



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 05/05/2005 (Per: PJK)



☞ The 2005 drafting file for LRB 05-0950

has been copied/added to the 2005 drafting file for

LRB 05-2922

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

2005 DRAFTING REQUEST

Bill

Received: 11/22/2004

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters: **mshovers**

Subject: **Insurance - health
Tax, Individual - income
Tax, Business - miscellaneous**

Extra Copies: **JK**

Submit via email: **YES**

Requester's email: **Rep.Richards@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health Insurance Purchasing Corporation of Wisconsin Plan (HIPCOW Plan)

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/08/2004	jdyer 12/20/2004		_____			
	mshovers 12/14/2004			_____			
	pkahler 12/14/2004			_____			
/P1			pgreensl 12/20/2004	_____		lemery 12/20/2004	

LRB-0950

12/20/2004 04:03:08 PM

Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 11/22/2004

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Jon Richards (608) 266-0650

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters: MES

Subject: Insurance - health

Extra Copies: JK

Submit via email: YES

Requester's email: Rep.Richards@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

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1/2	pkahler	11/12/20 jld	12/20/04 ps	12/20/04 ps			
		* *** NOTES					

FE Sent For: <END>

Wisconsin Health Project

- Expanding access
- Controlling costs

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HIPCAW

private corp - created by state

exclude ~~below~~ 65 & up
(fed employees
military personnel)

anyone in
market

each person has

a health insurance purchasing account (chosen by parent or grand)
age & sex → dollar amt by is credited to a/c
(by actuarial factors)

make adjust payment to provider

(grand & corp account for 90%
of rate)

(use state plan language)

(amt gets directed to plan of choice)

corp solicits bids & rates (places in tiers)

based on cost & quality

(voluntary for plans)

each person (even w/ a family) ~~has to~~
choose a plan

	\$60	\$100	
	\$0	\$25	\$50
Tier	1	2	3

← what person pays

corp ~~decides~~ but this is ratio

~~dependent~~

everyone must be covered so "dependent" doesn't
matter

← def

(people can buy supplemental but can't exempt themselves out)

must have

✓ resident def → lives at least 6mo. (or born here)
for residency
(use same standard as for tax purposes)
(pragmatic if possible or existing law)
but parents must have lived here 6mo.

✓ benefit packages: ✓ basic → ~~basic~~ high deductible
dr, hosp, drugs, + mandates
✓ copays drug \$5, \$15, \$35
same as for state (keep drugs separate from other plans)
✓ HTPCOW self-insuring for drugs

(only one plan level)

✓ higher cost-share for inappropriate use (like using emergency room for non-emergency reasons)

always free ⇒ things that are so good science - good medicine what are so cost effective like childhood immunizations, pap tests, annual physical exams, free things
PSA test budget are these examples

need DTFs waivers for MA eligible (mil. badge case) so that it becomes a financing mechanism but may need to compromise on the requirements

everything done on line paperless system

annual enrollment period default is least cost

financing: (annual cost of about
wants showed attempt to maximize fed funding
MA → fed funding (who pay? income tax) 14 billion)
each person pay 10% of income
over \$10,000
in income is up to \$500/mo

administration costs
no more than 10%
may used for administration

add on to income tax *
subtract 10,000 per person
pay through withholding
employer & employee both
kick in

5% of amt above minimum wage
\$250/mo would be most

employee use ↓ if employer
25% ↓ 75% opt'd
\$125 | \$375
on employee or on employer
would pay (employer can pick up more)

put proposal in writing for tax draft

apped at \$70,000
source you would
pay 10% of
\$60,000

ETP is only for supplemental coverages

(do over to you old payin?)

no.
HSA's

→ how do they fit in??
funding them?
as an alternative to the other coverage?

yes - it is an alternative

options for "plans":
HMO, indemnity fee for service, PPO, HSA

private corp:
50% employe members
50% labor & consumer members

Some as ~~the~~ worker's comp

Some no
some breakdown

apptd by ~~the~~ secretary
DOA

ability to borrow \$
at same rate as state

accountable to leg. gov → * records are open to audit \$
bd

audit by audit bureau
biennial report
paid by ~~the~~

see what else is out there
on quasi public/private

* open meetings
corp

reconciliation in April → can get \$ back or may need
to pay in

for premium assessments withholding

- plan itself me
- financing ~~the~~ MES
- creation of corps & features ~~the~~ me
- waivers & how to treat MA & BC me
- (effect on all other state programs (incl state, state
med RAC sponsored health plans,
HIRSP, etc))

start up costs?
get withholding first

Nov 2006 - first rollout
Jan 2007

(borrow for start up cost)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-09507
PJK
+MES
PI
Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DUE
Dec 21
Vote

1

AN ACT relating to a statewide health insurance plan

and creating an individual income surtax

generic

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

Insert 1-4A

SECTION 1. 13.94 (1s) (c) 4. of the statutes is created to read:

3

13.94 (1s) (c) 4. The Health Insurance Purchasing Corporation of Wisconsin for

4

the cost of the audits required to be performed under s. 260.05 (3).

5

SECTION 2. Chapter 260 of the statutes is created to read:

6

260.01 Definitions. In this chapter:

7

(1) "Brand name" has the meaning given in s. 450.12 (1) (a).

8

(2) "Corporation" means the Health Insurance Purchasing Corporation of

9

Wisconsin.

10

(3) "Generic name" has the meaning given in s. 450.12 (1) (b).

INS
1-4B

Insert 1-5

1 (4) "Resident" means an individual who has been legally domiciled in this state
 2 for a period of at least 6 months, except that, if a child is under 6 months of age, the
 3 child is a "resident" if the child lives in this state and at least one of the child's parents
 4 or the child's guardian is legally domiciled in this state. For purposes of this chapter,
 5 legal domicile is established by living in this state and obtaining a Wisconsin motor
 6 vehicle operator's license, registering to vote in Wisconsin, or filing a Wisconsin
 7 income tax return.

****NOTE: This definition is based on the one used in HIRSP [s. 149.10 (9)] for the
 definition of "resident," but changed "30 days" to "6 months." You wanted to use the same
 definition that is used for income tax purposes, but there is none. The tax statutes refer
 to a resident as a person who is domiciled in the state for the entire year.

8 (5) "Statewide plan" means the Statewide Comprehensive Health Insurance
 9 Plan of Wisconsin.

10 **260.05 Health Insurance Purchasing Corporation of Wisconsin. (1)**

11 INCORPORATION. The secretary of administration shall do all of the following:

12 (a) Draft and file articles of incorporation for a nonstock corporation under ch.
 13 181 and take all actions necessary to exempt the corporation from federal taxation
 14 under section 501 (c) (3) of the Internal Revenue Code.

15 (b) Provide in the articles of incorporation filed under par. (a) all of the
 16 following:

17 1. That the name of the corporation is the Health Insurance Purchasing
 18 Corporation of Wisconsin."

19 2. That the corporate board shall consist of 11 directors, including at least 5
 20 representatives of employers and at least 5 representatives of employees.

****NOTE: You indicated that you wanted the board of directors to have the same
 number and makeup as the Council on Worker's Compensation. That council has a
 designated employee of DWD as chairperson, 5 employer members, 5 employee members,
 and 3 nonvoting members that represent insurers authorized to do worker's

compensation business. A council, however, is attached to a state agency, unlike a private corporation. Do you want to make any changes to the directors in this draft?

****NOTE: Do you want to specify the length of the terms of the directors? If it is not specified, it is one year [see s. 181.0805 (1)].

- 1 (c) Designate the initial directors as specified in par. (b) 2. ✓
- 2 (d) Draft bylaws for adoption by the corporate board.
- 3 (2) DUTIES. ✓ As a condition for the release of funds under s. XXXXXXXX, the
- 4 corporation ✓ shall do all of the following:

****NOTE: The funds referred to are the GPR funds attributable to the amounts withheld from employee wages and salaries and contributed by employers.

- 5 (a) Develop and administer the statewide plan as provided in this chapter.
- 6 (b) Seek to obtain federal funds for paying costs related to individuals covered
- 7 under the statewide plan who would otherwise be eligible for coverage under Medical
- 8 Assistance, ✓ the Badger Care ✓ health care program, or any other health care program
- 9 financed at least in part with federal funds.

Insert 3-9 ✓

(10) a ✓ (x) Keep its records open at all times to inspection and examination by the governor or any committee of either or both houses of the legislature.

(12) e ✓ (x) Keep its meetings open to the public to the extent required of governmental bodies under subch. V ✓ of ch. 19.

(14) f ✓ (x) Cooperate with the legislative audit bureau ✓ in the performance of the audits under sub. (3). ✓

(3) BIENNIAL AUDIT. ✓ Biennially, the legislative audit bureau shall conduct a financial audit of the corporation and a performance evaluation audit of the statewide plan that includes an audit of the corporation's policies and management practices. The legislative audit bureau shall distribute a copy of each audit report under this subsection ✓ to the legislature under s. 13.172 (2) ✓ and to the governor. The corporation

1 shall reimburse the ^{legislative} audit bureau for the cost of the audits and reports required under
2 this subsection.

****NOTE: Do you want both financial and performance evaluation audits as drafted, or just one of those?

****NOTE: A recurring audit by the audit bureau of a private corporation is highly unusual. Perhaps it would be better to simply authorize the secretary of administration, or another state officer, to order independent audits.

3 **260.10 General provisions and administration.** (1) ✓ STATEWIDE PLAN

4 DESCRIPTION. The statewide health plan under this chapter shall be known as the
5 "Statewide Comprehensive Health Insurance Plan of Wisconsin." Except as provided
6 in s. 260.18 ✓ (3), benefits shall be provided under the ✓ statewide plan through private
7 group health benefit plans offered by insurers. The statewide plan and any health
8 benefit plan under which coverage is provided under the statewide plan are subject
9 to all applicable provisions of chs. ✓ 600 to 646.

10 (2) PARTICIPATION OF INSURERS. ✓ (a) The corporation shall solicit bids from, and
11 enter into contracts with, insurers for providing coverage under the statewide plan.
12 Any insurer that is authorized to do business in this state in one or more lines of
13 insurance that includes health insurance shall be eligible to participate.

14 (b) The corporation shall attempt to ensure that a sufficient number of
15 fee-for-service ✓ plans, health maintenance organizations, and preferred provider
16 plans are included in the statewide plan so that covered individuals have adequate
17 choice among plan types and adequate accessibility to health care.

18 (3) TIER ASSIGNMENT. ✓ The corporation shall rank each health benefit plan
19 offered by an insurer participating in the plan and assign the plan to one of ✓ 3 tiers
20 based on quality and cost. The corporation shall assign health benefit plans that it
21 determines provide high quality at a low cost to "Tier 1," assign health benefit plans
22 that it determines provide average quality at an average cost to "Tier 2," and assign

1 health benefit plans that it determines provide relatively low quality at a relatively
2 high cost to "Tier 3."

3 (4) RISK-ADJUSTED PAYMENTS. ✓ Payments made to a health benefit plan for
4 coverage of an individual who selects, or is assigned to, the health benefit plan under
5 s. 260.15 (2) ✓ shall be adjusted for the individual's risk, as determined under s. 260.15
6 (3). ✓

7 **260.15 Covered individuals.** (1) WHO IS COVERED. ✓ (a) Except as provided
8 in par. (b), every resident ✓ shall be covered under the statewide plan.

9 (b) None of the following is eligible for coverage under the statewide plan:

10 1. An individual who 65 years of age or older.

11 2. An individual who is eligible for health care coverage that is provided or
12 sponsored by the federal government or an agency of the federal government and
13 that is related to the individual's employment or service in the U.S. ✓ armed forces or
14 in forces incorporated as part of the U.S. armed forces.

15 (2) HEALTH BENEFIT PLAN SELECTION. ✓ During an annual open enrollment period,
16 each covered individual shall select from among the health benefit plans offered
17 under the statewide plan. If an individual does not make a selection, the individual
18 will be assigned to the least costly health benefit plan that provides the greatest
19 accessibility to health care for the individual.

20 (3) RISK ASSESSMENT. ✓ The demographic, actuarially based characteristics of
21 each covered individual, such as age and sex, shall be assessed and used to determine
22 the individual's risk for the purpose of making the risk-adjusted ✓ payments under s.
23 260.10 (4). ✓

1 **260.18 Benefits.** (1) BASIC HEALTH CARE BENEFITS. ✓ Each health benefit plan
2 offered under the statewide plan shall provide the same benefits, including all of the
3 following:

4 (a) Except as provided in par. (b), ✓ coverage of basic, comprehensive health care
5 services, including physicians' services and inpatient hospital services, which shall
6 be subject to copayments. ✓

7 (b) Coverage of cost-effective, ✓ preventive services or procedures, such as
8 childhood immunizations, physical examinations, and Papanicolaou ✓ tests, which
9 shall be determined by the corporation and for which no copayments may be imposed.

10 (2) PHARMACY BENEFIT. Separate from the health benefit plans offered by
11 insurers under the statewide plan, the statewide plan shall provide an uninsured
12 pharmacy benefit that uses a preferred list of covered prescription drugs. The
13 corporation shall develop the preferred list of covered prescription drugs under an
14 evidence-based analysis similar to the method used under s. 40.53 (2). ✓

15 **260.20 ✓ Cost sharing.** (1) PREMIUMS. Every covered individual shall pay a
16 monthly premium for coverage under the statewide plan, based on the ✓ tier to which
17 the individual's health benefit plan is assigned under s. 260.10 (3). ✓ The corporation
18 shall determine the premium rates in such a way that the premium for a health
19 benefit plan assigned to "Tier 2" is twice as much as the premium for a health benefit
20 plan assigned to "Tier 1," and the premium for a health benefit plan assigned to "Tier
21 3" is twice as much as the premium for a health benefit plan assigned to "Tier 2." ✓

22 (2) DEDUCTIBLES. Each health benefit plan offered under the statewide plan
23 shall include a high deductible, which shall be determined by the corporation.

****NOTE: Is the deductible the same for every plan?

1 (3) COPAYMENTS. (a) Except as provided in s. 260.18 (1) (b), every health benefit
2 plan offered under the statewide plan shall require a copayment for every covered
3 benefit. The corporation shall determine the amounts of the copayments, and shall
4 require a higher copayment for the inappropriate use of a benefit, such as obtaining
5 emergency services for treatment of a nonemergency condition.

6 (b) The statewide plan shall require a copayment of \$5 for each prescription of
7 a drug with a generic name, a copayment of \$15 for each prescription of a drug with
8 a brand name and that is on the preferred list, and a copayment of \$35 for each
9 prescription of a drug with a brand name and that is not on the preferred list.

10 **260.25 Supplemental and employer-provided benefits. (1)**

11 SUPPLEMENTAL HEALTH CARE BENEFITS. Nothing in this chapter prevents an individual
12 from procuring insurance providing any supplemental health care benefits not
13 provided under the statewide plan, or an employer from providing for the employer's
14 employees, by insurance or otherwise, any supplemental health care benefits not
15 provided under the statewide plan.

16 (2) EMPLOYER-PAID COST SHARING. Nothing in this chapter prevents an employer
17 from paying all or part of any employee cost sharing under s. 260.20.

****NOTE: Do you want to authorize employers to pay some or all of its employees' cost sharing as in this subsection?

18 **SECTION 3. Nonstatutory provisions.**

19 (1) WAIVERS. The department of health and family services shall request
20 waivers from the secretary of the federal department of health and human services
21 for all of the following purposes:

22 (a) To allow the use of federal financial participation to fund the benefits
23 provided under the Statewide Comprehensive Health Insurance Plan of Wisconsin

, to the maximum extent possible,

1 to individuals who are eligible to receive health care benefits under Medical
2 Assistance or the Badger Care health care program or any other assistance related
3 to health care benefits that is financed at least in part with federal funds.

4 (b) To allow individuals who are eligible for coverage under Medical Assistance
5 or the Badger Care health care program, or under any other assistance program
6 related to health care that is financed at least in part with federal funds, to be covered
7 under the Statewide Comprehensive Health Insurance Plan of Wisconsin and to
8 receive the benefits, including the pharmacy benefit, provided under the Statewide
9 Comprehensive Health Insurance Plan of Wisconsin.

10

(END)

Handwritten note in a large oval:

CS
~~XXXX~~ NOTE: This version of the draft does not include an initial applicability or effective date provision.

Other handwritten marks include a checkmark, a large arrow pointing from line 10 to the note, and a scribble with an arrow pointing to the right.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0950/ins
PJK.....

INSERT 1-4 A

1 SECTION 1. 20.505 (4) (fm) of the statutes is created to read:

2 20.505 (4) (fm) *Statewide Comprehensive Health Insurance Plan of Wisconsin.*

3 A sum sufficient equal to ^{amounts collected under s. 71.06 (2c)} to be paid to the Health Insurance Purchasing

4 Corporation of Wisconsin for the operating and administrative costs of the Statewide

5 Comprehensive Health Insurance Plan of Wisconsin.

(END OF INSERT 1-4A)

INSERT 3-9

6 (c) Expend in a state fiscal year in costs to administer the statewide plan not

7 more than one percent of the amount appropriated under s. 20.505 (4) (fm) for that

8 state fiscal year.

(END OF INSERT 3-9)

9

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0950/ins ^{PI}
~~DJZ~~MES:.....

INSERT 1-4 ^B

SECTION 1. 71.06 (2c) [✓] of the statutes is created to read:

71.06 (2c) INDIVIDUALS; AFTER 2005; INCOME SURTAX. The surtax to be [✓] assessed, levied, and collected upon the taxable incomes of all individuals shall be computed at the following rates:

(a) For taxable years beginning after December 31, 2005, [✓] for single individuals, heads of households, and married persons filing separately, on all taxable income ^{*} from \$0 to \$70,000, 10% ^{2 percent}, except that the first \$10,000 of taxable income shall be exempt from taxation under this [✓] subsection.

(b) For taxable years beginning after December 31, 2005, for married persons ^{*} filing jointly, on all taxable income from \$0 to \$140,000, 10% ^{2 percent}, except that the first \$20,000 of taxable income shall be exempt from taxation under this subsection.

SECTION 2. 71.06 (2m) [✓] of the statutes is amended to read:

^{*} 71.06 (2m) RATE CHANGES. If a rate under sub. (1), (1m), (1n), (1p) ^{explain} or (2), or (2c) changes during a taxable year, the taxpayer shall compute the tax for that taxable year by the methods applicable to the federal income tax under section 15 of the internal revenue code.

History: 1987 a. 312; 1989 a. 31; 1993 a. 16; 1997 a. 27, 41, 237; 1999 a. 9; 2001 a. 16.

SECTION 3. 71.06 (2s) (e) of the statutes is created to read:

71.06 (2s) (e) For taxable years beginning after December 31, 2005, [✓] with respect to nonresident individuals, including individuals changing their domicile into or from this state, the surtax brackets under sub. [✓] (2c) shall be multiplied by a fraction, the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income. In this [✓] paragraph, for



Ins 1-4 B contd

married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse, and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses. If an individual and that individual's spouse are not both domiciled in this state during the entire taxable year, the surtax brackets under sub. (2c) on a joint return shall be multiplied by a fraction, the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

SECTION 4. 71.64 (1) (d) of the statutes is created to read:

71.64 (1) (d) Of the amounts withheld in accordance with tables to be prepared by the department under sub. (9) that relate to the surtax under s. 71.06 (2c), the employer is responsible for funding at least 75 percent of the amount that must be withheld, and the employee is responsible for funding the remaining amount that must be withheld.

SECTION 5. 71.64 (9) (b) (intro.) of the statutes is amended to read:

71.64 (9) (b) (intro.) The department shall from time to time adjust the withholding tables to reflect any changes in income tax rates, any applicable surtax or any changes in dollar amounts in s. 71.06 (1), (1m), (1n), (1p) and (2), and (2c) resulting from statutory changes, except as follows:

(end ins 1-4 B)

History: 1987 a. 312; 1989 a. 31; 1997 a. 27, 41; 1999 a. 9.

INS MES D-NOTE

Please review the income surtax provisions of the draft very carefully to insure that I've captured your intent. You may want the department of revenue to review these sections of the bill.

The instructions I received stated that the employer should be required to pay at least 75% of the surtax and the employee should be required to pay any remaining amount of income surtax that must be withheld. I executed this instruction in created s. 71.64 (1) (d), but I'm not sure whether a provision like this would have any practical effect or accomplish your intent. It seems likely to me that an employer could simply modify its pay structure so that the employee, in effect, is paying all of the surtax that must be withheld.

↓

INSMESD-note
cont.

LRB-0950/?ins
~~LRB~~MES:.....

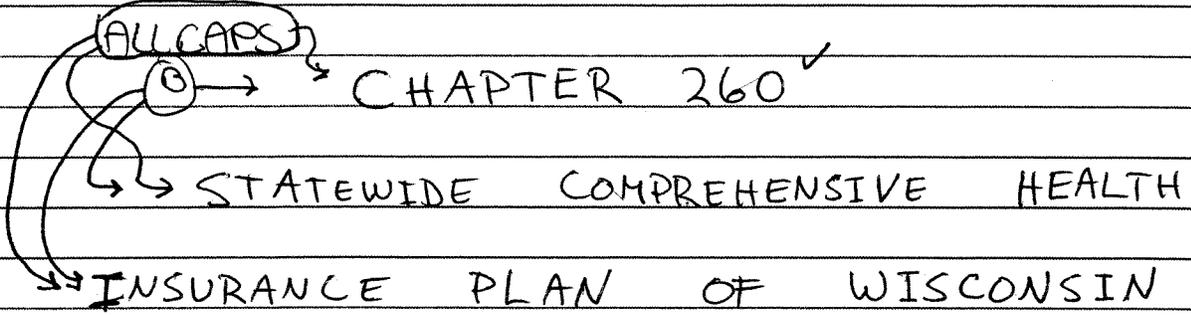
out

how

The instructions I received also stated that there should be some sort of "reconciliation" in April so that an individual who has "paid too much" would get some money back, or so that an individual who "hasn't paid enough" would have to pay more into the system. I need more details about you would like this reconciliation to work. Who figures ~~out~~ whether reconciliation is needed, and what amount needs to be "reconciled?" Who notifies taxpayers that need to pay more, and how is this amount calculated? From what source of funds do those who "paid too much" get a refund? Do they need to apply for a refund? Who sends them the refund amount?

AMEJ

Insert 1-5



(end of ins. § 1-5)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0950/dn
PJK
mes
Jld

1. This version of the draft contains the creation of the corporation, which must be accomplished in the manner provided in this draft because of the prohibition against creating corporations by special act under Article XI, section 1, of the Wisconsin Constitution. This version also contains the language relating to the new, statewide health care plan (do you want a different name from the one provided in the draft?) ~~and~~ the waiver language. This draft does not contain treatment of any statutory provisions outside of the new chapter, including the provisions dealing with health insurance for state employees ~~for the financing provisions~~.

2. You wanted the private corporation to be able to borrow money at the same interest rate as the state. I know of no way to require lenders to do that. Some alternative suggestions are: Require the state to lend money to the corporation at a particular interest rate, or provide that, if the state lends money to the corporation, it be at a particular interest rate. Require the state to provide subsidies to the corporation that would make up the difference between the interest rates obtained by the corporation and a particular rate that the state pays.

3. As we discussed briefly, a court might find, if suit were brought, that ERISA preempts this legislation because it relates to an employee benefit plan. One argument for that proposition is that the new plan replaces any comprehensive coverage that an employer provides or could provide for its employees with a plan that covers all state residents, including all employees in the state, and limits the coverage that an employer may provide for its employees to only supplemental health care benefits.

In *N.Y. Conference of BlueCross v. Travelers Ins.*, 514 U.S. 668 (1995), the Court found that a New York law imposing certain hospital surcharges was not preempted by ERISA even though the legislative scheme affected the relative prices of insurance policies and could have had an indirect effect on employee benefit plans by affecting the choices made by employers. However, the Court acknowledged that a state law with only an indirect economic effect on ERISA plans could be preempted if its effect were so acute as to force a plan "to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers...." *Id.* at 668.

This legislation has more than an acute indirect economic effect on ERISA plans; it prohibits all ERISA plans except for plans that provide only supplemental benefits not

and the financing ✓

(amending and repealing)

in current laws ✓

13

provided under the comprehensive statewide plan. On the other hand, the trend in the courts has been to find state legislation enacted to address health care costs and accessibility not preempted by ERISA. Although I cannot say how a court would decide in this particular case, I want to bring this issue to your attention.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

INS MES D-NOTE ✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0950/P1dn
PJK&MES:jld:pg

December 20, 2004

1. This version of the draft contains the creation of the corporation, which must be accomplished in the manner provided in this draft because of the prohibition against creating corporations by special act under Article XI, section 1, of the Wisconsin Constitution. This version also contains the language relating to the new, statewide health care plan (do you want a different name from the one provided in the draft?), the waiver language, and the financing. This draft does not contain treatment (amending and repealing) of any statutory provisions in current law outside of the new chapter, including the provisions dealing with health insurance for state employees.

2. You wanted the private corporation to be able to borrow money at the same interest rate as the state. I know of no way to require lenders to do that. Some alternative suggestions are: Require the state to lend money to the corporation at a particular interest rate, or provide that, if the state lends money to the corporation, it be at a particular interest rate. Require the state to provide subsidies to the corporation that would make up the difference between the interest rates obtained by the corporation and a particular rate that the state pays.

3. As we discussed briefly, a court might find, if suit were brought, that ERISA preempts this legislation because it relates to an employee benefit plan. One argument for that proposition is that the new plan replaces any comprehensive coverage that an employer provides or could provide for its employees with a plan that covers all state residents, including all employees in the state, and limits the coverage that an employer may provide for its employees to only supplemental health care benefits.

In *N.Y. Conference of BlueCross v. Travelers Ins.*, 514 U.S. 668 (1995), the Court found that a New York law imposing certain hospital surcharges was not preempted by ERISA even though the legislative scheme affected the relative prices of insurance policies and could have had an indirect effect on employee benefit plans by affecting the choices made by employers. However, the Court acknowledged that a state law with only an indirect economic effect on ERISA plans could be preempted if its effect were so acute as to force a plan "to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers...." *Id.* at 668.

This legislation has more than an acute indirect economic effect on ERISA plans; it prohibits all ERISA plans except for plans that provide only supplemental benefits not provided under the comprehensive statewide plan. On the other hand, the trend in the

courts has been to find state legislation enacted to address health care costs and accessibility not preempted by ERISA. Although I cannot say how a court would decide in this particular case, I want to bring this issue to your attention.

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Please review the income surtax provisions of the draft very carefully to insure that I've captured your intent. You may want the Department of Revenue to review these sections of the bill.

The instructions I received stated that the employer should be required to pay at least 75 percent of the surtax and the employee should be required to pay any remaining amount of income surtax that must be withheld. I executed this instruction in created s. 71.64 (1) (d), but I'm not sure whether a provision like this would have any practical effect or accomplish your intent. It seems likely to me that an employer could simply modify its pay structure so that the employee, in effect, is paying all of the surtax that must be withheld.

The instructions I received also stated that there should be some sort of "reconciliation" in April so that an individual who has "paid too much" would get some money back, or so that an individual who "hasn't paid enough" would have to pay more into the system. I need more details about how you would like this reconciliation to work. Who figures out whether reconciliation is needed, and what amount needs to be "reconciled?" Who notifies taxpayers that need to pay more, and how is this amount calculated? From what source of funds do those who "paid too much" get a refund? Do they need to apply for a refund? Who sends them the refund amount?

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