



1999 ASSEMBLY BILL 63

January 28, 1999 - Introduced by Representatives MUSSER, TURNER, RYBA, BOCK, LA FAVE, SYKORA, AINSWORTH, WASSERMAN, HEBL, HUBER, GOETSCH, OLSEN, HOVEN, HANDRICK, LASSA, KREUSER, POCAN, MILLER, ZIEGELBAUER, SINICKI, BERCEAU, ALBERS, PETTIS, HUNDERTMARK, J. LEHMAN, GRONEMUS, STASKUNAS, SERATTI, SKINDRUD, BOYLE, KESTELL, PLOUFF and PORTER, cosponsored by Senators MOEN, BRESKE, BAUMGART, WIRCH, PLACHE, ROBSON, GEORGE, DECKER, CLAUSING, FITZGERALD and ROESSLER. Referred to Committee on Small Business and Economic Development.

1 **AN ACT to repeal** 13.94 (1) (p), 15.07 (1) (b) 21., 15.165 (5), 20.515 (2) (title),
2 20.515 (2) (a), 20.515 (2) (g) and subchapter X of chapter 40 [precedes 40.98];
3 **to amend** 40.02 (26) (intro.), 40.02 (26) (intro.), 40.02 (28) and 40.02 (28); and
4 **to create** 13.94 (1) (p), 15.07 (1) (b) 21., 15.165 (5), 20.515 (2) (title), 20.515 (2)
5 (a), 20.515 (2) (g) and subchapter X of chapter 40 [precedes 40.98] of the
6 statutes; **relating to:** requiring the department of employe trust funds to
7 establish a health care coverage plan for employers in the private sector,
8 creating a private employer health care coverage board and making an
9 appropriation.

Analysis by the Legislative Reference Bureau

This bill requires the department of employe trust funds (DETF), after consulting with the departments of commerce and health and family services and the office of the commissioner of insurance, to design, establish and administer a health care coverage plan for employers in the private sector. The bill also creates a private employer health care coverage board (PEHCCB) that is responsible for approving the health care coverage plan before DETF may implement the plan. The membership of the PEHCCB consists of the secretary of employe trust funds, the secretary of

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health and family services, a member who represents health maintenance organizations, a member who represents hospitals, a member who represents insurance agents, a member who represents insurers, two employes who are eligible to receive health care coverage under the plan and whose employer employs not more than 50 employes, two members who represent employers that employ not more than 50 employes and who are eligible to offer health care coverage under the plan, a member who is a physician and two members who represent the public interest.

The key features of the private employer health care coverage plan are as follows:

1. Any employer in the private sector that employs two or more employes is eligible to participate in the plan.

2. Any employer that participates in the plan must offer the health care coverage to all of its permanent employes who have a normal work week of 30 or more hours and may offer the coverage to any of its other employes.

3. Any employer that participates in the plan must provide health care coverage under the plan to at least 50% (or a higher percentage specified by the PEHCCB) of its permanent employes who have a normal work week of 30 or more hours.

4. Any employer that participates must pay, on behalf of each employe who has coverage, at least 50% but not more than 100% of the lowest premium that would be available to the employer for the coverage.

5. Any employer that participates in the plan and that voluntarily terminates the coverage must wait at least three years before the employer may participate again.

6. Any insurer that offers the plan must provide coverage under the plan to any employer that applies for coverage, without regard to the health condition or claims experience of any individual who would have coverage, as long as the employer pays the premium and agrees to comply with plan requirements.

7. The health care coverage plan is subject to all provisions of the state insurance code to the same extent as any other group health benefit plan that is offered in the private sector.

8. The plan may not be combined with any health care coverage plan offered by DETF to state employes.

9. The plan may only be sold by licensed insurance agents in this state.

10. DETF is prohibited from selling any health care coverage under the plan or enrolling any employe under the plan, but DETF may publicize the availability of the health care coverage plan for employers.

11. DETF is authorized to contract with any person to provide services relating to the administration of the health care coverage plan.

12. The commission rate for the sale of the plan is set by the PEHCCB.

13. DETF is required to charge employers who participate in the plan a fee to cover the costs of designing, establishing and administering the plan.

14. The plan is sunset on January 1, 2007.

Under the bill, the PEHCCB is required to report annually to the governor and the legislature on the operation of the plan. In addition, no later than January 1,

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2005, the PEHCCB must submit a report to the governor and the legislature that offers recommendations as to whether DETF should continue to administer the plan, whether a different state agency should administer the plan or whether the plan should be administered by a private nonprofit organization. If the PEHCCB recommends that a different state agency administer the health care coverage plan or that the health care coverage plan be administered by a private nonprofit organization, the PEHCCB must submit proposed legislation relating to the recommendation at the time the PEHCCB submits its report.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 13.94 (1) (p) of the statutes is created to read:

2 13.94 (1) (p) No later than January 1, 2005, prepare a program evaluation audit
3 of the private employer health care coverage plan established under subch. X of ch.
4 40. The legislative audit bureau shall file a copy of the audit report under this
5 paragraph with the distributees specified in par. (b).

6 **SECTION 2.** 13.94 (1) (p) of the statutes, as created by 1999 Wisconsin Act
7 (this act), is repealed.

8 **SECTION 3.** 15.07 (1) (b) 21. of the statutes is created to read:

9 15.07 (1) (b) 21. Private employer health care coverage board.

10 **SECTION 4.** 15.07 (1) (b) 21. of the statutes, as created by 1999 Wisconsin Act
11 (this act), is repealed.

12 **SECTION 5.** 15.165 (5) of the statutes is created to read:

13 15.165 (5) PRIVATE EMPLOYER HEALTH CARE COVERAGE BOARD. (a) There is created
14 in the department of employe trust funds a private employer health care coverage
15 board consisting of the secretary of employe trust funds or his or her designee, the
16 secretary of health and family services or his or her designee and the following
17 members appointed for 3-year terms:

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- 1 1. One member who represents health maintenance organizations.
- 2 2. One member who represents hospitals.
- 3 3. One member who represents insurance agents, as defined in s. 628.02 (4).
- 4 4. Two members who are employes eligible to receive health care coverage
- 5 under subch. X of ch. 40 and whose employer employs not more than 50 employes.
- 6 5. One member who represents insurers.
- 7 6. Two members who are, or who represent, employers that employ not more
- 8 than 50 employes and who are eligible to offer health care coverage under subch. X
- 9 of ch. 40.
- 10 7. One member who is a physician, as defined in s. 448.01 (5).
- 11 8. Two members who represent the public interest.

12 (b) The secretary of employe trust funds or his or her designee and the secretary
13 of health and family services or his or her designee shall be nonvoting members.

14 **SECTION 6.** 15.165 (5) of the statutes, as created by 1999 Wisconsin Act (this
15 act), is repealed.

16 **SECTION 7.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
17 the following amounts for the purposes indicated:

	1999-00	2000-01
20.515 Employe trust funds, department of		
(2) PRIVATE EMPLOYER HEALTH CARE COVERAGE PLAN		
(a) Private employer health care		
coverage plan; start-up costs GPR A	-0-	-0-

23 **SECTION 8.** 20.515 (2) (title) of the statutes is created to read:
24 20.515 (2) (title) PRIVATE EMPLOYER HEALTH CARE COVERAGE PLAN.

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1 **SECTION 9.** 20.515 (2) (title) of the statutes, as created by 1999 Wisconsin Act
2 (this act), is repealed.

3 **SECTION 10.** 20.515 (2) (a) of the statutes is created to read:

4 20.515 (2) (a) *Private employer health care coverage plan; start-up costs.* The
5 amounts in the schedule for the start-up costs for designing, establishing and
6 administering the private employer health care coverage plan under subch. X of ch.
7 40.

8 **SECTION 11.** 20.515 (2) (a) of the statutes, as created by 1999 Wisconsin Act
9 (this act), is repealed.

10 **SECTION 12.** 20.515 (2) (g) of the statutes is created to read:

11 20.515 (2) (g) *Private employer health care coverage plan.* All moneys received
12 under subch. X of ch. 40 from employers who elect to participate in the private
13 employer health care coverage plan under subch. X of ch. 40, for the costs of
14 designing, establishing and administering the plan.

15 **SECTION 13.** 20.515 (2) (g) of the statutes, as created by 1999 Wisconsin Act
16 (this act), is repealed.

17 **SECTION 14.** 40.02 (26) (intro.) of the statutes is amended to read:

18 40.02 (26) (intro.) "Employee" means any person who receives earnings as
19 payment for personal services rendered for the benefit of any employer including
20 officers of the employer, except as provided in subch. X. An employe is deemed to
21 have separated from the service of an employer at the end of the day on which the
22 employe last performed services for the employer, or, if later, the day on which the
23 employe-employer relationship is terminated because of the expiration or
24 termination of leave without pay, sick leave, vacation or other leave of absence. A
25 person shall not be considered an employe if a person:

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1 **SECTION 15.** 40.02 (26) (intro.) of the statutes, as affected by 1999 Wisconsin
2 Act (this act), is amended to read:

3 40.02 **(26)** (intro.) “Employe” means any person who receives earnings as
4 payment for personal services rendered for the benefit of any employer including
5 officers of the employer, ~~except as provided in subch. X.~~ An employe is deemed to
6 have separated from the service of an employer at the end of the day on which the
7 employe last performed services for the employer, or, if later, the day on which the
8 employe–employer relationship is terminated because of the expiration or
9 termination of leave without pay, sick leave, vacation or other leave of absence. A
10 person shall not be considered an employe if a person:

11 **SECTION 16.** 40.02 (28) of the statutes is amended to read:

12 40.02 **(28)** “Employer” means the state, including each state agency, any
13 county, city, village, town, school district, other governmental unit or
14 instrumentality of 2 or more units of government now existing or hereafter created
15 within the state ~~and~~, any federated public library system established under s. 43.19
16 whose territory lies within a single county with a population of 500,000 or more and
17 a local exposition district created under subch. II of ch. 229, except as provided under
18 ss. 40.51 (7) and 40.61 (3), ~~or a local exposition district created under subch. II of ch.~~
19 ~~229 and subch. X.~~ Each employer shall be a separate legal jurisdiction for OASDHI
20 purposes.

21 **SECTION 17.** 40.02 (28) of the statutes, as affected by 1999 Wisconsin Act
22 (this act), is amended to read:

23 40.02 **(28)** “Employer” means the state, including each state agency, any
24 county, city, village, town, school district, other governmental unit or
25 instrumentality of 2 or more units of government now existing or hereafter created

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1 within the state, any federated public library system established under s. 43.19
2 whose territory lies within a single county with a population of 500,000 or more and
3 a local exposition district created under subch. II of ch. 229, except as provided under
4 ss. 40.51 (7) and 40.61 (3) ~~and subch. X~~. Each employer shall be a separate legal
5 jurisdiction for OASDHI purposes.

6 **SECTION 18.** Subchapter X of chapter 40 [precedes 40.98] of the statutes is
7 created to read:

CHAPTER 40**SUBCHAPTER X****PRIVATE EMPLOYER HEALTH****CARE COVERAGE**

12 **40.98 Health care coverage. (1)** In this subchapter:

13 (ar) "Board" means the private employer health care coverage board.

14 (b) "Dependent" means a spouse, an unmarried child under the age of 19 years,
15 an unmarried child who is a full-time student under the age of 21 years and who is
16 financially dependent upon the parent, or an unmarried child of any age who is
17 medically certified as disabled and who is dependent upon the parent.

18 (c) "Employee" means any person who receives earnings as payment for personal
19 services rendered for the benefit of any employer including officers of the employer.
20 An employe is considered to have separated from the service of an employer at the
21 end of the day on which the employe last performed services for the employer, or, if
22 later, the day on which the employe-employer relationship is terminated because of
23 the expiration or termination of leave without pay, sick leave, vacation or other leave
24 of absence. A person shall not be considered an employe if any of the following
25 applies:

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1 1. The person is employed under a contract involving the furnishing of more
2 than personal services.

3 2. The person is customarily engaged in an independently established trade,
4 business or profession providing the same type of services to more than one employer
5 and the person's services to an employer are not compensated for on a payroll of that
6 employer.

7 3. The person is a patient or inmate of a hospital, home or institution and
8 performs services in the hospital, home or institution.

9 (d) "Employer" means any person doing business or operating an organization
10 in this state and employing at least 2 employes. "Employer" does not include an
11 employer as defined in s. 40.02 (28).

12 (e) "Health care coverage plan" means the health care coverage plan
13 established under sub. (2) (a).

14 (f) "Insurer" has the meaning given in s. 600.03 (27).

15 **(2)** (a) The department shall design, establish and administer an actuarially
16 sound health care coverage plan for employers that provides coverage beginning not
17 later than January 1, 2002. In designing the health care coverage plan, the
18 department shall consult with the departments of commerce and health and family
19 services and the office of the commissioner of insurance. In establishing the health
20 care coverage plan, the department shall solicit and accept bids and enter into
21 contracts with insurers who are to provide health care coverage under the health
22 care coverage plan. The health care coverage plan is subject to the provisions of chs.
23 600 to 646 that apply to group health benefit plans, as defined in s. 632.745 (9), to
24 the same extent as any other group health benefit plan, as defined in s. 632.745 (9).

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1 Before the health care coverage plan may be implemented, the board must approve
2 the plan.

3 (am) The health care coverage plan established under par. (a) may not be
4 combined with any health care coverage plan under subch. IV.

5 (b) The health care coverage plan shall require that all insurance rates under
6 the plan be published annually in a single publication that is made available to
7 employers and employees. The rates shall be listed by county and by any other factor
8 that the department considers appropriate.

9 (c) The health care coverage plan shall have an enrollment period that is
10 established by the board.

11 (d) The department shall charge employers who participate in the health care
12 coverage plan a fee to cover the department's cost in designing, establishing and
13 administering the health care coverage plan. All moneys received under this
14 paragraph shall be credited to the appropriation account under s. 20.515 (2) (g).

15 (e) The department may not sell any health care coverage plan to an employer
16 or enroll any employe in the health care coverage plan, but the department may
17 publicize the availability of the health care coverage plan for employers.

18 (f) The department may enter into a contract with any person to provide
19 services relating to the administration of the health care coverage plan.

20 **(3)** Any employer who participates in the health care coverage plan shall do all
21 of the following:

22 (a) Offer health care coverage under the plan to all of its permanent employes
23 who have a normal work week of 30 or more hours and may offer health care coverage
24 under the plan to any of its other employes.

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1 (b) Provide health care coverage under the plan to at least 50% of its permanent
2 employees who have a normal work week of 30 or more hours and who do not otherwise
3 receive health care coverage as a dependent under any other plan that is not offered
4 by the employer or a percentage of such employees specified by the board, whichever
5 percentage is greater.

6 (c) Pay for each employe at least 50% but not more than 100% of the lowest
7 premium rate that would be available to the employer for that employe's coverage
8 under the health care coverage plan.

9 (d) Make premium payments for the health care coverage of its employees in the
10 manner specified by the board.

11 **(4)** Any employer that provides health care coverage for its employees under the
12 plan and that voluntarily terminates coverage under the plan is not eligible to
13 participate in the plan for at least 3 years from the date that coverage is terminated.

14 **(5)** Any insurer that offers the health care coverage plan shall provide coverage
15 under the plan to any employer that applies for coverage, and to all of the employer's
16 employees who elect coverage under the health care coverage plan, without regard to
17 the health condition or claims experience of any individual who would be covered
18 under the health care coverage plan if all of the following apply:

19 (a) The employer agrees to pay the premium required for coverage under the
20 health care coverage plan.

21 (b) The employer agrees to comply with all provisions of the health care
22 coverage plan that apply generally to a policyholder or an insured without regard to
23 health condition or claims experience.

24 **(6)** (a) The health care coverage plan may only be sold by insurance agents
25 licensed under ch. 628.

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1 (b) An insurance agent may not sell any health care coverage under the health
2 care coverage plan on behalf of an insurer unless he or she is employed by the insurer
3 or has a contract with the insurer to sell the health care coverage on behalf of the
4 insurer.

5 (c) The board shall set, and may adjust as often as semiannually, the
6 commission rate for the sale of a policy under the health care coverage plan. The rate
7 shall be based on the average commission rate that insurance agents are paid in the
8 state for the sale of comparable health insurance policies at the time that the rate
9 is set or adjusted.

10 (d) An insurer shall specify on the first page of any policy sold under the health
11 care coverage plan the amount of the commission paid to the insurance agent.

12 **(7)** (a) Annually, on or before December 31, the board shall submit a report to
13 the appropriate standing committees under s. 13.172 (3) and to the governor on the
14 operation of the health care coverage plan. The report shall specify the number of
15 employers participating in the health care coverage plan, calculate the costs of the
16 health care coverage plan to employers and their employees and include
17 recommendations for improving the health care coverage plan.

18 (b) No later than January 1, 2005, the board shall submit a report to the
19 appropriate standing committees under s. 13.172 (3) and to the governor that offers
20 recommendations as to whether the department should continue to administer the
21 health care coverage plan, whether a different state agency should administer the
22 health care coverage plan or whether the health care coverage plan should be
23 administered by a private nonprofit organization. If the board recommends that a
24 different state agency administer the health care coverage plan or that the health
25 care coverage plan be administered by a private nonprofit organization, the board

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1 shall submit proposed legislation to the appropriate standing committees under s.
2 13.172 (3) at the time that the board submits its report.

3 **SECTION 19.** Subchapter X of chapter 40 [precedes 40.98] of the statutes, as
4 created by 1999 Wisconsin Act (this act), is repealed.

5 **SECTION 20. Nonstatutory provisions.**

6 (1) PRIVATE EMPLOYER HEALTH CARE COVERAGE BOARD. Notwithstanding the
7 length of terms specified for the members of the private employer health care
8 coverage board under section 15.165 (5) of the statutes, as created by this act, the
9 initial members shall be appointed for the following terms:

10 (a) The members specified under section 15.165 (5) (a) 1., 3. and 7. of the
11 statutes, as created by this act, for terms expiring on May 1, 2002.

12 (b) The members specified under section 15.165 (5) (a) 2., 5. and 8. of the
13 statutes, as created by this act, for terms expiring on May 1, 2003.

14 (c) The members specified under section 15.165 (5) (a) 4. and 6. of the statutes,
15 as created by this act, for terms expiring on May 1, 2004.

16 (2) POSITION AUTHORIZATIONS FOR THE DEPARTMENT OF EMPLOYEE TRUST FUNDS. The
17 authorized FTE positions for the department of employee trust funds are increased
18 by 3.5 GPR positions on the effective date of this subsection, to be funded from the
19 appropriation under section 20.515 (2) (a) of the statutes, as created by this act, for
20 the purpose of designing, establishing and administering the private employer
21 health care coverage plan under subchapter X of chapter 40 of the statutes, as
22 created by this act.

23 **SECTION 21. Effective dates.** This act takes effect on the day after publication,
24 except as follows:

