



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #285

### **Health Insurance Coverage for Domestic Partners of State Employees and State Annuitants (ETF)**

#### *Base Item*

[LFB 2007-09 Budget Summary: Page 133, #8]

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#### **CURRENT LAW**

The Group Insurance Board offers health care coverage plans for state employees, local government employees, school district employees, and Wisconsin Retirement System (WRS) annuitants. For state employees, the Board must offer at least two insured or self-insured health care coverage plans providing substantially equivalent hospital and medical benefits, including a health maintenance organization or a preferred provider plan, if those health care plans are determined by the Board to be available in the area of the employee's place of employment and are approved by the Board. The Board is required to place each of the plans into one of three premium payment tiers established in accordance with standards adopted by the Board. The tiers must be separated according to the employee's share of premium costs.

The Board must provide both a family coverage option for persons desiring to cover eligible dependents, and a single coverage option for other eligible persons. The Department of Employee Trust Funds (ETF) is authorized to promulgate rules to define the term "dependent" for each group insurance plan. For health insurance purposes, the Department's rules define a dependent as an employee's spouse and an employee's unmarried child who is dependent upon the employee or the employee's former spouse for at least 50% of support and maintenance. Child includes a natural child, stepchild, adopted child, a child in certain adoptive placements, and a legal ward who became a legal ward of the employee or the employee's former spouse prior to age 19, and who is: (a) under the age of 19; (b) age 19 or over but less than age 25, if a full-time student; or (c) age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

## **GOVERNOR**

For the purpose of group health insurance coverage offered to state employees or to WRS annuitants who were employed by a state agency on the date of termination of covered employment, specify that the definition of "dependent" would include a domestic partner, a domestic partner's minor children dependent on the employee for support and maintenance, or the domestic partner's children (and stepchildren) of any age, if handicapped to an extent requiring continued dependence. The provision would permit state employees and state annuitants to include domestic partners in the state employee health insurance coverage plans offered by the Group Insurance Board. [As drafted, the intent of the provision would appear to also include coverage of a domestic partner's minor children dependent on an annuitant for support and maintenance; however, reference to "an annuitant" is not specifically included.]

Define "domestic partner" as an individual in a domestic partnership. Provide that a "domestic partnership" would mean a relationship between two individuals that satisfies all of the following: (a) each individual is at least 18 years old and otherwise competent to enter into a contract; (b) neither individual is married to, or in a domestic partnership with, another individual; (c) the two individuals are not related by blood in any way that would prohibit marriage under state law; (d) the two individuals consider themselves to be members of each other's immediate family; and (e) the two individuals agree to be responsible for each other's basic living expenses. Specify that these provisions would first apply to coverage under the group insurance plans offered by the Group Insurance Board on January 1, 2009.

## **DISCUSSION POINTS**

1. The bill would provide a definition of "domestic partner" and a "domestic partnership" in statute. These definitions are consistent with the definitions employed in other jurisdictions where domestic partners are provided with some access to employee benefits. Both same-sex and opposite-sex partners would be covered under the definition provided in the bill.

2. Under the regular and supplemental accumulated sick leave conversion credit program, unused sick leave is converted into a credit amount to pay for future health insurance premiums. By including a domestic partner in the definition of a dependent, the bill's provisions would also have the effect of making the credits available to a domestic partner, in the event the domestic partner is a surviving insured dependent of an eligible employee who is deceased. This change would not be expected to affect the state contribution rates that fund this program.

3. While the bill does not specify in statute a process to determine eligibility, enroll eligible participants, and implement some of the administrative aspects of domestic partner health insurance coverage, such a process would typically be established under the Group Insurance Board's existing rule-making authority. Consequently, the Legislature would also have the opportunity to review those features of the benefit.

4. It is likely this process would require the registration of the employee and his or her

domestic partner with the employer (the state) by certifying, in writing, that: (a) all the required eligibility conditions described above have been satisfied; (b) any change in the domestic partner relationship will be reported to the employer in a timely manner; and (c) the insured parties acknowledge the existence of any other provisions or restrictions that may apply. Since enrollment and administration of health care coverage for state employees is currently handled by each state agency for its respective employees, it is anticipated that the certification process for domestic partner health care coverage would likewise be administered by each state agency.

5. The Group Insurance Board and its consulting actuary have evaluated domestic partner group health insurance coverage proposals that have been offered during prior legislative sessions. ETF officials indicate that these costing assumptions continue to be valid for the provisions contained in SB 40. The Board's actuary has concluded that same-sex domestic partners have not been shown to be any more costly to insure than opposite sex couples. As a result, ETF officials have concluded that the increase in state costs would result from more individuals enrolling in the state employee group health insurance plan coverage and not from any increased risk factors for the overall state employee health insurance pool.

6. More specifically, state employee health insurance costs relating to the addition of a domestic partner to the employee's group health insurance contract would increase only if the state employee's original contract was changed from single coverage to family coverage. For those state employees currently enrolled under family coverage, the addition of a domestic partner would not result in higher costs, since it is unlikely that there would be any further change to the family coverage rate that already applies.

7. The ETF actuarial evaluation, based on these factors, as well as data relating to the provision of domestic partner coverage in other jurisdictions, concludes that health insurance costs for state employees would increase between 1% and 2%, if coverage is extended to same-sex and opposite-sex domestic partners.

8. In 2007, the annual costs to provide state employee group health insurance coverage, including both employer and employee costs, is projected to total \$807.6 million (all funds). Based on these costs, the proportion of premiums paid by the employer, and the projected 1% to 2% increase, the annualized state costs for coverage of domestic partners would be estimated to fall within the range of \$7.6 million to \$15.2 million (all funds).

9. Because the provision for domestic partner coverage would first apply to coverage beginning on January 1, 2009, the initial fiscal effect would be limited to the last six months of the 2007-09 biennium. Based on projected health insurance premium growth rates, and anticipated increases in the employee contribution levels, state costs for the domestic partner provisions in the bill would fall in the range of \$4.6 million to \$9.2 million (all funds) for this six-month period.

10. The additional administrative costs associated with domestic partnership coverage are difficult to estimate. However, the following types of administrative expenses would be expected to accrue to each state agency: (a) the costs of registering domestic partners and

administering their health care coverage; and (b) tracking and reporting additional taxable benefits for state employees, as explained below.

11. The tax consequences of the provisions under the bill would vary, depending on the status of the domestic partner. Under federal law, the value of employee health insurance paid for by an employer, including family coverage for spouses and dependents, is excluded from the employee's gross income. However, employer-provided health insurance for a domestic partner of an employee is only excludable from an employee's income if the domestic partner qualifies as a dependent of the employee under federal tax law.

12. Under federal law, to which state law conforms, a domestic partner would qualify as a taxpayer's dependent for purposes of the exclusion described above if the domestic partner: (a) had the same principal abode as the taxpayer and was a member of the taxpayer's household during the entire taxable year of the taxpayer; (b) was not the taxpayer's spouse at any time during the taxable year; (c) was a U.S. citizen or a resident of the U.S. or a country contiguous to the U.S.; and (d) did not file a joint return with a spouse for the same taxable year. Generally, a domestic partner living with a taxpayer as a member of the taxpayer's household would not qualify as a dependent of the taxpayer unless the taxpayer provided more than 50% of the domestic partner's support and the domestic partner had gross income below a specified maximum amount that is adjusted annually for inflation. For tax year 2007, the specified maximum income level is \$3,400.

13. Under federal and state income tax provisions, an employee receiving employer-provided health insurance for a domestic partner who is not the employee's dependent would have to include in the employee's income the excess of the fair market value of the health insurance premiums attributable to the domestic partner's coverage over the amount paid by the employee for such coverage. In addition, the employer and the employee would each be required to pay FICA-related taxes of 7.65% of the value of the premiums paid for by the employer for a domestic partner who was not a dependent of the employee. These additional employer costs would be funded from the amounts available to the affected state agency for fringe benefits costs.

14. Under the bill, domestic partners would be classified as dependents eligible for coverage under the state employee group health care plans. However, some other jurisdictions have provided support for domestic partner health care by using a different approach.

15. The University of Illinois has operated a program that provides that the state employee in a same-sex domestic partnership may be eligible to receive a reimbursement for part of the health insurance premium expenses attributable to that partner. (However, where the two domestic partners are both eligible for state coverage as university or state employees, neither may receive reimbursement under the program.) The amount of reimbursement is based on the difference between what the employee had to pay to purchase his or her partner's coverage and the premium that the employee would pay for dependent coverage under the state's plan, up to the amount the employer would pay for dependent coverage under the state's plan. The reimbursement is taxable income for the employee. [Beginning July 1, 2008, this reimbursement program will no longer be available and all same-sex domestic partner health benefits will be provided through the

State of Illinois Group Insurance Plan.]

16. The City of Madison has a similar program. Domestic partner coverage is not provided by the City's health care coverage program (through ETF's Wisconsin Public Employers' Group Health Insurance program). Instead, if the domestic partner does not have access to any employer-sponsored coverage from another source, the City reimburses an employee up to the difference between the monthly family premium and the monthly single premium for the employee's HMO plan, based on the actual cost of the domestic partner's coverage. The current maximum monthly reimbursement is \$604.38. The domestic partner is responsible for purchasing his or her health care coverage. Again, the reimbursement is treated as taxable income for the City employee.

17. In both of these cases, the insured domestic partners are not included in the governmental employer's health care coverage plans (as would be the case under the SB 40 provisions). Such coverage must be purchased separately, and the employee is reimbursed up to a maximum amount that is associated with what the employer would otherwise pay for dependent coverage. The reimbursement is taxable income for the employee.

18. A reimbursement program of this type could provide an alternative approach to the provisions in SB 40 to include domestic partners in state employee health care coverage plans. The Committee could direct the Office of State Employment Relations to explore providing reimbursement to state employees with domestic partners who do not have health insurance coverage available to them through their own employers by providing a monthly reimbursement of expenses equal to the difference between the state contribution share of the single coverage monthly premium cost and the state contribution share of the family coverage monthly premium cost of the lowest-cost tier 1 plan that is available in the county in which the employee resides, but no more than the actual monthly premium cost of the domestic partner's health insurance coverage. The Office of State Employment Relations could also be directed to: (a) identify any statutory changes that might be required to implement a reimbursement program; and (b) if no such changes are required, develop procedures relating to the certification and reimbursement of domestic partner expenses for health insurance coverage.

19. If it is determined that no statutory changes would first be required, this approach could likely be implemented during the 2007-09 biennium, once the rules were promulgated. The cost of this alternative would probably be less than the 1% to 2% cost estimate under the bill's provisions that is discussed above. This is because the reimbursement would only be available if the domestic partner did not have access to his or her own employer-provided health insurance coverage. However, it is not possible to estimate the precise cost of this approach for each state agency. The Committee could authorize such a program at this time and allow state agencies to fund any reimbursements from base resources.

20. A domestic partner health insurance reimbursement approach could also be pursued as part of the biennial process of providing compensation and fringe benefit adjustments for state employees. The implementation of a reimbursement program for domestic partner health insurance

coverage applicable to state employees could be accomplished by including the reimbursement provisions as a feature in the state's compensation plan for nonrepresented state employees, certain executive positions, and elected officials (subject to the approval of the Joint Committee of Employment Relations), and in collective bargaining agreements for represented state employees (subject to the approval of the Legislature). As under current practice, any required statutory changes could be advanced as part of that process. The additional employer-paid costs, to the extent that they would not be funded from base resources, would then be eligible for supplementation from compensation reserves. This approach would be available if the Committee deleted the Governor's domestic partner provisions in SB 40.

21. Additional funding for the incremental costs of extending state group health insurance coverage to the domestic partners of state employees has not been provided to state agencies under the bill. The provision would apply to coverage beginning January 1, 2009, and, if approved, could be included as an item in state employee collective bargaining agreements and the compensation plan for nonrepresented state employees for the 2007-09 biennium. As noted previously, if such provisions were included and received the requisite approval by the Joint Committee on Employment Relations (for the compensation plan) or by that Committee and the Legislature (for the collective bargaining agreements), the amounts required by state agencies in excess of their base level fringe benefits funding for the additional costs of the domestic partners benefit could be supplemented from available compensation reserves.

22. The UW System Board of Regents has endorsed the inclusion of domestic partnership benefits for state employees in its 2007-09 unclassified compensation plan recommendations. Along with competitive compensation, the provision of domestic partnership benefits is seen as important in recruiting and retaining faculty in a nationally competitive employment marketplace. Among its Big 10 peer institutions, UW-Madison is the only institution that does not offer a domestic partnership health insurance benefit. For the peer institutions of UW-Milwaukee and the comprehensive campuses, the array of domestic partnership benefits varies by institution and state.

23. The compensation plan for UW faculty and academic staff and the collective bargaining agreements governing certain UW System classified staff could also serve as the vehicle for providing domestic partner group health insurance benefit coverage for these employees, in which case any additional unfunded costs incurred by the UW System would be subject as well to supplementation from compensation reserves.

24. If the Committee chooses to include the Governor's recommendation, it should include a technical correction to the bill to include coverage of a domestic partner's minor children dependent on an annuitant for support and maintenance. The complete provision was inadvertently excluded from the bill.

25. Finally, it should be noted that on April 20, 2005, certain state employees filed suit in Dane County Circuit Court against the state for declaratory and injunctive relief concerning group health insurance and family leave eligibility of state employees and their domestic partners

under Wisconsin law. This case is still pending. Approving the Governor's recommendation under SB 40 would appear to address the factual basis on which the complaint rests. Alternatively, deleting the Governor's recommendation at this time could result in the need for domestic partner health insurance coverage for state employees to be reconsidered in the future, if the plaintiffs prevail. However, the case, including any subsequent appeals, will likely require a substantial period of time to resolve.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to permit state employees and state annuitants to include domestic partners in the state employee health insurance coverage plans offered by the Group Insurance Board, but correct the bill to include coverage of a domestic partner's minor children dependent on an annuitant for support and maintenance.

2. Delete the Governor's recommendation. Instead, direct the Office of State Employment Relations to explore providing reimbursement to state employees with domestic partners who do not have health insurance coverage available to them through their own employers by providing a monthly reimbursement equal to the difference between the state contribution share of the single coverage monthly premium cost and the state contribution share of the family coverage monthly premium cost of the lowest-cost tier 1 plan that is available in the county in which the employee resides, but not more than the actual monthly premium cost of the domestic partner's health insurance coverage. Further, direct the Office of State Employment Relations to: (a) identify any statutory changes that might be required to implement a reimbursement program; and (b) if no such changes are required, develop procedures relating to the certification and reimbursement of domestic partner expenses for health insurance coverage.

3. Maintain current law.

Prepared by: Art Zimmerman