State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, *Governor*
Theodore K. Nickel*, Commissioner*

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

March 7, 2017

The Honorable Scott Fitzgerald
Senate Majority Leader
Room 211 South
State Capitol
P.O. Box 7882
Madison, WI 53707

The Honorable Robin Vos
Speaker of the Assembly
Room 211 West
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: Social and Financial Impact Report—January 2017 Special Session Assembly Bill 6 (Jr7) and January 2017 Special Session Senate Bill 6 (Jr7) Recovery Charter School
Updated with Fiscal Estimate from the Department of Public Instruction dated March 2, 2017

Dear Majority Leader Fitzgerald and Speaker Vos:

Pursuant to s. 601.423, Wis. Stat., I am submitting a social and financial impact report on January 2017 Special Session Assembly Bill 6 (Jr7) and January 2017 Special Session Senate Bill 6 (Jr7), relating to authorizing the director of the Office of Educational Opportunity in the University of Wisconsin System to contract for the operation of a recovery charter school, insurance coverage of mental health treatment provided by a recovery charter school, and making appropriations.

New Requirements

The proposed legislation authorizes the director of the Office of Educational Opportunity in the University of Wisconsin System to contract with a person to operate, as a four-year pilot project, one recovery charter school for high school students recovering from substance use disorder or dependency.

The bill prohibits a health care policy, plan, or contract from excluding coverage for mental health or behavioral health treatment or services provided by the recovery charter school if the policy, plan, or contact covers mental health or behavioral health treatment or services when provided by another health care provider.

The enrollment of the recovery charter school is limited to no more than 15 pupils. Therefore, the Office of the Commissioner of Insurance (OCI) determines the portion of individuals who may use or are eligible for the treatment or services covered by the mandate to be no more than 15 pupils within the four-year pilot program.

Social Impact Factors

Current Mental Health and Behavioral Health Coverage Laws

Wisconsin law requires certain health insurance policies include inpatient, outpatient, and transitional benefits to treat nervous and mental disorders and substance use disorders [s. 632.89, Wis. Stat.]. This law applies to group health insurance policies and contracts, self-insured state governmental health plans, and individual health policies issued in Wisconsin that provide coverage of nervous and mental health disorders or substance use disorders.

The three services covered by the law are inpatient, outpatient, and transitional treatment as detailed below.

Inpatient Services. These are services for the treatment of nervous and mental disorders or substance use disorders provided to an insured in a hospital.

Outpatient Services. These are nonresidential services for the treatment of nervous and mental disorders or substance use disorders provided to an insured by any of the following entities or persons or, if for the purpose of enhancing the treatment of the insured, a collateral of the insured:

- A program in an outpatient treatment facility approved by the Department of Health Services and established and maintained according to rules promulgated under s. 51.42 (7) (b), Wis. Stat.

- A licensed physician who has completed a residency in psychiatry in an outpatient treatment facility or in the physician's office.

- A licensed psychologist who is listed in the National Register of Health Service Providers in Psychology or who is certified by the American Board of Professional Psychology.

Transitional Treatment Services. These are services for the treatment of nervous or mental disorders or substance use disorders provided to an insured in a less restrictive manner than are inpatient hospital services but in a more intensive manner than are outpatient services [s. Ins 3.37 (3m), Wis. Adm. Code].

All plans and policies to which the law applies provide both inpatient and outpatient services. However, a group health benefit plan, a governmental self-insured health plan, and an individual health benefit plan providing coverage for the treatment of mental health disorders or substance use disorders must make available the criteria for determining medical necessity under the plan with respect to that coverage.

Additionally, if a group health benefit plan or a governmental self-insured health plan providing coverage for mental health disorders or substance use disorders denies any particular insured, participant, or beneficiary coverage for services for treatment, or if an individual health benefit plan providing coverage for these conditions denies any particular insured coverage for services for treatment, the plan must, upon request, make the reason for the denial available to those persons. This requirement is in addition to complying with current law with respect to explaining restrictions or terminations of coverage.

Wisconsin law applies to individual insurance policies only to the extent that if an insurer elects to offer coverage; it must be done on a parity basis. Federal employee group plans (e.g., postal carrier plans) and self-insured employer group plans falling within the terms of the federal Employee Retirement Income Security Act (ERISA) of 1974 are also exempted from the Wisconsin law. The Wisconsin law does not apply to most policies issued to a group based in another state if both policyholder and group exist primarily for purposes other than to procure insurance and fewer than 25% of the insured persons are Wisconsin residents.

The federal Mental Health Parity Act (MHPA), which was enacted in 1996, provides for parity in the application of aggregate lifetime and annual dollar limits on mental health benefits with dollar limits on medical/surgical benefits. MHPA's provisions are subject to concurrent jurisdiction by the Department of Labor, the Treasury, and the Department of Health and Human Services. The federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) expanded these requirements. Under MHPAEA, group health plans, insurance companies, and health maintenance organizations (HMOs) offering mental health and/or substance use treatment benefits may not set annual or lifetime dollar limits on mental health benefits lower than any such dollar limits for medical and surgical benefits. A plan not imposing an annual or lifetime dollar limit on medical and surgical benefits may not impose such a dollar limit on mental health benefits offered under the plan. MHPAEA does not require health plans to include coverage for mental health and substance use disorders in their benefits package. MHPAEA requirements apply only to plans offering mental health and/or substance use benefits in the self-funded and large group markets.

Effective January 1, 2014, the federal Affordable Care Act requires all non-grandfathered[1] individual and small employer plans (1 to 50 employees) to cover the treatment of nervous and mental disorders or substance abuse disorders as an "essential health benefit." The coverage must be provided on a parity basis per MHPAEA and, as an essential health benefit, it may not be subject to any annual or lifetime dollar limits.

Additional Details

Not all group health plans offering mental health benefits have to meet the parity requirements. In group plans not impacted by the Affordable Care Act, any group health plan whose costs increase 2% or more the first year and 1% for every subsequent year due to the application of MHPAEA's requirements may claim an exemption from MHPAEA's requirements. The same exemption is available under state law. However, if it is exempt, state law requires compliance with the minimum mandated coverage requirements contained in s. 632.89 (2), Wis. Stat.

For a group health benefit plan, a governmental self-insured health plan, and an individual health plan providing coverage for nervous and mental health disorders or substance use disorders, the exclusions and limitations; deductibles; copayments; coinsurance; annual and lifetime payment limitations; out-of-pocket limits; out-of-network charges; day, visit, or appointment limits; limitations regarding referrals to non-physician providers and

[1] A "non-grandfathered plan" is a health plan established after the Affordable Care Act was enacted or a health plan changed in one or more specified ways since the law's enactment.

treatment programs; and duration or frequency of coverage limits under the plan may be no more restrictive for coverage of the treatment of nervous and mental health disorders or substance use disorders than the most common or frequent type of treatment limitations applied to substantially all other coverage under the plan.

If the basis an insurer uses to establish fee reimbursement levels are reasonable and equitably applied to all providers, the requirement for coverage of outpatient treatment does not prohibit any limitation on the amount of a provider's charge to be covered, e.g., application of a "usual and customary fees" limitation which would generally be applicable to other covered conditions.

Prescription drugs are included as part of the mandated coverage for the treatment of nervous and mental disorders or substance use disorders but only if prescription drug coverage is provided as part of the insurance plan. Prescription drugs are covered if the drugs are prescribed for a patient who is receiving treatment on either an inpatient or outpatient basis and if the prescription drugs are for the treatment of nervous and mental disorders or substance use disorders. The costs incurred for the prescription drugs or diagnostic testing cannot be applied toward the minimum coverage for either inpatient or outpatient treatment. If a health plan does not provide coverage for prescription drugs, then they are not included as part of the mandated coverage.

Recovery Schools

The Association of Recovery Schools (ARS) defines a recovery school as: secondary schools designed specifically for students recovering from substance use or co-occurring disorders. They have the following definitional characteristics:

- Primary purpose is to educate students in recovery from substance use or co-occurring disorders.

- Meet state requirements for awarding a secondary school diploma, i.e., school offers credits leading to a state-recognized high school diploma and students are not just getting tutored or completing work from another school while there.

- Intending all students enrolled be in recovery and working a program of recovery for substance use or co-occurring disorders, as determined by the student and the school.

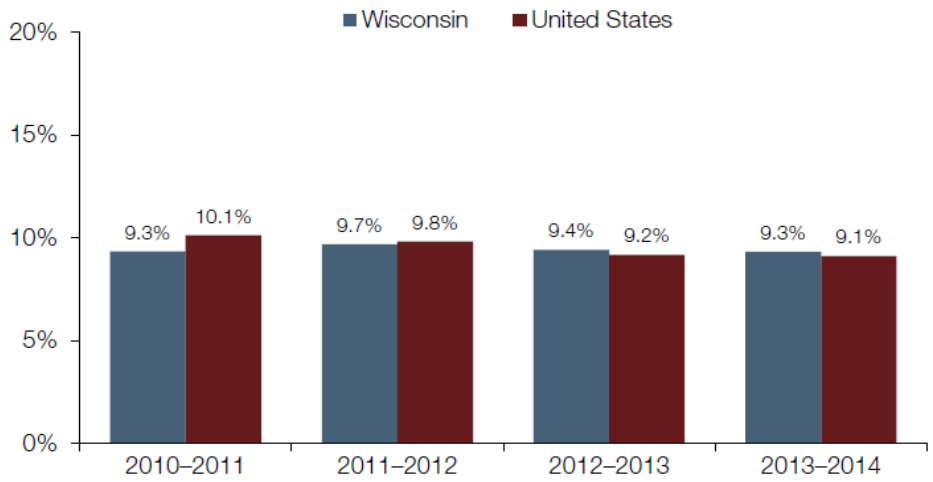
- Available to any student in recovery from substance use or co-occurring disorders who meets state or district eligibility requirements for attendance, i.e., students do not have to go through a particular treatment program to enroll and the school is not simply the academic component of a primary or extended-care treatment facility or therapeutic boarding school.[2]

[2] Association of Recovery Schools. "State of Recovery High Schools 2016 Biennial Report." https://recoveryschools.org/wp-content/uploads/2016/03/State-of-Recovery-Schools_3-17-16-low.pdf

Currently in Wisconsin there is one recovery high school. Since opening in 2005, over 80 students have attended Horizon High School. The school reports an average enrollment between 6-14 students and provides an environment including daily group counseling with a certified Alcohol and Other Drug Abuse counselor, personal relapse prevention, and recovery plans.[3]

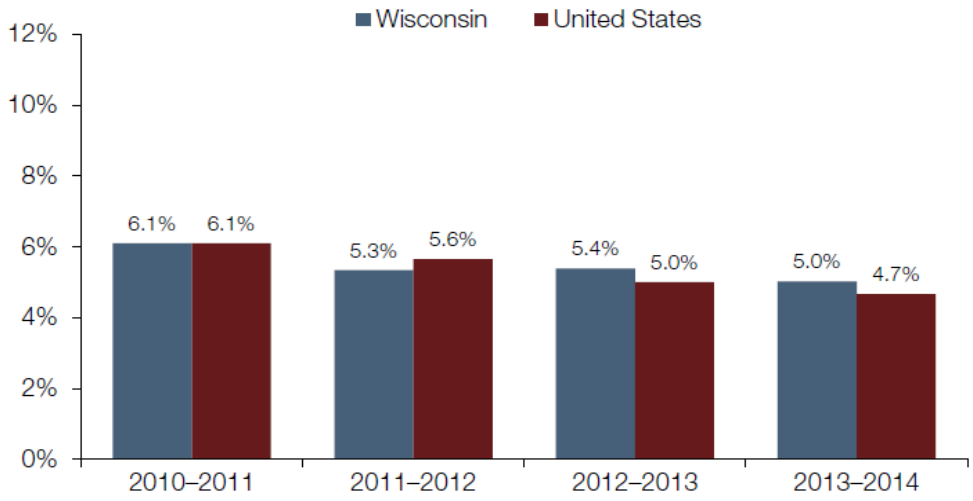
Substance Abuse Data in Wisconsin

- In Wisconsin, about 42,000 adolescents ages 12–17 (9.3% of all adolescents) per year in 2013–2014 reported using illicit drugs within the month prior to being surveyed. The percentage did not change significantly from 2010–2011 to 2013–2014.[4]



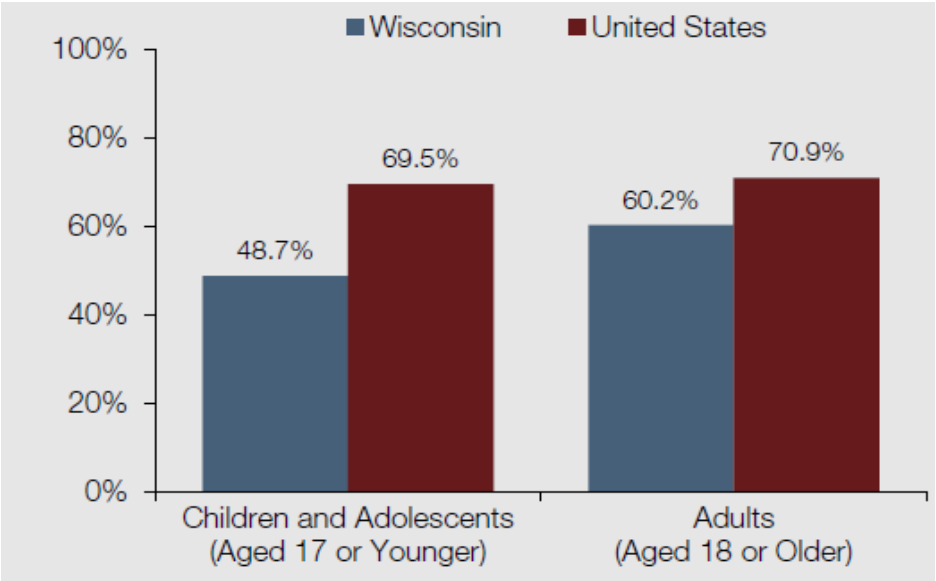
- In Wisconsin, about 22,000 adolescents aged 12–17 (5.0% of all adolescents) per year in 2013–2014 reported nonmedical use of pain relievers within the year prior to being surveyed. The percentage did not change significantly from 2010–2011 to 2013–2014.[5]

[3] Horizon High School. "About Us." http://www.horizonhs.org/about.html
[4] Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer Wisconsin, 2015." https://www.samhsa.gov/data/sites/default/files/2015_Wisconsin_BHBarometer.pdf
[5] Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer Wisconsin, 2015." https://www.samhsa.gov/data/sites/default/files/2015_Wisconsin_BHBarometer.pdf



- In 2014, 13,123 children and adolescents (aged 17 or younger) were served in Wisconsin's public mental health system. [6]

- The percentage of children and adolescents (aged 17 or younger) reporting improved functioning from treatment received in the public mental health system was lower in Wisconsin than in the nation as a whole. The percentage for adults (aged 18 or older) was lower in Wisconsin than in the nation as a whole. [7]



[6] Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer Wisconsin, 2015." https://www.samhsa.gov/data/sites/default/files/2015_Wisconsin_BHBarometer.pdf
[7] Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer Wisconsin, 2015." https://www.samhsa.gov/data/sites/default/files/2015_Wisconsin_BHBarometer.pdf

Fiscal Impact Factors

OCI estimates the health insurance mandate to have no state fiscal impact on OCI operations. In short, the proposed legislation would require insurers to cover medically necessary services provided in the school setting, but only if the insurer already provides coverage for a substance use disorder or dependency. The social impact factors covered above outline the mandated coverage already in place and would not increase the use of the treatments or services covered. Therefore, the proposed legislation will not impact OCI nor will it add to the cost to regulate insurance in Wisconsin.

The fiscal estimate prepared by the Department of Public Instruction (DPI) estimates no local government costs. DPI also estimates the state fiscal effect as an increase in existing appropriations and increase costs that may be possible to absorb within the agency's budget.

Please contact Elizabeth Hizmi at (608) 267-9460 or elizabeth.hizmi@wisconsin.gov if you have any questions regarding this report.

Respectfully Submitted,

Theodore K. Nickel
Commissioner