wisconsin.gov

XII. Written Comments

Written comments on the proposed changes are welcome and will be accepted from September 12, 2022, until October 14, 2022. Written comments may be sent to:

Mail: Department of Health Services
Division of Medicaid Services
Attn: BadgerCare 1115 Waiver Extension
PO Box 309
Madison, WI 53707-0309

Fax: 608-266-1096
Email: DHSDMSbadgercare1115@dhs.wisconsin.gov

Public comments will be included in the waiver request submitted to CMS on or around November 15, 2022, and will be available on the DHS website at www.dhs.wi.gov/medicaid/waiver-badgercare1115.htm