

**STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES**

**AGENCY PRIMER:  
“WHAT YOU NEED TO KNOW”**

**JANUARY 2023**



**INSTITUTE FOR  
REFORMING GOVERNMENT**

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## FROM THE DESK OF CJ SZAFIR

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Freedom and Opportunity. Those are ideals that bind us together as a state. Unfortunately, the size and scope of state government too often gets in the way of individuals and families being able to achieve their full potential as they build their share of the American Dream.

We can do better, and we must do better. We all should ask— is the mission of state government, of each and every agency, bureau, and division, aligned with the vision that everyday Wisconsinites have for Wisconsin? Is state government set up to help citizens succeed, or is it a roadblock to success? We need a conservative vision for state government, indeed for each and every agency.

Earlier this year, the Institute for Reforming Government started an ambitious project to shine light on the biggest state agencies to help answer those questions because we believe the best way to enhance liberty is to improve transparency. We reached out to experts, those with experience from serving on the inside of agencies, and those with experience being on the regulated side. We looked at past revenue and spending trends. The findings are not surprising.

State agencies are massive. They spend record amounts of taxpayer dollars year over year. They too often get in the way of individual success and are set up as enforcement agents instead of partners in creating a better Wisconsin. They need reform. We need leaders to bring forward conservative visions to the agencies.

In these briefings, we shine light onto state agencies to help all citizens diagnose what is broken. Later, based on these and discussions with people all over Wisconsin, we'll offer government reform ideas and detailed budget analysis to help chart a new course for Wisconsin - one where each and every individual in our state has the freedom and opportunity to succeed.

Sincerely,

**CJ Szafir**

*President*

Institute for Reforming Government

# SUMMARY

## “Light and liberty go together”

Thomas Jefferson, In a letter to Tench Coxe, 1795

This document prepared by the Institute for Reforming Government (IRG) is intended to inform policy makers and the public of the full scope of the Wisconsin Department of Health Services (DHS). Our partners at the IRG Action Fund will release conservative, free market, and liberty-minded reforms.

We can do better, and we must do better. We all should ask, “Is the mission of state government — of each and every agency, bureau, and division — aligned with the vision that everyday Wisconsinites have for Wisconsin? Is state government set up to help citizens succeed, or is it a roadblock to success? We need a conservative vision for state government, indeed for each and every agency.

Last spring, with support from our donors and Board of Directors, the Institute for Reforming Government started an ambitious project to help answer those questions about the biggest state agencies because we believe the best way to enhance liberty is to improve transparency. This project was the work of eight experts in Wisconsin state government, including three senior-level cabinet officials, a budget director, and subject matter experts. In addition, our team had regular meetings with former top officials in state government as well as business leaders and other experts outside of government. We looked at past revenue and spending trends. The findings are not surprising.

The department’s budget in 2021-2023 was set at \$30 billion with authority to employ 6,300 people making it the largest cabinet agency by budget and second largest by workforce. The department’s influence in the health care market cannot be understated; \$25 billion out of the \$30 billion budgeted for DHS goes to pay for the Medicaid program. Medicaid provides publicly funded insurance for residents based on income and other factors like disability through programs like BadgerCare, FamilyCare and IRIS. The Department also operates the state’s food stamp program, FoodShare. Apart from Medicaid, the department also administers mental health programs, public health, and the regulation of care facilities around the state.



The current Department of Health Services has undergone many changes in its long history. In the late 1800s, all of Wisconsin's institutions for the disabled, mentally ill, and prisons were overseen by separate governance boards. In a series of reforms from 1871 through 1891, the state undertook the process of consolidating these functions under one unit of government, the State Board of Control of Wisconsin Reformatory, Charitable and Penal Institutions. In 1876, the state created the State Board of Health to take on many of the functions we now think of as public health; epidemiology, health inspections, and testing of water supplies. In the 1930s, the state gradually expanded its public welfare programs culminating with the creation of the State Department of Public Welfare in 1939.

In 1967, the executive branch reorganization act created the Department of Health and Social Services. Like other agencies at the time, this new Department was governed by a Board appointed by the Governor, the Board of Health and Social Services. The Board appointed the Secretary of the Department until that authority was given to the Governor in 1975. In the same year, the legislature reorganized the Department and by 1996, the Department was rebranded the Department of Health and Family Services. In 1989, the legislature created the Department of Corrections and moved adult corrections to the new Department. 1995 Act 27 reorganized executive branch functions again. Responsibility of juveniles was moved to the Department of Corrections and various other programs were moved to the Department of Workforce Development. In 2007, the Department of Children and Families was created and split off its current functions from what is now the Department of Health Services.

In 2020, DHS became the focus of the state when Governor Evers imposed a lockdown of "non-essential" businesses through the department's public health authority. Although the lockdown was eventually overturned by the Wisconsin Supreme Court, the ramifications of this decision are still being felt today.

Today, the Department of Health Services is the second biggest cabinet agency with over 6,000 employees and a biennial budget of roughly \$30 billion. The department's largest program is Medical Assistance (MA) or Medicaid. The 2021-2023 budget for MA is about \$25 billion, all funds.

# AGENCY DESCRIPTION, MISSION, & FUNCTION

*Information in this section was pulled directly from public sources on the Department of Administration and Department of Financial Institutions*

## **Agency Descriptions**

The department is headed by a secretary who is appointed by the Governor with the advice and consent of the Senate. The department has five divisions and four offices and works in partnership with local governments, tribes, health and human services agencies, private providers, consumers, and concerned citizens.

## **Mission**

To protect and promote the health and safety of the people of Wisconsin.

## **Function**

The functions of the Department of Health Services are operationalized through its five divisions and five offices. The purpose and function of each of these is listed below:

### **Office of the Secretary**

This office is headed by the Secretary of the department. The Secretary is appointed by and serves at the pleasure of the Governor. Within the office, the Secretary has several appointees that are charged with overseeing the operations of the department, external relations, legislative relations, communications, and legal issues. There are a number of civil service positions that help handle the workload of the appointees and take on other tasks related to outreach to local and tribal governments.

### **Office of Legal Counsel**

The Office of Legal Counsel (OLC) provides legal services to the Office of the Secretary and is the legal office for the whole department. The office provides legal opinions, oversees the rulemaking process, provides training for compliance, litigates on behalf of the department, and provides assistance to the Department of Justice on DHS related issues.



### **Office of Inspector General**

Established in 2011 under Governor Walker, the Office of the Inspector General is charged with the responsibility of identifying and reducing the amount of waste, fraud, and abuse within the department. The OIG performs internal audits, investigates fraud cases, and is the general watchdog to ensure accountability within the department.

### **Office of Policy Initiatives and Budget**

The Office of Policy Initiatives and Budget is responsible for the department's budget and financials and conducts research as requested by department leadership.

### **Office of Health Equity**

Created under Governor Evers, the Office of Health Equity is charged with the mission to promote and lead equity initiatives within the department and through all of the department's programs:

### **Division of Enterprise Services**

The Division of Enterprise Services is the administrative services division and oversees the day-to-day operation of the department. This includes information technology, personnel, purchasing, facilities, billing, and accounting for the department.

### **Division of Care and Treatment Services**

The Division of Care and Treatment Services operates the department's seven facilities. These facilities serve individuals in need of mental health services and individuals with intellectual disabilities. The division also oversees the implementation of community based mental health and substance abuse services.

### **Division of Medicaid Services**

The Division of Medicaid Services oversees the state's Medicaid program. Medicaid offers no or low-cost health care to individuals who are eligible based on income, disability, or age. These services are offered through multiple programs such as BadgerCare, FamilyCare, and IRIS. As mentioned previously, the Medicaid program costs roughly \$25 billion every 2 years. They also operate the FoodShare program, Supplemental Security Income, SeniorCare, and children's long-term care. The division also manages Milwaukee Enrollment Services, which is the enrollment office for public benefits in Milwaukee County.

### **Division of Public Health**

The Division of Public Health works with local and tribal public health authorities, and other community stakeholders. The division is focused on communicable diseases, promoting health lifestyles, and Emergency Medical Services (EMS).

### **Division of Quality Assurance**

The Division of Quality Assurance has regulatory oversight over health and residential care facilities across Wisconsin. The division is also responsible for the licensing of more than 40 different programs and facilities in just about every aspect of health care.





# AGENCY BUDGET TRENDS

The state budget process begins in September of every even year when each agency sends its budget requests to the Department of Administration. The Governor then has several months to put together the executive budget proposal that is forwarded to the Legislature. The Legislature, through the work of the Joint Finance Committee, then holds hearings and votes on the budget through the spring and summer of the odd year. This culminates with the signing of the budget document that summer. While technically due by July 1 of the budget year, often budget debates will drag into the Summer and sometimes the Fall. However, the government does not shut down in Wisconsin as it does at the federal level when there is a budget impasse - it simply continues on the current spending plan until a new budget is adopted.

The department's budget has been on an upward trajectory for the last several budget cycles and this is primarily due to the cost of Medicaid. Medicaid is the main cost driver within the department and one of the biggest drivers in each budget cycle.

## Agency Budget Trend

Fund	2017 ACT 59	2019 ACT 9	2021 ACT 58
GPR	\$7,827,314,000	\$8,563,335,600	\$8,859,576,900
FED	\$12,197,710,700	\$13,311,819,300	\$15,673,816,900
PR	\$2,745,890,500	\$3,056,743,700	\$3,602,115,300
SEG	\$1,162,874,100	\$1,163,700,200	\$2,012,636,900
<b>TOTAL</b>	<b>\$23,933,789,300</b>	<b>\$26,095,598,800</b>	<b>\$30,148,146,000</b>

## FTE POSITION SUMMARY

Fund	2017 ACT 59	2019 ACT 9	2021 ACT 58
GPR	2,561.21	2,657.23	2,642.84
FED	1,253.45	1,257.77	1,274.77
PR	2,360.23	2,434.19	2,422.31
SEG	2	2	2
<b>TOTAL</b>	<b>6,176.89</b>	<b>6,351.19</b>	<b>6,341.92</b>

# AGENCY LEADERSHIP

As the head of a cabinet agency, the Secretary is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor. The Secretary of each agency then must appoint the other members of their team to help them carry out the duties and responsibilities of the agency. Descriptions of each appointed position are listed below:

## **Secretary**

Appointed by the Governor, the Secretary leads and represents the agency. The position is responsible for directing and managing the agency to execute the Governor's agenda while ensuring the efficient operation of the agency per state statute. The position is also responsible for reporting on the agency's matters to the Governor and Legislature.

## **Deputy Secretary**

The Deputy Secretary serves at the pleasure of the Secretary and is primarily responsible for assisting the Secretary with carrying out the mission of the agency including but not limited to, personnel management, day-to-day operations, and external affairs.

## **Assistant Deputy Secretary**

The Assistant Deputy Secretary also serves at the pleasure of the Secretary and is responsible for assisting both the Secretary and Deputy Secretary. Responsibilities may include but are not limited to day-to-day operations and external affairs aligned with the agency's mission.

## **Chief Legal Counsel**

The Chief Legal Counsel serves at the pleasure of the Secretary and provides legal counsel and support involving the agency's affairs.

## **Legislative Liaison**

The Legislative Liaison is primarily responsible for facilitating and managing relationships with the Legislature and external stakeholders to provide information as needed and requested. The position also helps develop the agency's legislative agenda to align with the Governor's priorities, current industry standards and respond to stakeholder concerns.

## **Communications Director**

The Communications Director supports the Secretary's Office in strategic communications and responds to media inquiries. The position may also speak on behalf of the Secretary and represent the agency in the media.



### Division Administrator

Division Administrators, appointed by the Secretary, are responsible for providing leadership, personnel management and guidance on day-to-day operations for their assigned division. These positions typically report to the Deputy Secretary, communicating activities and providing advice to ensure the division is in line with the agency's mission.

Within the Department of Health Services, the Medicaid Director is an important position. Also the Administrator for the Division of Medicaid Service, the Medicaid Director operationalizes the \$25 billion Medicaid program for the state of Wisconsin.

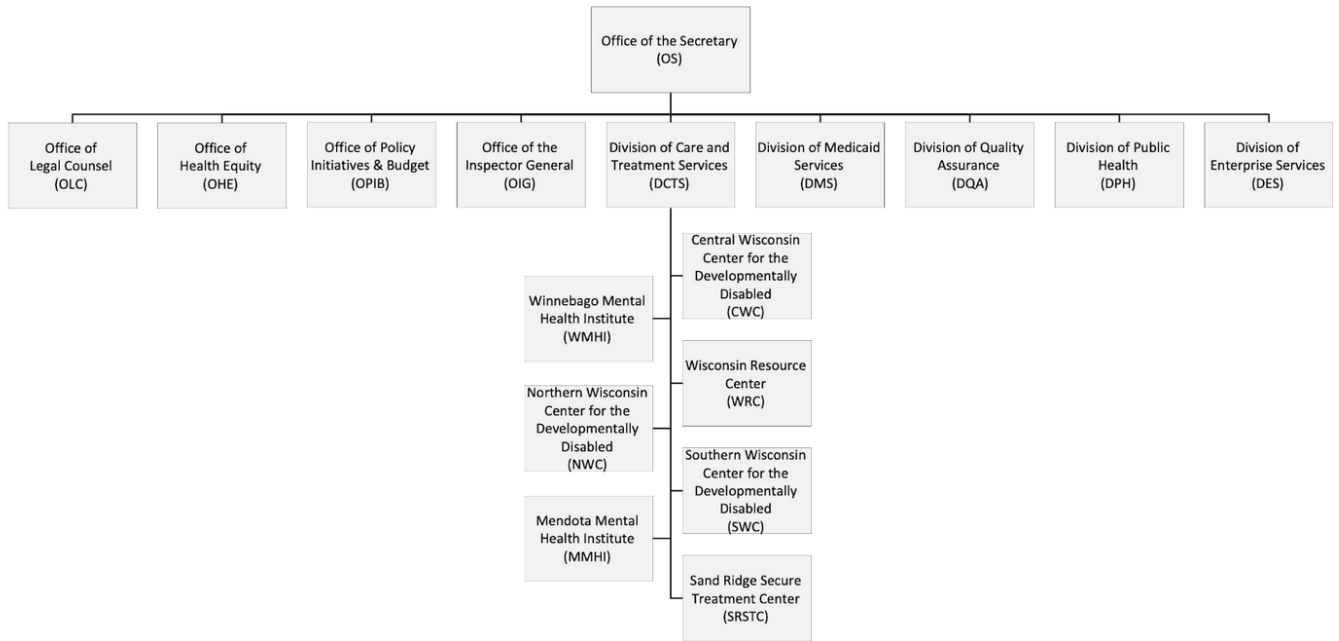
These appointments may change during the 4-year term of a governor. Listed here are the teams serving under Gov. Evers in mid-2022, as well as the team that served at the end of Gov. Walker's final term.

## AGENCY LEADERSHIP

POSITION	EVERS	WALKER
SECRETARY	Karen Timberlake	Linda Seemeyer
DEPUTY SECRETARY	Deb Standridge	Tom Engels
ASSISTANT DEPUTY SECRETARY	T.R. Williams	Jennifer Malcore
CHIEF LEGAL COUNSEL	Sandra Rowe	Sandra Rowe
COMMUNICATIONS DIRECTOR	Ali Maresh	Julie Lund
LEGISLATIVE DIRECTOR	HJ Waukau	Jon Hoelter
DIVISION ADMINISTRATORS		
OFFICE OF THE INSPECTOR GENERAL	Tony Blaize	Tony Blaize
OFFICE OF POLICY INITIATIVES AND BUDGET	Andy Forsaith	Andy Forsaith
CARE AND TREATMENT FACILITIES	Rose Kleiman	Rose Kleiman
PUBLIC HEALTH	Paula Tran	Karen McKeown
QUALITY ASSURANCE	Otis Woods	Otis Woods
MEDICAID SERVICE	Lisa Olson	Heather Smith

# ORGANIZATION CHART

## Department of Health Services



October 3, 2022



# ATTACHED COUNCILS, TASK FORCES, & COMMITTEES

Like most agencies, the Department of Health Services has Boards and Councils that are charged with various responsibilities. Generally, these groups either give advice to the Secretary or they are part of the regulatory process itself.

*The councils, committees, and boards listed below constitute those listed by the Legislative Reference Bureau*

## **Council on Mental Health**

The council makes recommendations to all of state government about spending on mental health programs and serves as an advocate for people with mental illness.

## **Council on Birth Defect Prevention and Surveillance**

The council makes recommendations to the department regarding the Wisconsin Birth Defects Registry; particularly, what birth defects are reported and in what format.

## **Trauma Advisory Council**

The council is charged with advising the DHS on the status and operation of Wisconsin's trauma care system.

## **Council on Blindness**

The council makes recommendations to DHS and other departments regarding services and programs for the blind and visually impaired.

## **Public Health Council**

The council advises state government and the public regarding the state's 10-year public health plan and is charged with helping coordinate responses to public health emergencies.

## **Council for the Deaf and Hard of Hearing**

The council makes recommendations to the department regarding programs and services for the deaf, hard-of-hearing, and deaf blind.

## **Newborn Screening Advisory Group**

This group advises the department regarding the statutorily required newborn screening test that is administered to all Wisconsin newborns. Over the years, additional tests have been required as part of the screening panel.

### **Medicaid Pharmacy Prior Authorization Advisory Committee**

Medicaid coverage in Wisconsin also includes prescription drug coverage. The committee advises the department regarding prior authorization issues within the Medicaid's prescription drug benefit.

### **Quality Assurance and Improvement Committee**

The committee makes recommendations to the department regarding the disbursement of civil forfeiture funds that are meant to improve Wisconsin nursing homes.

### **Emergency Medical Services Board**

The EMS board assists in the appointment of the state's medical director for emergency medical services. The board also reviews statutes and rules that set the standards for EMS care and makes recommendations to DHS and WisDOT.

### **Council on Physical Disabilities**

The council develops the state plan regarding services for people with disabilities and recommends legislative changes to the department.

*The list below are councils, committees, and boards that are listed on the Department of Health Services website as being attached to the department or listed as the department having involvement in their duties*

Independent Living Council of Wisconsin  
State Council on Alcohol and Other Drug Abuse  
Wisconsin Governor's Birth to 3 Interagency Coordinating Council  
Autism Council  
Governor's Committee for People with Disabilities  
Governor's Health Equity Council  
Governor's Task Force on Caregiving  
Wisconsin National and Community Service Board  
Assistive Technology Advisory Council  
Council for Children with Long-Term Support Needs  
Minority Health Advisory Council  
Wisconsin Long Term Care Advisory Council  
Certified Peer Specialist Advisory Committee  
Children Come First Advisory Committee  
IRIS Advisory Committee  
Recovery Implementation Task Force  
SeniorCare Advisory Committee  
State Disaster Medical Advisory Committee  
Treatment Intervention Advisory Committee  
Wisconsin Council on Immunization Practices  
Wisconsin Drug Utilization Review Board  
Wisconsin State Dementia Plan Steering Committee



# MAJOR PAST INITIATIVES (2011-Present)

Most major policy initiatives happen during the budget process. The Governor, and sometimes the Legislature, will propose a major reduction or increase in spending for any number of programs. The major initiatives dating from 2011 to the present for the Department of Health Services are listed below:

## MAJOR PAST INITIATIVES

INITIATIVE	GOVERNOR	ENACTED	NOTES
Reduce Eligibility to 100% FPL; eliminate Doyle waiting list	Walker	Yes	
Medicaid Expansion per ObamaCare	Evers	No	Legislature rejected
Work requirements/copays/premiums/drug testing	Walker	Yes	Enacted by Legislature, federal approval blocked
Drug testing for "SNAP" (food stamps)	Walker	Yes	
Disproportionate Share Hospital ("DSH") Payments	Both	Yes	
Medicaid postpartum coverage 1 year	Evers	No	Legislature modified it to 90 days; feds approved
Coverage of room and board for SUD residential treatment	Evers	No	Legislature rejected
SUD and behavioral health provider increases	Both	Yes	
Medicaid dental reimbursement increases	Both	Yes	
JFC review and approval of provider rate increases > \$7.5m all funds	Walker	Yes	Signed 2018

JFC review and approval of federal waivers, pilots, demo programs	Walker	Yes	Signed 2018
Various public health funding initiatives	Evers	No	Legislature rejected
Expansion of Birth to 3 program	Evers	No	Legislature rejected





# STAKEHOLDERS

Every agency has a number of organizations, professions, and industries that are uniquely interested in the policy or regulatory decisions that could affect their membership or industry. The groups are commonly organized into trade associations and are represented by registered lobbyists that stay in touch with agency leadership. These lobbyists keep their membership informed on current policy debates and use their expertise to educate policy makers on the issues important to their industries. Below is a non-exhaustive list of stakeholders that are interested in the Department of Health Services.

STAKEHOLDER	TYPICAL ISSUES
WI Hospital Association	Reimbursement and workforce
Rural WI Health Coop	Reimbursement and workforce
Nursing Homes	Reimbursement and workforce
Dentists	Reimbursement and workforce
Various Therapy Groups	Reimbursement and workforce
Children's Hospital Of WI	Specific coverage/access for children's conditions
WI Medical Society	Reimbursement and workforce; provider burn-out
WI Association of Health Plans	Reimbursement; contracting; quality metrics
Alliance of Health Insurers	Reimbursement; contracting; quality metrics
County governments	Reimbursement; managing DHS functions locally
National Alliance on Mental Illness (NAMI-WI)	Reimbursement and workforce
Local Public Health departments	Funding; flexibility; pandemic
Pharmaceutical Manufacturers	Preferred Drug List; Reimbursement; Contracting

# PAST EXECUTIVE ORDERS

Formal actions by the Governor are conveyed through executive order. These orders often direct state agencies to carry out the Governor's policy goals within their statutory authority. They can be used to create councils to explore public policy solutions, bring the state into compliance with federal requirements, direct agencies to take certain actions, and carry out powers granted to the Governor under Chapter 14 of the Wisconsin Statutes. Below is a list of executive orders that pertain to the Department of Health Services.

## EXECUTIVE ORDERS

GOVERNOR	Exec-utive Order	Emer-gency Order	DATE	DESCRIPTION	STATUS
Evers		1	3/12/2020	2020 Public Health Emergency	Inactive
Evers		2	7/30/2020	2020 Public Health Emergency	Inactive
Evers		3	9/22/2020	2020 Public Health Emergency	Inactive
Evers		4	11/20/2020	2020 Public Health Emergency	Inactive
Evers	72		3/12/2020	60 Day PH Emergency, DHS Named Lead Agency for COVID Response	Inactive
Evers	82		7/13/2020	60 Day Public Health Emergency	Inactive
Evers	90		9/22/2020	60 Day Public Health Emergency	Inactive
Evers	95		11/20/2020	60 Day Public Health Emergency	Inactive
Evers	6		1/28/2020	60 Day Public Health Emergency	Active
Walker	6, 73, & 150		1/21/11, 6/18/12, & 1/26/15	Governor's Council on Physical Fitness and Health	Inactive



# GOVERNMENT REFORM OPPORTUNITIES

Wisconsin government has grown too big and too expensive. This has precipitated issues across the whole of the executive branch that have become a barrier to the success of Wisconsin residents and businesses alike. The Institute for Reforming Government endeavors to shine light on these issues as prime opportunities for bold reform. Below you will find a non-exhaustive list of policy concerns that we have highlighted for the Department of Health Services.

## **Budget Pressure**

Since 2011, the DHS budget has grown from \$18 billion to roughly \$30.1 billion all funds. The major cost driver has consistently been the cost of the Medicaid program. As mentioned above, the budget for Medicaid alone is \$25 billion in the 2021-2023 biennial budget. The Medicaid program usually requires in the neighborhood of \$1 billion in new funding every biennial budget to keep the program running.

## **Medicaid HMOs**

There are currently 14 managed care organizations (MCOs or HMOs) that serve the Medicaid population through contracts with the Department of Health Services, divided among regions across the state. This is outside of the norm nationwide. Why? Because Wisconsin Medicaid does not employ a strong procurement process, such as the “request for proposals” (RFP) process utilized in many other states. Rather, DHS simply certifies the MCOs based on various regulatory criteria, such as network adequacy, quality, financial reserves, compliance, and numerous other items. There is little turnover in the MCOs, and new entrants are few and far between.

## **Private Market Options**

Although Wisconsin has not expanded Medicaid per the federal Affordable Care Act (ACA), the Wisconsin Medicaid program covers 283,000 “childless adults” (CLA). By definition, people in this group are generally of working-age and have no dependents. It is also a group that often enrolls in Medicaid and later finds health coverage through an employer. In other words, many CLAs “churn” on and off Medicaid. Given their general employability and lack of dependents (children), there is little reason for this population to be covered by Medicaid. This is particularly true under the current federal philosophy, which measures success by the number of people covered in public assistance programs, rather than finding coverage in the private market. Keep in mind that they pay no premiums in Medicaid and therefore have little incentive to be employed at a job that provides reasonable – but not cost-free – health coverage.

## Medicaid Drug Costs

The State Medicaid program spent \$1.26 Billion on prescription drugs in state fiscal year 2020. While that was mitigated by \$723 million in mandatory (per federal law) rebates from the drug manufacturers, this expense continues to trend upward. Further, as drugs and treatments for both common and rare conditions receive more rapid approval, the upward trend in this expense is accelerating. However, it is not clear if the State is effectively managing the Medicaid drug benefit.

## Increase Nursing Home Capacity

The State maintains a “nursing home bed cap” that restricts adding capacity to the long-term care system in Wisconsin. The cap is an archaic statutory mechanism from decades ago. Moreover, the nursing home challenge drives hundreds of millions in additional state budget expenditures every biennial budget. Yet the problems persist: insufficient capacity for an ag-ing population, unending labor shortages, and disruptions in patient care. This means patients are not being treated at the appropriate level of care, thus taking up critical space in hospitals and fraying the continuum of care. In this climate, hospitals have little leverage in making a nursing home take a patient, even if that patient’s condition is best served in the nursing home.

## Address Pandemic Management

Current public emergency statutes grant very broad authority to state and local entities without adequate checks and balances on the exercise of such authority. On April 16, 2020, Wisconsin Department of Health Services (DHS) Secretary-Designee Palm issued Emergency Order #28 (EMO 28). This order required Wisconsinites to remain at home, while directing “non-essential” – as determined by DHS - businesses to remain closed until further notice.

This authority is based on s. 252.02 Wisconsin Statutes, which authorize the following (in part):

- *“The department may close schools and forbid public gatherings in schools, churches, and other places to control outbreaks or epidemics.” {s. 252.02 (3)};*
- *“...the department may promulgate rules and enforce rules or issue orders for guarding against the introduction of communicable disease into the state...” {s. 252.02 (4)}; and*
- *“The department may authorize and implement all emergency measures necessary to control communicable diseases.” {s. 252.02 (6)}*



In addition, state law provides broadly similar authorities to local governments:

- *“Local health officers may do what is reasonable and necessary for the prevention and suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken.” {s. 252.03 (2)}*
- *“The governing body of any local unit of government may declare, by ordinance or resolution, an emergency...whenever conditions arise by reason of riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire or police protection, or other critical systems of the local unit of government...” {s. 323.11}*

As executed, these powers were used to prohibit private businesses from operating, prevent in-person religious services, and forbid “non-essential” travel, while allowing “essential” businesses to remain open. “Non-essential” businesses had little recourse, nor was there a transparent process for determining “essential” status.

### Current Status

The Wisconsin Legislature legally challenged the authority of the DHS Secretary-Designee to issue EMO 28, seeking to invalidate it. The Legislature’s main argument focused on whether EMO 28 could only be issued as a formal administrative rule, per chapter 227 Wisconsin Statutes. The Department (DHS) argued that the broad authority noted in s. 252.02 (3), (4) and (6), to govern the situation and allow the Secretary-Designee to act accordingly outside of the s. 227 process.

In a 4-3 opinion, the Court invalidated EMO 28 immediately, except with respect to the provision of the order that closed schools. Notably, three concurring opinions were issued, addressing three separate legal concepts within the case.

In addition, the three dissenting justices each issued dissenting opinions, broadly around the applicability of the s. 227 administrative rules process. While the Court invalidated EMO 28, the authorities under which it was issued remain on the books, as do similar authorities for local government. Therefore, the Court could face similar cases in the near or distant future, and potentially reach different legal conclusions.

# CONCLUSION

At the Institute for Reforming Government we know that the government isn't the way of the future - people are. And we believe that in order to empower people and ideas to flourish, our government needs to get out of the way.

This is nothing new for Wisconsinites- we have a long history as the standard bearer for government reform. We were the first state to implement unemployment insurance, Wisconsin Works (W-2), and we were on the cutting edge of major collective bargaining reform. But today the state we love is beginning to lag behind. Our executive branch has become bloated, slow, and expensive - a burden to the state's economy instead of a catalyst.

The solution to this problem isn't more government, it's less. What we need is a conservative vision for the state. This introductory document lays bare the issues and problems that are standing in the way for Wisconsin. In the coming months, IRG will be releasing a series of reforms that will cast a conservative vision for key executive branch agencies in the state.

We have also partnered with the former Chair of the White House Council of Economic Advisors, Tomas Philipson, to prepare a report that will present details conservative free-market healthcare reforms for consideration by lawmakers. IRG will be releasing this report in the near future.

Now is the time to renew our faith in the people of Wisconsin, not the government.