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**For immediate release**

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**From Bad to Worse: New JFC Version of Medicaid Power Shift Compounds the Problems**  
Medicaid Provisions in JFC Budget Raise Constitutional Issues and Many Other Concerns

The amended 2011-13 budget bill developed by the Joint Finance Committee (JFC) includes provisions from the budget repair bill giving the Department of Health Services (DHS) sweeping authority to change state laws relating to Medicaid and BadgerCare. In fact, the Joint Finance version of this power shift goes even further than the budget repair bill: It allows DHS to exercise this new authority without going through any kind of rulemaking procedure or holding any public hearings.

Although a motion approved by the JFC a couple of weeks ago indicated that the committee was amending a specific portion of the budget repair bill's provisions about the Medicaid power shift, it didn't reveal that the rest of the Medicaid policymaking language in that bill was being folded into the biennial budget. When the actual language of the JFC budget was finally unveiled Monday, the surprising and unprecedented breadth of the Medicaid policymaking changes now in the budget bill became clear.

"This complete handover to unelected officials of the power to reshape Medicaid and BadgerCare policy is extremely disturbing," said Ken Taylor, executive director of the Wisconsin Council on Children and Families. "By taking the legislature out of the equation and skirting any need for public hearings, this bill is taking away the voices of the million-plus Wisconsinites who could be affected by these changes, and is inconsistent with Wisconsin's good government tradition."

Taylor also noted that the transfer of Medicaid and BadgerCare policymaking authority raises serious constitutional concerns, just as the similar provisions in the budget repair did. A June 5 drafter's note prepared by the Legislative Reference Bureau attorney who writes the Medicaid portions of the statutes cautioned that this part of the JFC amendment raises a number of potential legal problems, including possible violation of constitutional provisions regarding separation of powers between the branches of government.

In addition, Taylor pointed out that the reason why the Act 10 provisions are not already in effect is that a judge concluded that legislature leaders violated the open meetings law in their rush to vote on the budget repair bill. The amended budget now provides a very simple solution for any future open meetings challenges pertaining to the use of DHS's sweeping new decision-making authority: It simply eliminates the requirement that the Department hold any meetings at all. (Whether that in itself violates other statutes and case law is also open to question.)

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The changes in policymaking authority now inserted into the biennial budget bill will almost certainly generate a legal challenge on constitutional grounds. The new procedures also seem to be at odds with the Administrative Procedures Act (Chapter 227 of the statutes) and the case law in this area. How the courts might rule on those legal issues is unclear. However, what is very clear is that the power shift contained in the JFC bill would be a huge blow to the ability of Wisconsin citizens to have a role in critical policy choices relating to Medicaid and BadgerCare.

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