
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: April 15, 2020

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2019 Assembly Bill 1038

Assembly Amendment 4

2019 ASSEMBLY BILL 1038

The following provisions of 2019 Assembly Bill 1038, relating to the state government response to the COVID-19 pandemic, were amended by Assembly Amendment 4.

Education

Assembly Bill 1038 authorizes the Department of Public Instruction (DPI) to waive requirements for private schools participating in the Special Needs Scholarship Program, the Wisconsin Parental Choice Program, the Racine Parental Choice Program, or the Milwaukee Parental Choice Program (collectively, “the choice programs”) and waive requirements for independent charter schools during a particular time period. Under the bill, DPI may waive requirements during the public health emergency declared on March 12, 2020, by Executive Order #72 (EO 72)¹, if schools are closed for at least 10 school days in a school year by the Department of Health Services (DHS) or a local health officer. This waiver applies only to the school year in which schools are closed by DHS or the local health officer.

The bill also allows DPI to establish alternative deadlines for any requirement related to a choice program during a particular time period. DPI may establish an alternative deadline during the public health emergency declared on March 12, 2020, by EO 72, if schools are closed for at least 10 days in a school year by DHS or a local health officer. DPI may create an alternate deadline if the original deadline either: (1) occurs during the period beginning on the first day schools are closed by DHS or a local health officer and ending 120 days after the last day schools are closed by DHS or a local health officer; or (2) is a deadline for a requirement that impacts a date during the period from the first day schools are closed by DHS or a local health officer and ending 120 days after the last day schools are closed by DHS or a local health officer.

Assembly Amendment 4 changes the time period during which DPI may waive requirements for choice programs and independent charter schools and establish alternate deadlines for choice program requirements. The amendment also allows DPI to take these actions regardless of whether schools are closed by DHS or a local health officer.

Under the amendment, DPI may waive requirements or create alternate deadlines beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020, though a waiver of requirements only applies to the 2019-20 school year. In contrast, under the bill, DPI could only waive requirements and create alternate deadlines during the public health emergency, and could only do so if schools were closed for at least 10 school days by DHS or a local health officer. Further, under the bill, DPI could only waive requirements for the school year in which schools were closed by DHS or a local health officer.

¹On March 12, 2020, Governor Tony Evers signed EO 72 declaring a state of emergency related to public health under s. 323.10, Stats., in response to the COVID-19 pandemic.

The amendment also changes slightly the types of choice program deadlines DPI may alter. Under the amendment, DPI may establish alternate deadlines for choice program requirements if the original deadline is either: (1) a deadline that occurs during the period beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020; or (2) a deadline for a requirement that affects a date during the period beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020. In contrast, the bill did not use a set ending date to determine qualifying deadlines DPI could alter, and instead, applied to deadlines occurring up to 120 days after the last day schools are closed by DHS or a local health officer.

Temporary Emergency Health Care Providers

Assembly Bill 1038 authorizes the Department of Safety and Professional Services (DSPS) to grant temporary emergency credentials to former health care providers and health care providers from other states. To qualify, a former health care provider must have held the credential at any time within the prior five years and the credential cannot have ever been revoked, limited, suspended, or denied renewal. A health care provider from another state must hold an out-of-state credential that authorizes or qualifies him or her to perform acts that are substantially the same as the acts authorized under the Wisconsin credential.

Under the bill, temporary emergency credentials may be issued to any of the following health care providers: nurses, dentists, physicians, physician assistants, perfusionists, respiratory care practitioners, psychologists, social workers, marriage and family therapists, professional counselors, clinical substance abuse counselors, and any other profession identified by DHS.

Temporary credentials expire 90 days after the conclusion of the period covered by the public health emergency declared in EO 72.

Assembly Amendment 4 deletes DSPS's authority to issue temporary emergency credentials. Instead, it authorizes former health care providers and health care providers from other states to practice temporarily in Wisconsin without obtaining a Wisconsin credential, until 30 days after the conclusion of the period covered by the public health emergency declared in EO 72, if all of the following criteria are met:

- The practice by the health care provider is necessary for an identified health care facility to ensure the continued and safe delivery of health care services.
- The identified health care facility's needs reasonably prevented the health care provider from obtaining a credential before beginning to provide health care services at the facility.
- The health care provider applies for a temporary credential or permanent credential within 10 days of first providing health care services at a health care facility.
- The health care facility notifies DSPS within five days of the date on which the health care provider begins providing health care services at the facility.

Similar to under the bill, to qualify, a former health care provider must have held the credential at any time within the prior five years, and a health care provider from another state must hold an out-of-state credential that authorizes or qualifies him or her to perform acts that are substantially the same as the acts authorized under the Wisconsin credential.

These provisions apply to the following health care providers: all of the provider types listed in the bill, chiropractors, physical therapists, physical therapy assistants, podiatrists, dietitians, athletic trainers, occupational therapists, occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, speech-language pathologists, audiologists, massage therapists, and bodywork

therapists. DHS does not have authority under the amendment to identify additional qualifying professions.

Payments for Services by Out-of-Network Providers

Assembly Bill 1038 prohibits a defined network plan, including a health maintenance organization, or preferred provider plan from requiring an enrollee of the plan to pay more for a service, treatment, or supply provided by an out-of-network provider than what the enrollee would pay for a service, treatment, or supply provided by a provider in the plan's network. However, this prohibition applies only to a service, treatment, or supply that is related to diagnosis or treatment for COVID-19 and that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency. The bill specifies how a plan must reimburse out-of-network providers under these circumstances.

The bill also provides the manner in which any health care provider or facility that provides a service, treatment, or supply to an enrollee of a defined network or preferred provider plan, but is not a participating provider of that plan, must accept payment for such services, treatments, or supplies.

The bill provides that these provisions apply during the public health emergency declared by the Governor under EO 72 or during the public health emergency declared by the secretary of the federal department of health and human services in response to the COVID-19 pandemic.

Assembly Amendment 4 provides that these provisions apply only during the public health emergency declared by the Governor under EO 72 and for the 60 days following the date that the state of emergency terminates. The amendment also deletes the references to the applicability of these provisions during the public health emergency declared by the secretary of the federal department of health and human services in response to the COVID-19 pandemic.

Immunity From Civil Liability for Health Care Providers

Assembly Bill 1038 provides immunity from civil liability for health care professionals and providers, and their employees, agents or contractors, for certain actions or omissions to address or respond to a coronavirus outbreak.

Specifically, under the bill, any health care professional, health care provider, or employee, agent or contractor of a health care provider or professional, is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions taken in providing services to a 2019 novel coronavirus outbreak if all of the following conditions apply:

- The act or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared by EO 72 relating to the 2019 novel coronavirus pandemic and for the 60 days following the date on which the state of emergency terminates.
- The actions or omissions either occur during a good faith response to the emergency, or are substantially consistent with: (1) any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or respond to the emergency; or (2) any guidance published by DHS, or the U.S. Department of Health and Human Services or its divisions or agencies, relied upon in good faith.
- The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.

The immunity created under the bill does not apply if certain current law provisions providing indemnification or immunity apply.

Assembly Amendment 4 removes the reference to actions or omissions “taken in providing services to address or in response to a 2019 novel coronavirus outbreak” and instead clarifies that, to qualify for immunity, the action or omission must be committed either: (1) during the state of emergency declared by EO 72; or (2) during the 60 days following the date on which the order terminates.

The amendment also modifies the language relevant to a person’s “good faith response to the emergency.” Under the bill, the immunity provision may apply if the action or omission occurs during the person’s good faith response to the emergency. The amendment provides that an action or omission may qualify for immunity if it relates to health services provided or not provided in good faith.

Worker’s Compensation

Assembly Bill 1038 creates a presumption that a first responder’s diagnosis of COVID-19 is employment related, for purposes of worker’s compensation eligibility. A “first responder” includes an employee or volunteer for an employer that provides law enforcement, firefighting, or medical or other emergency services, for patients or members of the public who require emergency services. The presumption applies to a diagnosis of COVID-19 that was caused during the public health emergency declared by EO 72 through 30 days after the termination of the order, and may be rebutted by evidence that the exposure occurred outside of the first responder’s work for the employer.

Assembly Amendment 4 specifies that the first responder must have been exposed to persons with confirmed cases of COVID-19 in the course of employment, for purposes of worker’s compensation eligibility. The amendment also revises the covered first responders to specify that in addition to an employee or volunteer for an employer that provides law enforcement or firefighting services, a first responder includes an employee or volunteer for an employer that provides medical treatment for COVID-19 (rather than medical or other emergency services).

Unemployment Insurance

Under current law, an employer may utilize a “work-share” structure to keep workers employed who would otherwise be laid off. The program uses partial unemployment benefits combined with continued, but reduced, work hours. **Assembly Bill 1038** creates a more accessible, modified work-share program for employers to utilize in lieu of laying persons off. For example, during the period covered by the bill: (1) work-share plans must cover at least two positions that are filled on the effective date of the work-share program, rather than at least the greater of 20 positions or 10 percent of employees in a work unit under current law; (2) the maximum reduction in working hours under a work-share program may be either 60 percent of the normal hours per week of the employees included under a work-share plan, or any other maximum provided by federal law, whichever is greater, rather than the 50-percent reduction provided under current law; (3) work-share plans may cover any employees of the employer; rather than be limited to a particular work unit of the employer as provided in current law; and (4) reduced working hours need not be apportioned equitably among employees in the work-share program. The modified program requirements apply to a work-share plan that is submitted by an employer between the bill’s enactment and December 31, 2020.

Assembly Amendment 4 allows an employer with a work-share plan that was approved by the Department of Workforce Development prior to the bill’s enactment to submit a plan modification so that the plan is subject to the modified program requirements.

Property Tax Appeals

Generally, current law requires timely payment of property taxes in order for a taxpayer to pursue various property tax appeals. For taxes due and payable in 2020, **2019 Assembly Bill 1038** specifies that, for a claim of unlawful tax under s. 74.35, Stats., or a claim of excessive assessment under s. 74.37,

Stats., an appeal may be maintained if the taxes are paid by October 1, 2020, or by any installment date by which taxes are due after October 1, 2020.

For taxes due and payable in 2020, **Assembly Amendment 4** provides that the same due date of October 1, 2020, or any later installment date, also applies to taxes paid under protest as described in s. 70.511 (2), Stats., which directs that a tax levy must be based on the contested assessed value of a property when the reviewing authority has not made a determination prior to the time of the tax levy.

Waiver of Property Tax Interest and Penalties

Current law specifies interest of one percent per month or fraction of a month for delinquent property taxes and authorizes a county, or the City of Milwaukee, to impose a penalty of up to 0.5 percent per month or fraction of a month on delinquent property taxes in addition to the interest due.

2019 Assembly Bill 1038 specifies that a taxation district (a city, village, or town) may, after making a finding of general or case-by-case hardship, waive interest and penalties on installment payments of property taxes due and payable after April 1, 2020, if the total amount due and payable in 2020 is paid on or before October 1, 2020. Under this provision, interest and penalties shall accrue from October 1, 2020, for any taxes payable in 2020 that are delinquent after that date.

Assembly Amendment 4 specifies that a taxation district may not waive interest and penalties as described in the bill unless the county board where the taxation district is located first adopts a resolution authorizing such waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution.

If interest and penalties are waived under this provision, the amendment also specifies that the county shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under s. 74.29 (1), Stats., and shall settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020 settlement must be distributed proportionally to the underlying taxing jurisdictions.

Plan for Supporting Affected Industries

Assembly Bill 1038 requires the Wisconsin Economic Development Corporation (WEDC) to submit a report to the Legislature and the Governor by June 30, 2020. The report must include a plan for providing support to the major industries in this state that have been adversely affected by the COVID-19 public health emergency, including tourism, manufacturing, agriculture, construction, retail, and services.

Assembly Amendment 4 adds the forest products industry to the list of industries that WEDC is specifically required to address in the plan.

BILL HISTORY

Representative Vos offered Assembly Amendment 4 on April 14, 2020. On the same date, the Assembly adopted the amendment on a vote of Ayes, 63; Noes, 36, and passed the bill, as amended, on a vote of Ayes 97; Noes, 2.

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