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June 16, 2011

## Senators Must Resolve Conflict between Act 10 and JFC Budget: Will Public Have Input into Future Medicaid Policy Decisions?

Thanks to the Supreme Court’s June 14th ruling, Act 10 is now taking effect and grants the Department of Health Services (DHS) sweeping power to change Medicaid and BadgerCare policies – even if the policy changes conflict with state statutes. However, the Legislature is voting this week on provisions in the budget that amend the Medicaid portions of Act 10 by further consolidating power in DHS and eliminating public input.

The table below compares the Medicaid decision-making authority granted to DHS by Act 10 with the provisions of the biennial budget bill. In most respects the two pieces of legislation are the same, but there is one extremely important difference – Act 10 requires DHS policy changes that conflict with the statutes to be made by rule, which would provide public notice, public hearings and citizen involvement in the process. The budget bill would eliminate the rulemaking requirement in Act 10, thereby eliminating the only opportunity for a public hearing and testimony.

By delegating so much legislative policy-making authority to DHS, both Act 10 and the biennial budget bill substantially reduce the ability of the public to provide meaningful input into these policy decisions. The Senate can prevent the complete elimination of public hearings and citizen involvement by sticking with the Act 10 language that requires the use of rulemaking.

Provision	Act 10	JFC Budget
Transfer legislative authority for changes to Medicaid to DHS, until January 2015.	Yes	Yes
Require a vote of the entire legislature when policy changes conflict with state statutes.	No	No
Require rule-making when policy changes conflict with state statutes.	Yes	No -- repeals the rulemaking requirement in Act 10
Provide opportunity for legislative oversight by health committees.	Yes – proposed rules would be referred to a standing committee in each house for review.	No
Provide opportunity for oversight by Joint Finance Committee when policy changes conflict with state statutes.	No – instead requires rule-making process for changes superseding state statutes	Yes – Joint Finance 14 day passive review process
Provide public hearings on policy changes conflicting with state statutes.	Yes	No
Direct DHS to seek waivers that allow the state to make changes that conflict with federal law, including a waiver of “Maintenance of Eligibility” (MOE) requirements.	Yes	Yes
Require DHS to reduce eligibility of adults to 133% of the federal poverty level in July 2012 if DHS doesn’t get an MOE waiver by 12/31/11	Yes	Yes