



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #258

Tobacco User Surcharge for State Employee Health Insurance (Employee Trust Funds)

[LFB 2013-15 Budget Summary: Page 146, #7]

CURRENT LAW

The Group Insurance Board (GIB) in the Department of Employee Trust Funds (ETF) offers group health care coverage plans for state employees, local government employees, and Wisconsin Retirement System annuitants. For state employees, GIB 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 GIB 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 does not currently require any type of surcharge associated with tobacco use or any other medical characteristic.

GOVERNOR

Provide that, notwithstanding fair employment law relating to discrimination, the Group Insurance Board, beginning in 2014, would be required to impose a premium surcharge for state employee health care coverage for eligible employees who use tobacco products. Provide that the Group Insurance Board may terminate the health care coverage of any eligible employee who falsely claims that he or she does not use tobacco products.

The provision would also apply to state annuitants who participate in a state health care plan. Provide that the premium surcharges paid by annuitants who use tobacco products must be

used to reduce future health care coverage premiums for annuitants and to reimburse ETF for costs incurred by the Department in providing health care coverage to annuitants. Require the Secretary of DOA to annually determine the surcharge amounts that are to be used to reimburse ETF for costs incurred by the Department in providing health care coverage to annuitants and to transfer that amount to the ETF appropriation account for administration (general program operations).

Provide that, during 2014 and 2015, the Group Insurance Board would be required to impose a premium surcharge of \$50 a month for state employee health care coverage for eligible employees who use tobacco products. Provide that the Director of the Office of State Employment Relations (OSER), who establishes employee health insurance contribution requirements annually, must consider the amount of premium surcharges that employees are required to pay for the use of tobacco products when establishing employee health insurance premium contributions.

DISCUSSION POINTS

1. The tobacco-user surcharge provision would, beginning January 1, 2014, impose a monthly health insurance surcharge on state employees who use tobacco products and who are covered under a GIB plan. Under a nonstatutory provision, the surcharge would be set at \$50 a month in 2014 and 2015. In 2016 and beyond, GIB would have the authority to change the amount of the surcharge.

2. Administration officials indicate that health care costs of smokers and other people who use tobacco are estimated to be 30 to 35 percent higher than nonsmokers; therefore, the Governor is recommending the tobacco user charge be included for state employee health plans.

3. According to the Centers for Disease Control and Prevention (CDC), 19.3% of adults in the United States smoke cigarettes, with the rate for men (21.5%) higher than for women (17.3%). Smoking rates are also higher for those with less education and lower income. Tobacco use is highly correlated with a wide range of serious illnesses and the CDC estimates that annual smoking-related deaths in the U.S. total approximately 443,000. In addition, the CDC estimates that for every smoking related death, 20 additional people suffer with at least one serious illness related to smoking.

4. While the overall rate of smoking for adults nationwide is 19.3%, a 2012 ETF survey, based on self-reported responses, indicates the rate of tobacco use among state employees to be approximately 9.6%. Based on this rate, the \$50 surcharge would be expected to generate approximately \$2.0 million in 2013-14 and \$4.0 million in 2014-15 (all funds). The GPR portion of this total would be estimated at \$0.9 million in 2013-14 and \$1.8 million in 2014-15. Officials at ETF indicate that the surcharge revenue would be credited back to the employer (state agencies), although the bill does not specify how this would be accomplished. The GIB would need to develop and administer a crediting mechanism.

5. The surcharge is also required to be paid by state retirees who use tobacco products.

In this case, the bill would direct that the surcharges paid by annuitants must be used to reduce future health care coverage premiums for annuitants and to reimburse ETF for costs incurred by the Department in providing health care coverage to annuitants. The bill would require the Secretary of DOA to annually determine the surcharge amounts that are to be used to reimburse ETF for costs incurred by the Department in providing health care coverage to annuitants and to transfer that amount to the ETF appropriation account for administration (general program operations). Again, the bill does not specify how the surcharge revenues would be used to reduce future health care coverage premiums for annuitants and GIB would need to develop and administer a mechanism for doing this.

6. Other issues unaddressed in the bill include: (a) how GIB will determine which employees are subject to the surcharge (an attestation process); (b) how the surcharge will be integrated into the premium structure (whether to develop premium rates for tobacco users separate from nonusers, or maintain consistent rates and require the surcharge to be paid by affected employees as an additional employee-required contribution); (c) how annuitant premium rates are structured to allow the use of sick leave credits for surcharge payments; (e) the definition of tobacco use that conforms to federal law; and (f) how the attestations relating to tobacco use are to be administered and the information integrated into ETF and state agency computer systems.

7. Under current law, the Secretary of ETF is required to promulgate, with the approval of GIB, all rules required for the administration of the group health plans offered by the state. Therefore, the issues discussed above that will require the development and administration of policies to implement the tobacco user surcharge can be established by the Department, with appropriate rules specified in the administrative code.

8. Tobacco user surcharges are becoming increasingly common. According to the *2013 18th Annual Towers Watson/National Business Group on Health, Employer Survey on Purchasing Value in Health Care*, tobacco-use surcharges were utilized by 35% of companies in 2012, 42% in 2013, and is expected to reach 62% by 2014. The 583 companies surveyed are those with at least 1,000 employees and 19% of the companies surveyed have 25,000 employees or more. The companies, primarily in the private sector, are distributed throughout the U.S. and cover eight industry groups; 4% of the sample are "public sector and education" employers.

9. The bill would only require the surcharge payment if a state employee or retired state employee uses a tobacco product. Some employers (both private and public) that impose a tobacco-user surcharge also require the surcharge if any spouse or dependent covered by the health plan is a user of tobacco products. The argument for this approach is that the increased health care costs associated with tobacco use affect employer health insurance rates regardless of which participating member on the policy uses a tobacco product. Administration officials indicate that the provision was limited to only employees or retired employees because many administrative details remain to be worked out in order to implement the surcharge. Further, it is possible the policy could be expanded to dependents at a later date. Officials at ETF also indicate the application of the surcharge could be expanded to other dependents, but prefer, due to the administrative complexities, to limit the surcharge initially to employees and retired employees only.

10. Under federal regulations, a tobacco-user surcharge may be utilized only in conjunction with a health promotion or disease prevention program typically termed a "wellness" program. A wellness program is an employer-provided program designed to promote health or prevent disease consistent with certain federal requirements. One requirement under federal regulations is that a wellness program must provide for tobacco cessation counseling and pharmacological aids. The state operates a wellness program for state employees focusing on prevention and improved health care management for those with chronic conditions. The state also provides smoking cessation benefits to state employees. Coverage includes pharmacological products that by law require a written prescription. Coverage also includes one office visit for counseling and to obtain the prescription and four telephonic counseling sessions per calendar year. Additional counseling and/or limited extension of pharmacological products require prior authorization by the employee's health plan.

11. According to ETF officials, the state employee wellness program and its smoking cessation benefits meet the federal requirements. Therefore, the state is allowed, under federal law, to impose a tobacco-user surcharge.

12. As noted above, a growing proportion of private sector companies are imposing tobacco-user surcharges of some form. The American Lung Association indicates that 12 states now impose a tobacco-user surcharge for state employees: Alabama, Georgia, Indiana, Kansas, Kentucky, Missouri, North Carolina, South Carolina, South Dakota, Tennessee, Texas, and West Virginia. Employee Trust Fund officials indicate that surcharges in these states generally fall in the range of \$25 to \$80 per month. The amount of the surcharge under the bill (\$50 per month) falls within this range and is, according to ETF officials, allowable under federal limits.

13. Under the bill, GIB would be allowed to terminate the health care coverage of any eligible employee who falsely claims that he or she does not use tobacco products. However, under recent federal law guidance relating to implementation of the Patient Protection and Affordable Care Act, this type of termination provision is not permitted. Rather, those attesting falsely about their tobacco use must be allowed to re-file their attestation and the employer is permitted to recoup the unpaid surcharges.

14. The Administration has identified this issue in its 2013-15 budget errata report and recommends removing the termination provision and instead providing for the recoupment of the applicable surcharges. Officials at ETF indicate that federal regulations may limit the period for which such a recoupment is allowable. The bill could be modified to provide that GIB would be allowed to recoup surcharge payments of any eligible employee who falsely claims that he or she does not use tobacco products, to the extent allowable under federal law. [Alternative 2]

15. Arguments have been made against tobacco-user surcharges. For example, the American Cancer Society, the American Lung Association, Smoke Free Wisconsin, and the Campaign for Tobacco-Free Kids oppose tobacco-user surcharges. Generally, such anti-smoking organizations argue that there is no evidence that surcharges are effective in reducing tobacco use. It is also noted that charging higher premiums for tobacco users may result in reduced access to health care, particularly for those earning lower incomes. According to press accounts, three states (Rhode Island, Vermont, and Massachusetts) and the District of Columbia have passed measures

prohibiting such surcharges.

16. Some have also raised concerns that the surcharge approach could be expanded to other health conditions that are associated with higher health care costs. Such conditions could be considered for surcharge impositions as part of a targeted wellness program. For example, obesity, as measured by the body mass index, high blood pressure, or high cholesterol could be subject to surcharges. The *2013 18th Annual Towers Watson/National Business Group on Health* survey reports that 10% of companies in 2012 and 16% of companies in 2013 apply rewards or penalties based on biometric outcomes other than tobacco-use status (for example weight control or cholesterol levels). The percentage is expected to increase to 47% of companies in 2014. Again, critics of surcharges warn about reduced access to health care for those with serious health conditions.

17. Finally, it should be noted that estimated reductions in state fringe benefit costs associated with the proposed tobacco-user surcharge were factored into the calculation of the compensation reserves for most state agencies and the amounts appropriated separately to the University of Wisconsin System for increased unbudgeted compensation and fringe benefit costs in 2013-15. If the Committee should choose to delete the surcharge provision, the surcharge revenue would not be realized and fringe benefit costs would increase from the levels projected for the compensation reserves and the UW System. As noted above, the \$50 surcharge would be expected to bring in approximately \$2.0 million in 2013-14 and \$4.0 million in 2014-15 (all funds). The GPR portion of this total would be estimated at \$0.9 million in 2013-14 and \$1.8 million in 2014-15. The Committee could appropriate \$408,200 GPR in 2013-14 and \$816,400 GPR in 2014-15 to the UW System, and place an additional \$507,800 GPR in 2013-14 and \$1,015,700 GPR in 2014-15 in the compensation reserves to address higher fringe benefit costs associated with the deletion of the surcharge. [Alternative 3]

18. If the surcharge is deleted and no additional funding is provided to the GPR reserves or appropriated to the UW System, any shortfalls would need to be absorbed by each state agency from existing resources. [Alternative 4]

ALTERNATIVES

1. Approve the Governor's recommendation to provide that, notwithstanding fair employment law relating to discrimination, the Group Insurance Board, beginning in 2014, would be required to impose a premium surcharge for state employee health care coverage for eligible employees who use tobacco products. Provide that the Group Insurance Board may terminate the health care coverage of any eligible employee who falsely claims that he or she does not use tobacco products.

Apply the provision to state annuitants who participate in a state health care plan. Provide that the premium surcharges paid by annuitants who use tobacco products must be used to reduce future health care coverage premiums for annuitants and to reimburse ETF for costs incurred by the Department in providing health care coverage to annuitants. Require the Secretary of DOA to annually determine the surcharge amounts that are to be used to reimburse ETF for costs

incurred by the Department in providing health care coverage to annuitants and to transfer that amount to the ETF appropriation account for administration (general program operations).

Provide that, during 2014 and 2015, the Group Insurance Board would be required to impose a premium surcharge of \$50 a month for state employee health care coverage for eligible employees who use tobacco products. Provide that the Director of the Office of State Employment Relations, who establishes employee health insurance contribution requirements annually, must consider the amount of premium surcharges that employees are required to pay for the use of tobacco products when establishing employee health insurance premium contributions.

2. Modify the Governor's recommendation by deleting the provision that the Group Insurance Board may terminate the health care coverage of any eligible employee who falsely claims that he or she does not use tobacco products. Instead, provide that the Group Insurance Board would be authorized to recoup surcharge payments of any eligible employee who falsely claims that he or she does not use tobacco products, to the extent allowable under federal law.

3. Delete the provision. In addition, provide \$408,200 GPR in 2013-14 and \$816,400 GPR in 2014-15 to the University of Wisconsin System, and place an additional \$507,800 GPR in 2013-14 and \$1,015,700 GPR in 2014-15 in the compensation reserves to address higher fringe benefit costs associated with the deletion of the surcharge.

ALT	Change to Bill Funding
GPR	\$1,224,600
GPR-Reserves	<u>1,523,500</u>
Total GPR	\$2,748,100

4. Delete provision. Under this alternative, funding would not be provided to the UW System or compensation reserves.

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