

WISCONSIN LEGISLATOR  
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**CHAPTER 19 – HEALTH  
CARE AND HEALTH  
INSURANCE**

The state's involvement in health care and health insurance issues is primarily through four agencies: the Department of Health Services; the Department of Safety and Professional Services; the Office of the Commissioner of Insurance; and the Department of Employee Trust Funds.

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## MAJOR HEALTH CARE COVERAGE PROGRAMS

Described below are major programs with state government financial involvement that provide health care coverage to eligible persons. The programs are administered by the Department of Health Services (DHS), with claims processing done by private contractors. Medicaid, BadgerCare Plus, and SeniorCare all have income eligibility criteria, while Medicaid also has asset eligibility requirements. The federal Medicare program is also an important source of health care coverage for many Wisconsin residents.

In addition to the programs described in this chapter, DHS administers programs that provide assistance to persons with certain chronic diseases (chronic renal disease, cystic fibrosis, and hemophilia) and acquired immunodeficiency syndrome (AIDS).

### Medicare

**Detailed information about Medicare is included in a federal publication, *Medicare & You*, which is available at:**

<http://www.medicare.gov>

The federal Medicare program, administered by the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services (DHHS) is a major source of payment for health care for elderly and disabled persons. Most U.S. citizens age 65 and older, people under age 65 with certain disabilities, and people with end-stage renal disease, are eligible

for coverage under the program. Medicare has four parts.

**Medicare Part A** provides hospital insurance that includes inpatient care in hospitals, nursing homes, skilled nursing facilities, and critical care access hospitals, but does not include long-term care or custodial care. Most Part A enrollees are not required to pay a premium to receive those benefits if they or their spouse paid Medicare taxes while working.

**Medicare Part B** provides supplementary medical insurance that covers such services as medically necessary doctor visits, outpatient care, and other services not covered by Medicare Part A. Unlike Part A, most people are required to pay a premium to participate in Medicare Part B.

**Medicare provides coverage for citizens age 65 and older and individuals under age 65 with certain disabilities, without regard to income or assets.**

The average Part B premium is \$104.90 per month with a \$147 annual deductible. However, if an individual does not sign up for Part B when they are first eligible, they may accrue a late enrollment penalty. If an individual's modified adjusted gross income, as reported to the IRS, is above \$85,000 for an individual or \$170,000 for a couple, their monthly premium will range between \$146.09 and \$335.70 per month.

**Medicare Part C** combines the benefits available under Medicare Parts A and B, and does so through private health insurance plans referred to as Medicare Advantage Plans. These Medicare Advantage Plans can also offer additional benefits, including Medicare Part D prescription drug coverage.

**Medicare Part D** is a prescription drug benefit program which began in January 2006. People are eligible to participate in Medicare Part D if they are entitled to Medicare Part A or they are enrolled in Medicare Part B. Generally speaking, participation in Medicare Part D is voluntary, although some individuals such as “dual eligibles” (individuals who are eligible for coverage under both the Medicare and Medicaid programs) are automatically enrolled in a Medicare Part D plan. Like Part B, there is also a late penalty if an individual does not sign up for Part D when they are first eligible.

## Medicaid

### Information about Medicaid enrollment and benefits:

<http://www.dhs.wisconsin.gov/publications/p0/p00079.pdf>

Medicaid, commonly referred to as Medical Assistance (MA) or Title 19, is a program aimed at providing health care services to persons of limited resources. The DHS administers Wisconsin's MA program under a framework of state and federal laws, and

in conformity with the state plan it submits to the DHHS CMS.

Medicaid has income and asset eligibility requirements. However, Medicaid does provide spousal impoverishment protections when one spouse enters a nursing home and the other spouse remains outside of the nursing home. In that situation, the law allows the spouse outside the nursing home to retain greater assets and income than would otherwise be allowed in order for the spouse in the nursing home to be eligible for Medicaid. Medicaid laws also limit the extent to which an applicant must divest property in order to bring the applicant's assets below the level allowed for Medicaid eligibility.

Medicaid covers an array of health care services. Unlike the federal Medicare program, Medicaid is a major payer for long-term care services, including nursing home services. Included in the services covered are physician services, hospitals, rural health clinics, medical supplies and equipment, transportation to receive services, and several other health care services.

In Wisconsin, Medicaid services for individuals who are elderly, blind or disabled (EBD MA) are provided through a variety of programs administered by the DHS. These programs

**When a spouse applies for Medicaid to cover the expenses of long-term care in a nursing home or other long-term care facility, spousal impoverishment protections allow the couple to disregard certain assets and income for purposes of Medicaid eligibility, so that the non-institutionalized spouse will not be required to deplete his or her assets in order to pay for the care of the institutionalized spouse.**

provide elderly, blind, and disabled individuals traditional MA services such as physician services, inpatient and outpatient hospital services, and nursing home care. Some EBD MA recipients also receive non-traditional long-term care services under Family Care and other home and community-based waiver programs.

As discussed above, in order to be eligible for most of the EBD MA programs, individuals must meet certain financial criteria, including an asset and income test. Certain individuals who do not qualify for MA coverage because their income exceeds the limit may receive MA coverage by meeting the “Medicaid deductible.” Once the individual meets the deductible, other MA-covered services the individual receives during a six-month deductible period are paid by the state MA program. The deductible is equal to the amount by which the individual’s income exceeds the MA income limit.

In addition, the Medicaid Purchase Plan (MAPP) permits individuals with a disability who are working or want to work to become eligible or remain eligible for Medicaid. The goal of this program is to remove financial disincentives to work. The program also allows an individual to accumulate savings from earned income in independence accounts.

During the past decade, Wisconsin's Medicaid program has grown increasingly complex.

This is due, in part, to agreements between the state and the federal DHHS that waived aspects of federal Medicaid law, thereby enabling the state to expand coverage. Examples of current waiver programs are the state’s home- and community-based long-term care programs (including the community options waiver program, the community integration program, and the long-term care children’s waiver program),

**As a result of the federal Health Care Reform legislation (which is described in detail later in this chapter), beginning in 2014, states will have the ability to expand Medicaid coverage and receive enhanced federal funding for newly eligible Medicaid beneficiaries.**

SeniorCare, Family Care and BadgerCare Plus, described below. Information about the MA waiver programs is also provided in Chapter 21, *Human Services and Aging*.

Medicaid is funded jointly by the federal government and the State of Wisconsin. In general, services are reimbursed approximately 59% by the federal government and 41% by the state government.

## BadgerCare Plus

### **BadgerCare Plus Information:**

**1-800-362-3002**

<http://dhs.wisconsin.gov/badgercareplus/>

BadgerCare Plus is a Medicaid program that offers an array of health care services for low-income persons. The program was previously broken into tiers, but on April 1, 2014, all BadgerCare Plus members became covered under the Standard Plan. Adults with household incomes at or below 100% of the federal poverty level (FPL) are eligible for BadgerCare Plus Standard. Pregnant women

with household incomes at or below 300% of the FPL and children (under 19 years old) with household incomes at or below 300% of the FPL are also eligible. Copayments for services are between \$0.50 and \$3 per service. There are no copayments for preventive services.

BadgerCare Plus is funded by federal funds available under Medicaid and under the State Children’s Health Insurance Program (SCHIP), state general purpose revenue (GPR) funds, and premiums paid by participants.

## SeniorCare

**SeniorCare information:  
1-800-657-2038**

<http://dhs.wisconsin.gov/seniorCare/index.htm>

SeniorCare is a program that provides prescription drug coverage to eligible elderly persons. To be eligible, a person must be a state resident who is at least 65 years of age, does not receive Medicaid benefits, has an annual household income at or below 240% of the FPL, and pays a \$30 annual

enrollment fee. There is no asset limit for SeniorCare. The term “household income” is defined by DHS by rule. FPLs are calculated annually and the income eligibility limits for SeniorCare may be found at the DHS website at:

<http://www.dhs.wisconsin.gov/seniorCare/fpl.htm>.

To qualify for coverage under SeniorCare, a participant must meet an \$850 annual deductible for prescription drugs. The deductible is \$500 for persons with a household income between 160% and 200% of the FPL, and the deductible does not apply to persons with annual incomes of less than 160% of the FPL. After meeting the deductible, the participant is charged a copayment for drug purchases at the rate of \$5 for a generic drug and \$15 for a brand name drug. In addition, drug coverage is available under SeniorCare for persons whose household income exceeds 240% of the FPL if they spend greater than the amount by which their income exceeds 240% of the FPL on prescription drugs.

SeniorCare is funded by state GPR, federal Medicaid dollars, and enrollment fees.

## HIRSP

HIRSP offered health insurance coverage to Wisconsin residents who could not purchase adequate private coverage due to a medical condition, or who lost employer-sponsored group health insurance. HIRSP was an independent authority with its own governing board and was not part of either DHS or OCI.

With the Affordable Care Act requirement that insurers accept anyone who applies for coverage beginning with plans effective January 1, 2014, keeping HIRSP operational was determined to be unnecessary. The 2013-15 Biennial Budget (Act 20) included language to eliminate HIRSP on December 31, 2013; however, in light of problems with the launch of HealthCare.gov, HIRSP was extended through March 31, 2014, to give HIRSP enrollees additional time to purchase a plan during open enrollment. HIRSP coverage ended on April 1, 2014, and all claims were due on June 1, 2014. OCI assumed responsibility for the dissolution of HIRSP on March 1, 2014.

## THE AFFORDABLE CARE ACT AND THE FEDERAL EXCHANGE

In March 2010, Congress passed the Patient Protection and Affordable Care Act (P.L. 111-148 and P.L. 111-152), often referred to as the “ACA.” Almost immediately, the ACA was challenged on constitutional grounds. In June 2012, the U.S. Supreme Court upheld the ACA in a landmark decision, *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012). In the *National Federation* decision, the Court rejected only one provision of the law, the “Medicaid expansion,” and ruled that the provision must be optional for the states. As discussed below, Medicaid was not expanded in Wisconsin. Below is an overview of the health insurance market reforms introduced by the ACA, including a description of the optional Medicaid expansion provision.

### Overview of Key ACA Provisions

The ACA required most individuals to have health insurance beginning in 2014. Tax penalties, phased-in over several years, will be assessed against those who do not have qualifying coverage. The tax penalty is set to increase each year as follows:

- In 2014, it will be the greater of \$95 per adult or 1% of taxable income.
- In 2015, it will be the greater of \$325 per adult or 2% of taxable income.
- In 2016, it will be the greater of \$695 per adult or 2.5% of taxable income.
- After 2016, the tax penalty increases annually based on a cost-of-living adjustment.

Tax penalties will not be assessed against persons below certain income levels, those for whom premiums for the lowest-cost plan exceed 8% of an individual’s income, and certain others. The law provides cost-sharing subsidies and premium credits to individuals based on income level and cost of coverage.

The ACA also requires employers with 50 or more employees to provide health insurance to employees beginning in 2014, and will impose assessments for noncompliance. The ACA offers tax credits to small businesses (i.e., fewer than 50 employees) to make employee coverage more affordable.

The ACA provided funding to states to establish state-based American Health Benefit Exchanges and Small Business Health Options Program Exchanges, through which individuals and small businesses may purchase qualifying coverage. However, Wisconsin opted not to create its own exchange and, therefore, Wisconsin is currently participating in the federally operated health exchange, described below.

The ACA established new requirements for private insurance companies, including requiring dependent coverage up to age 26 for all individual and group policies, prohibiting pre-existing condition exclusions, prohibiting lifetime caps on coverage, and requiring new private plans to cover preventive services with no copayments or deductibles.

All insurers must sell a health insurance policy to any person who applies for coverage unless fraudulent information is provided by the consumer. This is referred to as “guaranteed issue.”

The ACA requires insurance plans to spend 80% or 85% of premium dollars on medical services. Insurers that do not meet these thresholds must provide rebates to policyholders.

Plans are required to offer the following “essential health benefits”:

- Ambulatory patient services.
- Emergency services.
- Hospitalization.
- Maternity and newborn care.
- Mental health and substance use disorder services, including behavioral health treatment.
- Prescription drugs.
- Rehabilitative and habilitative services and devices.
- Laboratory services.
- Preventive and wellness services and chronic disease management.
- Pediatric services, including oral and vision care.

Plans are categorized into one of four tiers. The tiers and the extent of coverage provided are as follows: bronze plans, on average, cover 60% of expected costs; silver plans cover 70% of these costs; gold plans cover 80%; and platinum plans cover 90%.

All plans offered on the federal exchange must limit in-network annual out-of-pocket expenses to \$6,350 for self-only coverage and \$12,700 for family coverage.

Insurance premium credits for federal taxes are available for individuals and families with incomes between 100% and 400% of the FPL, which is \$11,670 to \$46,680 for individuals and \$23,850 to \$95,400 for a family of four.

The premium tax credit is refundable which means that if a person has no tax liability, rather than receiving a credit against their taxes, the amount of the credit is paid directly to the individual’s insurance company to help reduce the cost of health insurance. Premium tax credits are available only for health insurance that is purchased through a health care exchange. A premium tax credit calculator is available on the Kaiser Family Foundation website: <http://healthreform.kff.org/subsidycalculator.aspx>.

## The Federal Health Insurance Exchange

As discussed above, Wisconsin chose to establish a state-operated exchange, and therefore, Wisconsin participates in the federal health insurance exchange (exchange), also referred to as the “marketplace.” The federal exchange operates a website designed to help consumers

find and purchase health insurance. The website for the federal exchange is [www.healthcare.gov](http://www.healthcare.gov).

Although the ACA requires most individuals to have health insurance or face tax penalties, it does not require individuals to purchase health insurance through the exchange. Likewise, insurers may sell their plans through the federal exchange or privately, off the federal exchange.

The exchange website allows consumers to: (1) check their eligibility for government assistance programs, including any subsidies available to help pay for private health insurance; (2) compare health insurance plans based on cost; and (3) link consumers to insurers for the purchase of health insurance after they choose a plan in which they are interested.

In general, health insurance may be purchased on the exchange only during periods of “open enrollment.” For coverage starting in 2015, the proposed Open Enrollment Period is scheduled for November 15, 2014-February 15, 2015. Individuals and families may also qualify for special enrollment periods outside of open enrollment if they experience certain triggering events, such as: (1) loss of minimum essential coverage; (2) gaining or becoming a dependent; (3) newly gaining citizenship; and (4) becoming newly eligible for premium tax credits. Individuals and families generally have 60 days from the time of a triggering event to enroll.

According to the federal DHHS Assistant Secretary for Planning and Evaluation Office of Health Policy, as of mid-April, 2014, 139,815 Wisconsin residents had selected a health insurance plan through the federal exchange.

## Medicaid Expansion Under the ACA

**For more information on the implementation of the ACA in Wisconsin, see:**

<http://www.dhs.wisconsin.gov/publications/P0/00634.pdf>

**A comprehensive health reform portal maintained by the Henry J. Kaiser Family Foundation can be found at:**

<http://kff.org/health-reform/>

**A healthcare information web portal maintained by the federal DHHS can be found at:**

<http://www.healthcare.gov>

The ACA also introduced changes to Medicaid to provide broader coverage for low-income individuals and families. Most significantly, this included an expansion of Medicaid eligibility to childless adults earning up to 138% of the FPL, along with an increased level of federal matching funds. Wisconsin chose not to expand Medicaid eligibility and thus all Wisconsin residents with an income above 100% of the FPL must obtain private insurance on the marketplace.

## HEALTH INSURANCE REGULATION

### Office of the Commissioner of Insurance Oversight

Health insurance, including health insurance sold on the federal exchange, is regulated by the Office of the Commissioner of Insurance (OCI), both with respect to financial stability and consumer protection. All insurers must be licensed in Wisconsin and meet state marketing and financial standards. The OCI regulates all rate and form filings, performs financial and market conduct examinations, and responds to consumer complaints. The OCI also regulates health insurance agents and licensed navigators who help consumers to find health insurance coverage.

Types of health insurance regulated by the OCI include plans in which an insured person may select from any health care providers to provide covered services (generally referred to as an “indemnity plan”) or plans in which an insured person is limited to or is given an incentive for obtaining covered services from health care providers selected by the plan (generally referred to as a “defined network plan” or “managed care plan”). Types of defined network plans include health maintenance organizations (HMOs) and preferred provider plans (PPPs; also referred to as “preferred provider organizations” or “PPOs”).

Insurance laws include various types of mandates that must be met by insurance plans. These health insurance mandates generally fall into the following categories: (1) requiring coverage of a particular type of health care provider (e.g., a chiropractor or an optometrist); (2) requiring coverage for the treatment of a particular disease or condition (e.g., temporomandibular disorders or breast reconstruction); (3) requiring coverage of a particular type of health care treatment, service, or equipment (e.g., mammograms or lead poisoning screening); and (4) requiring coverage for particular persons because of their relation to the insured person (e.g., newborn infants or adopted children).

### Federal Preemption

In the area of health insurance regulation, state law is preempted by federal law in several areas. For example, certain changes under the ACA relate to consumer grievances against insurance providers. Because these changes have not been incorporated into Wisconsin law, the federal regulations administered by the DHHS concerning grievances currently preempt Wisconsin’s rules administered by the OCI.

Similarly, because of the federal Employee Retirement Income Security Act (ERISA), the OCI does not regulate self-insured employee benefit plans. ERISA provides that it supersedes all state laws that relate to employee benefit plans. Therefore, a state’s insurance laws, including health insurance mandates, do not apply to such plans. However, ERISA’s preemption does not apply to governmental self-insured plans, such as municipal or school district self-insured plans, and the state’s insurance laws apply to those plans.

## General Patients' Rights

State law contains a range of consumer rights for persons insured under defined network plans. The law sets forth duties of health plans and patients' rights in the following areas: (1) access standards; (2) continuity of care; (3) provider disclosures; (4) quality assurance; (5) use of a physician as a medical director; (6) data systems and confidentiality; and (7) OCI oversight. Included in the statutes are requirements that defined network plans include sufficient numbers, and types, of providers to meet anticipated needs; requirements regarding referrals to specialists, including referrals to obtain obstetric or gynecologic benefits; continuity of care after a provider is no longer included as a selected provider in a defined network plan; prohibitions on penalizing participating providers who discuss all treatment options with insured persons (generally called “gag clauses”); and a requirement for developing a process for selecting participating providers and reevaluating them. The rights and duties relating to defined network plans are generally set forth in ch. 609, Stats., and subch. III of ch. Ins 9, Wis. Adm. Code.

In addition to the above provisions that apply to defined network plans, the statutes also provide protections for insured persons relating to coverage of emergency care and experimental treatment. Those provisions apply to all health benefit plans, not just to defined network plans. The statute relating to emergency care requires that if a health care plan provides coverage of any emergency medical services, it must provide coverage of emergency medical services that are provided in a hospital emergency facility and that are needed to evaluate or stabilize an emergency medical condition. The term “emergency medical condition” is defined in the statutes using a “prudent layperson” definition.

The statutes also require a health care plan that limits coverage of experimental treatment to define the limitation and disclose the limits in any policy. The disclosure must state who is authorized to make a determination on the limitation and the criteria the plan uses to determine whether a treatment, procedure, drug, or device is experimental. Time deadlines for making a determination and the right of appeal are also included in the statute.

## Continuation Rights

Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time. In addition, Wisconsin law provides for conversion from group plan coverage to individual policy coverage. The federal law is often referred to as “COBRA,” since it was created by the Consolidated Omnibus Budget Reconciliation Act of 1985.

**Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time.**

Under the federal COBRA law, employees who terminate employment for any reason other than gross misconduct, persons whose hours are reduced, and dependents of those persons, may continue group coverage for up to 18 months. Dependents may continue coverage for up to 36 months if they lose coverage because of death of the employee, divorce of the employee, the dependent has reached the maximum age under the policy, or the employee becomes eligible for Medicare. Disabled employees may continue coverage for up to 29 months.

**For more information on continuation rights, visit the DHS' *Consumer Guide to Healthcare*, at:**

<http://www.dhs.wisconsin.gov/guide/pay/losing.htm>

Under the Wisconsin law, continuation rights are available for: (1) the former spouse of a group member who otherwise would terminate coverage because of divorce or annulment; (2) a group member who would otherwise terminate eligibility for coverage except in cases of discharge due to misconduct; and (3) the spouse or dependent of a group member if the group member dies while

covered by the group policy and the spouse or dependent was also covered. Generally, the person electing continuation coverage in the group plan may continue such coverage for 18 months. Wisconsin law also permits a terminated insured to choose conversion coverage, without having to show evidence of insurability, under individual coverage that is reasonably similar to the coverage under the group policy.

Persons electing continuation coverage under Wisconsin law may be required to pay the full premium for such coverage. Under federal law, they may be required to pay up to 102% of the premium.

Wisconsin law on continuation rights covers groups of all sizes, whereas federal law covers only groups of 20 or more employees. However, federal law is more expansive in that it covers persons under self-insured employee benefit plans, whereas Wisconsin law may not cover these plans because of ERISA preemption.

## PUBLIC AND PREVENTIVE HEALTH

At the state level, the public health system is primarily administered by DHS, through its Division of Public Health. The division is further divided into the following bureaus: (1) Communicable Disease and Emergency Response (communicable diseases, sexually transmitted disease programs, AIDS programs, immunization, public health preparedness, and emergency medical services); (2) Community Health

**At the state level, the public health system is primarily administered by the DHS, through its Division of Public Health. At the local level, public health services are provided by local public health departments and tribal health centers.**

Promotion (nutrition and physical activity, family health, and chronic disease prevention and cancer control); and (3) Environmental and Occupational Health (food safety, health hazard evaluation, radiation protection, and asbestos and lead). The division also includes an Office of Health Informatics (eHealth initiative, population health, vital records, and health care information) and the Office of Policy and Practice Alignment.

**A map with links to all local public health departments may be found at:**

[http://www.dhs.wisconsin.gov/local\\_health/index.htm](http://www.dhs.wisconsin.gov/local_health/index.htm)

At the local level, public health services are provided by local public health departments and tribal health centers. In most counties, the local health department is a county agency. However, in a handful of counties, local health departments may be any of the following: (1) a joint city-county health department; (2) a municipal or multiple municipal

health department; or (3) a combination of a county health department and municipal health departments. A number of local health departments have also been granted agent status by DHS for the purposes of performing environmental health activities such as issuing permits to and making investigations of hotels, restaurants, campgrounds, swimming pools, and similar types of entities. In addition, all 11 American Indian tribes in Wisconsin operate tribal health clinics, and the Gerald L. Ignace Indian Health Center in Milwaukee serves members of all tribes in Wisconsin. Most tribal health centers offer services to non-tribal members as well.

## HEALTH FACILITIES AND RESIDENTIAL PROGRAMS

### State Licensing

**Information about facilities regulated by the DHS is available at:**

[http://dhs.wisconsin.gov/rl\\_DSL/index.htm](http://dhs.wisconsin.gov/rl_DSL/index.htm)

The state licenses and certifies a number of health facilities and caregiving residential programs.

The Division of Quality Assurance in the DHS licenses adult family homes, community-based residential facilities (CBRFs), and residential care apartment complexes (RCACs) for adults, as

well as hospitals, hospices, and nursing homes. CBRFs are facilities that serve five or more adults who do not require care above intermediate level nursing care and who receive no more than three hours of nursing care per week. RCACs are places where five or more adults reside and that consist of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, an individual bathroom, sleeping and living areas, and that provide to residents not more than 28 hours per week of services that are supportive, personal, and nursing services.

Although the term “assisted living” is commonly used, this is not actually a type of licensed facility. Typically, when that term is used, the facility referred to is either a CBRF or an RCAC. Residential programs that provide services to minors and that are licensed by the

Department of Children and Families (DCF) include foster homes, treatment foster homes, group homes, and residential care centers for children and youth. The statutes also allow a foster home or treatment foster home to be licensed by a county human services or social services department or by a licensed child welfare agency.

## Zoning Exceptions for Certain Residential Facilities

**Information about statutes governing placement of community living arrangements is provided in Legislative Council Information Memorandum 2010-11, at:**

<http://www.legis.wisconsin.gov/lc>

The statutes provide that, under specified circumstances, certain residential caregiving programs, including CBRFs for adults and group homes and residential care centers for children, may locate in areas that are locally zoned for residences of families. These programs, which are referred to generally as “community living arrangements” in the

statutes, may locate in specified residential areas depending on the number of residents in the facility. In addition, the statutes provide that no community living arrangement may be established within 2,500 feet, or a lesser distance established by ordinance, of any other community living arrangement. However, a federal district court in Wisconsin has held that the distance requirement in the law is preempted by the federal Fair Housing Amendments Act and the federal Americans with Disabilities Act. Information about these facilities and programs is included in Chapter 21, *Human Services and Aging*.

## HEALTH PROFESSIONALS

### Licensing and Certification

Examining boards and affiliated credentialing boards in the Department of Safety and Professional Services license and certify a number of health care professionals, including nurses, chiropractors, dentists and dental hygienists, physicians, physician assistants, respiratory care practitioners, podiatrists, dietitians, athletic trainers, occupational therapists and occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, social workers, marriage and family therapists, professional counselors, hearing instrument specialists, speech-language pathologists, and audiologists. The DHS licenses emergency personnel, including first responders and various categories of emergency medical technicians.

An examining board is a part-time body that sets standards of professional competence and conduct for the profession under its supervision; prepares, conducts, and grades examinations; grants licenses; and examines complaints. An affiliated credentialing board generally has the same authority as an examining board, but is attached to an examining board and must submit its proposed rules to the examining board to which it is attached for comment.

In addition to providing for a basic credential, such as a license or certificate, the statutes also allow certain health care providers who satisfy additional requirements to engage in a higher level of practice than that provided under the basic credential. For example, a nurse who satisfies additional requirements established by the Board of Nursing is authorized to issue prescription orders; such a nurse is referred to as an advanced practice nurse prescriber.

## Caregiver Background Checks

**More information about the caregiver background check law is available at:**

<http://www.dhs.wisconsin.gov/caregiver/index.htm>

Under Wisconsin law, certain entities regulated by the DHS or the DCF or county departments of human services or social services are required to conduct a background check on employees with direct client contact at the time of employment and every four years after that. The background check involves a criminal history search from records maintained by the

Department of Justice, information maintained by the DHS concerning abuse of patients, and other specified information. The entities covered by the law include nursing homes, CBRFs, hospitals, home health agencies, child welfare agencies, and group homes. In addition to applying to these entities, the law also applies to regulatory agencies, such as the DHS, the DCF, and county departments with respect to licenses and certificates for those entities.

Under the caregiver background check law, the regulated entities may not hire or contract with a caregiver if the person has engaged in certain misconduct or been convicted of a “serious crime,” as defined by statute. The statutory definition of that term includes a number of serious crimes and includes additional crimes that are considered serious if the entity is one that serves children. However, the law provides a process by which a person who has engaged in certain misconduct or been convicted of a serious crime may demonstrate that he or she has been rehabilitated.

## MEDICAL MALPRACTICE

Any person, or certain relatives of a person, who is injured by the malpractice of a health care provider may sue for economic and noneconomic damages. Noneconomic damages are intended to compensate for pain and suffering, loss of companionship, mental distress, and loss of enjoyment of life.

Current law limits noneconomic damages to \$750,000 per occurrence of medical malpractice. Current law also limits damages for loss of society and companionship to certain relatives recoverable in a wrongful death action against a health care provider to \$500,000 in the case of a deceased minor and \$350,000 in the case of a deceased adult.

Wisconsin law requires specified health care providers (including physicians, nurse anesthetists, and hospitals) to carry insurance or self-insure for liability up to statutorily specified levels. The level is \$1,000,000 per occurrence and \$3,000,000 for all claims in a year. The law also requires those health care providers to pay annual assessments into the Injured Patients and Families Compensation Fund, which then provides coverage for medical malpractice claims in excess of those amounts. The Injured Patients and Families Compensation Fund is administered by OCI.

## ADVANCE DIRECTIVES

**Forms for living wills and powers of attorney for health care (or a power of attorney for finance and property) may be obtained from the DHS, at:**

<http://dhs.wisconsin.gov/forms/advance-directives/index.htm>

A living will and a power of attorney for health care are documents that are referred to generally as advance directives. They are designed to specify the wishes of a competent person with regard to health care to be rendered when the person is no longer capable of making health care decisions. A living will is a directive to physicians not to use life-sustaining procedures or feeding tubes when the person is in a terminal condition or persistent

vegetative state. A power of attorney for health care is a document that authorizes another individual, known as a “health care agent,” to make health care decisions for the person when the person is incapacitated. While use of a living will is limited to persons who are in a terminal condition or persistent vegetative state, a power of attorney for health care may be used at any time that the person is incapacitated, regardless of whether the person is in a terminal condition. Therefore, the power of attorney for health care is not limited to end-of-life decision-making.

## ADDITIONAL REFERENCES

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Medical Assistance, BadgerCare, and related programs. These Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb/>.
2. More information regarding the ACA may be found on the following websites:
  - The National Conference of State Legislatures maintains a health reform implementation website at: <http://www.ncsl.org/issues-research/health.aspx>.
  - The Henry J. Kaiser Family Foundation maintains a comprehensive health reform web portal at: <http://kff.org/health-reform/>.
  - The federal DHHS maintains a healthcare information web portal at: <http://www.healthcare.gov>.

3. The OCI has prepared a number of frequently asked questions informational pages on the ACA, and the federal exchange, found at: [http://oci.wi.gov/healthcare\\_reform.htm](http://oci.wi.gov/healthcare_reform.htm).
4. The DHS has prepared a number of consumer publications and websites that describe programs and services under its jurisdiction. These may be found at: <http://www.dhs.wisconsin.gov/programs/consumer.htm>. Some of the specific items prepared by DHS are as follows:
  - Consumer Guide to Health Care: (<http://dhs.wisconsin.gov/guide/index.htm>).
  - Choosing Wisconsin Residential Options: (<http://dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm>).
5. The Board on Aging and Long Term Care operates a Medigap help line, with a toll-free number of 1-800-242-1060. The help line is designed to answer questions about health insurance, primarily Medicare supplemental policies, long-term care insurance, and other health care plans available to Medicare beneficiaries.

The Board on Aging and Long Term Care also operates an ombudsman program that serves as an advocate for long-term care consumers who reside in nursing homes or group homes or are participating in the Community Options Program. The toll-free telephone number for the ombudsman program is: 1-800-815-0015.

6. In addition to the toll-free number, persons may contact the Medigap help line or the ombudsman program at: [BOALTC@wisconsin.gov](mailto:BOALTC@wisconsin.gov) or by writing to the Board on Aging and Long Term Care at: 1402 Pankratz Street, Suite 111, Madison, WI 53704-4001.
7. The Legislative Audit Bureau audit reports may be found at: <http://www.legis.wisconsin.gov/lab>
  - *Health Insurance Risk-Sharing Plan Authority* (Audit Report 14-7).
  - *Non-Emergency Medical Transportation* (in-progress; expected release Winter 2014-15).
  - *Dental Services Grant* (Audit Report 13-13).
  - *Injured Patients and Families Compensation Fund* (Report 13-4).
  - *Medical Assistance Program* (Report 11-15).

## GLOSSARY

**ACA:** Affordable Care Act, or the Patient Protection and Affordable Care Act. The federal health reform law passed by Congress in 2010.

**APNP:** Advanced practice nurse prescriber. A nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist who meets specified requirements and is granted a certificate to prescribe drugs by the Board of Nursing.

**CBRF:** Community-based residential facility. A place in which five or more adults live and receive care, treatment, or services, but only limited nursing services.

**CMS:** Federal Centers for Medicare and Medicaid Services in the federal DHHS.

**COBRA:** Consolidated Omnibus Budget Reconciliation Act of 1985. This federal law includes provisions for continuation of group health care coverage after a person would otherwise leave the group.

**Defined network plan:** A health care plan in which an enrollee's choice of health care providers is generally limited to those selected by the plan, although under some of the plans, enrollees may choose other providers and pay a larger share of the cost. Types of defined network plans include health maintenance organizations (HMOs) and preferred provider plans (PPPs).

**DHHS:** Federal Department of Health and Human Services.

**ERISA:** Employee Retirement Income Security Act. This federal law preempts states from applying their insurance laws to nongovernmental self-insured plans.

**Health Insurance Exchange or Marketplace:** The website maintained by the federal government that facilitates the purchase of health insurance by consumers.

**Federal Poverty Level (FPL):** This level is set by the federal government and varies based on family size. Individuals with incomes below the poverty level are believed to be lacking the resources to meet their basic needs.

**Navigator:** A federally funded entity or individual who helps consumers determine their eligibility for public assistance programs. They also help consumers compare health insurance options displayed on the federal exchange website after consumers input their preferences.

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