



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #310

Private Employer Health Care Coverage Program (Employee Trust Funds -- Private Employer Health Care Coverage Program)

[LFB 2003-05 Budget Summary: Page 157, #1]

CURRENT LAW

1999 Wisconsin Act 9 (the 1999-01 biennial budget act) directed the Department of Employee Trust Funds (DETF) to create a health care program for small employers, the private employer health care coverage program (PEHCCP) and provided \$400,000 GPR in 1999-00 and 3.5 GPR positions, beginning in 1999-00 for the program.

The program is not yet operational. The attachment describes the current statutory provisions relating to PEHCCP.

Although DETF continues to have 3.5 GPR positions authorized for the program, all of the positions are currently vacant. There is no base level funding to support the program because \$205,100 GPR that was provided in 2001 Wisconsin Act 16 and \$850,000 GPR that was provided in 2001 Wisconsin Act 109 to support the program in the 2001-03 biennium was provided in 2001-02, and is therefore not included in the agency's 2002-03 adjusted base budget.

In order to support the costs of the program in the 2001-03 biennium, Act 109 required the Office of the Commissioner of Insurance (OCI) to lapse \$850,000 PR in insurance fee revenue to the general fund to offset the GPR costs of the program. Because this lapsed amount was considered a loan to the general fund, Act 109 included provisions that required the general fund to repay the loan, including interest costs on the loan.

GOVERNOR

Provide \$210,900 GPR annually to support staff costs to administer PEHCCP, including: (a) salaries (\$140,000 annually); (b) fringe benefits (\$52,000 annually); and (c) associated supplies and services (\$18,900 annually).

DISCUSSION POINTS

Background

1. 1999 Act 9, which directed DETF to create PEHCCP, was passed in October of 1999. The position for director was posted in February of 2000, and the director was hired in April of 2000. The PEHCCP Board members were appointed and the program manager position was posted in May of 2000. Both the program manager and the Board coordinator were hired in July of 2000. The Board met in August, 2000, to discuss a strategy for the request for proposals (RFP). In October of 2000, a conference with potential vendors was held. Based on information gathered in the conference, an RFP was released in November, 2000, for administrative and marketing services. PEHCCP received no responses to the RFP. The Board solicited and received feedback from potential vendors as to why no vendor responded to the RFP. Based on the information gathered, the Board recommended statutory changes during the 2001-03 biennium to assist in attracting vendors.

2. As part of the 2001-03 budget, PEHCCP requested statutory changes that would: (a) shift health plan contracting responsibility from an administrator to DETF; (b) clarify that DETF may subcontract with an administrator for marketing services and/or maintenance of a toll-free number for public information; (c) allow the Board to determine the most appropriate means to publish program rates; (d) specify that employers may offer coverage to employees working fewer than 30 hours per week only to the extent permitted by participating health plans; (e) clarify that employers must contribute a minimum of 50% of the lowest single coverage rate for that employee; (f) clarify that agents must be listed with participating carriers and authorize the Board to approve agent training criteria; and (g) tighten the rate band for health status, claims experience, and duration of coverage and inclusion of occupation from 35% to 10%.

2001 Act 16, which was signed by the Governor on August 30, 2001, amended the statutes to reflect the requested changes, except for (g), which was vetoed. In his veto message, the Governor indicated a concern that restricting the rate variance would have the effect of increasing costs to many small employers that provided health insurance benefits to their employees. The Board believed that tightening the rate band was necessary to put forth a successful RFP. Therefore, the Board did not release a second RFP.

3. DETF and the Board decided, instead, to seek advice from a consultant, the Institute for Health Policy Solutions (IHPS), in designing and developing PEHCCP for Wisconsin. IHPS concluded that fundamental changes were needed to successfully implement PEHCCP. IHPS suggested three strategies, either alone or in combination, that would assist in successful

implementation of PEHCCP: (a) small group market rating reforms; (b) extending coverage to the uninsured and making coverage more affordable for small employers by offering premium subsidies and by providing an exemption from mandated benefits; and (c) making PEHCCP the exclusive small employer coverage venue in Wisconsin.

Rating Reforms

4. Section 635.05 of the statutes regulates rates for small employer health insurance and requires OCI to promulgate rules that establish restrictions on premium rates charged to small employers with similar case characteristics for the same or similar benefit design characteristics, such that premium rates cannot vary from the midpoint rate for those small employers by more than 35% of that midpoint rate. Case characteristics include the demographic, actuarially based characteristics of the employees of a small employer, and the employer, if covered, such as age, sex, and geographic location. Case characteristics do not include loss or claim history, health status, occupation, duration of coverage, or other factors related to claim experience.

5. IHPS indicates that Wisconsin allows too substantial of a variation in rates based on the risk profile of a given small employer to successfully implement a small employer pool. Currently, each small employer is assessed premiums based on factors, such as health and claims history, of its own employees. Small employers with unhealthy employees could pay much higher premiums. With the rate variance of $\pm 35\%$, the premiums for a small employer with unhealthy employees could be as much as 70% higher than those for a small employer with healthy employees. A pool would spread the costs over all small employers. As a result, the small employers with unhealthy employees could pay much lower premiums, and the small employers with healthy employees could pay much higher premiums. The pool would attract small employers with unhealthy employees, while small employers with healthy employees would prefer to receive lower premiums in the outside market. Consequently, the pool would likely to suffer an adverse selection "death spiral."

6. IHPS suggests that Wisconsin adopt rating rules that would not allow rates to vary based on the health status or claims experience of a given employer group. Some adjustments for case characteristics would still be allowed. Since the great variances in rates are generally based on health status and claims experience, prohibiting these as factors could naturally tighten the rate band. As a result, the pool could be much less likely to experience adverse selection and could substantially reduce the maximum premium costs or the volatility in rates a given small employer might experience in the open market. Rates for small employers who currently present the lowest risks would increase, but IHPS believes the increases would be modest compared to the reductions the high-cost employers would realize. IHPS also suggests that the increases could be phased in to temper any negative effects. In addition, the lower-cost employers' rates would not spike if one their employees developed a high-cost medical condition.

Subsidies

7. IHPS indicates that PEHCCP could become a cost-effective mechanism for reaching

uninsured workers and their families if subsidies were provided through BadgerCare and other sources. IHPS envisions PEHCCP as a federally funded demonstration project opportunity. The project would establish PEHCCP as a source of stable health insurance coverage that offers consumers a choice of health plans, informed by comparative data, and that affords working parents and their children coverage under the same plan. IHPS states that PEHCCP would perform enrollment and related functions, such as: (a) eligibility determinations; (b) maintaining enrollment databases; (c) billing, disbursing, and reconciling funds; (d) providing quality and other related information to inform the individual workers of choices; and (e) sharing different degrees of electronic eligibility and payment data with health plans, employers, agents, employees, and governmental agencies.

8. IHPS recommends reforming BadgerCare to emphasize providing premium assistance to enable low-income workers to enroll in their employer's plan and to make affordable coverage available through low-wage small firms, rather than providing coverage outside of the employment context. PEHCCP would manage the flow of subsidy dollars on behalf of small-firm workers and their families. PEHCCP would: (a) specify benefit packages its health plans offer that meet state and federal requirements; (b) collect data about employer contribution amounts at initial enrollment and track changes in the amounts over time through re-enrollment forms; (c) combine premium payments from multiple sources, including employer, employee, and state subsidy, and route the payments to the health plan chosen by the enrollee; and (d) verify that subsidized families have enrolled and remain enrolled in a plan. IHPS states that the process of evaluating cost-effectiveness would then be much easier because there would only be a few benefit packages to be evaluated and employer contribution information would be readily available in one centralized location.

9. IHPS predicts that this type of pool would encourage more uninsured small employers to begin to offer coverage because small employers with mostly low-wage workforces would make a smaller contribution due to the subsidies than would usually be required. IHPS indicates, therefore, that enrollment in PEHCCP would be much higher, which would attract health plans to participate. However, many of the small employers have childless workers, as well as parents, in their employ, so another subsidy source for these people would be needed.

Mandated Benefits

10. Health insurance policies sold in Wisconsin often include mandated benefits, which are benefits that an insurer must include in certain types of health insurance policies. Some of the mandated benefits only apply to group policies, while some apply to both group and individual policies. Under current law, mandated benefits include: (a) nonphysician providers; (b) optometrists; (c) chiropractors; (d) nurse practitioners; (e) dentists; (f) handicapped children after age of maturity; (g) nervous and mental disorders, alcoholism, and other drug abuse; (h) home health care; (i) skilled nursing care; (j) kidney disease; (k) mammography; (l) newborn infants; (m) coverage of grandchildren; (n) diabetes; (o) maternity coverage; (p) genetic testing; (q) drugs for treatment of HIV infection; (r) lead screening; (s) temporomandibular disorders; (t) hospital and ambulatory surgery center charges and anesthetics for dental care; (u) breast reconstruction; (v)

child immunizations; and (w) adopted children. Proponents of mandated benefits argue that the benefits ensure that policyholders have access to specific providers or coverage for certain conditions that insurers might otherwise preclude or withhold and that the benefits are preventive services that will pay for themselves over time.

11. Groups representing small employers argue that mandated benefits increase the cost of insurance. Small employers may find PEHCCP more attractive if benefit packages could be designed and offered that did not include all of the mandated benefits.

Exclusive Venue

12. IHPS also recommends that Wisconsin could make PEHCCP the only source of health insurance coverage for small employers. IHPS indicates that making PEHCCP the exclusive venue for small employer health care coverage would be more effective than rate reforms in protecting the pool, its health plans, and its enrollees from a systemic adverse selection spiral. IHPS states that exclusive venue would achieve economies associated with large scale purchasing, more stable coverage, and substantial administrative economies of scale. However, IHPS notes that some lower risk small employers might choose the option to self-insure. IHPS suggests that PEHCCP could be: (a) given authority to aggressively negotiate rates; (b) expected to dictate a highly structured marketplace; or (c) given more of a "clearinghouse" function that achieves administrative economies and establishes guidelines to preclude abuse.

Options for the Committee

13. The recommendations suggested by IHPS involve significant policy issues that could benefit from extensive review by the Legislature's standing committees, public hearings, and input by DETF, OCI, and the Department of Health and Family Services (with respect to proposed changes to BadgerCare).

14. If the Committee wishes to consider these or other statutory changes to the program, it could direct DETF to submit proposed legislation to implement these recommendations to the appropriate legislature standing committees by September 1, 2003. With respect to the funding budgeted in the bill to support staff positions in DETF, the Committee could either: (a) approve the Governor's recommendation to provide funding to support ongoing staff costs for the program; or (b) transfer this funding to the Joint Committee on Finance program supplements appropriation, which could be available to support the program once these statutory changes are made. Since all of these positions are currently vacant, this alternative would not result in a layoff of current staff.

15. If the Committee does not wish to consider these or other changes to the program that may enable DETF to successfully implement the program, it could repeal the program and delete the GPR funding in the bill that would support DETF staff costs.

16. In a March 25, 2003, letter to the Governor, the Senate President, and the Speaker of the Assembly, the DETF Secretary indicated that statutory changes would be needed or the program could never be implemented. Further, the DETF Secretary indicated that if changes are not pursued,

PEHHCP should be repealed, the PEHCCP Board should be disbanded, and the funds for the program's operation should be returned to the general fund.

ALTERNATIVES

A. Funding for Staff

1. Adopt the Governor's recommendation to provide \$210,900 GPR annually to support the operating costs of PEHCCP.

2. Modify the Governor's recommendation by placing the funding that would be provided to DETF in the Governor's bill instead in the Committee's program supplements appropriation, which would be available to support staff costs once statutory changes are made to the program.

2. Modify Alternative A2 by placing \$105,500 GPR in 2003-04 and \$210,900 GPR in 2004-05 in the Committee's program supplements appropriation to reflect an estimated January 1, 2004, start date for the positions if statutory changes were made to the program in the future.

<u>Alternative A3</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	- \$105,400

B. Statutory Changes

1. Adopt the Governor's recommendation to make no statutory changes to the program.

2. Require DETF to submit proposed legislation to the appropriate Senate and Assembly standing committee's by September 1, 2003, based on the IHPS recommendations and other recommendations that DETF determines would enable the agency to successfully implement the program.

3. Repeal the program. Delete funding that would be provided in the bill to support staff costs (\$210,900 GPR annually) and delete 3.5 GPR current positions, beginning in 2003-04.

<u>Alternative B3</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	- \$421,800
2004-05 POSITIONS (Change to Bill)	- 3.50

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ATTACHMENT

Private Employer Health Care Coverage Program

Design of PEHCCP. Under current law, DETF is required to design an actuarially sound health care coverage program, which includes more than one group health care coverage plan, for employers. An employer is defined as any person doing business or operating an organization in Wisconsin and employing at least two eligible employees. However, for a person operating a farm business, the person must employ at least one eligible employee. An employee is eligible if he or she works on a permanent basis and has a normal workweek of 30 or more hours. An employee is defined as a person who receives earnings as payment for personal services rendered for the benefit of any employer, including officers of the employer. A person is not an employee if the person is: (a) employed under a contract involving the furnishing of more than personal services; (b) customarily engaged in an independently established trade, business, or profession providing the same type of services to more than one employer, and the person's services to an employer are not compensated for on a payroll of that employer; or (c) a patient or inmate of a hospital, home, or institution that performs services in the hospital, home, or institution. In designing PEHCCP, DETF must consult with the Office of the Commissioner of Insurance (OCI) and may consult with the Department of Commerce and the Department of Health and Family Services (DHFS).

Private Employer Health Care Coverage Board. The Private Employer Health Care Coverage Board must approve PEHCCP before implementation. The Board members include: (a) the DETF Secretary or designee; (b) the DHFS Secretary or designee; (c) one member who represents health maintenance organizations; (d) one member who represents hospitals; (e) one member who represents insurance agents; (f) two members who are employees eligible to receive health care coverage under PEHCCP and whose employer employs not more than 50 employees; (g) one member who represents insurers; (h) two members who are, or who represent, employers that employ not more than 50 employees and who are eligible to offer health care coverage under PEHCCP; (i) one member who is a physician; and (j) two members who represent the public interest. The members representing DHFS and DETF are nonvoting members of the Board. The other members are nominated by the Governor and appointed for staggered, three-year terms.

Contracts. DETF is required to solicit and accept bids and to make every reasonable effort to enter into a contract for the administration of PEHCCP, based on criteria established by the Board. DETF is then required to enter into contracts with insurers who are to provide health care coverage under PEHCCP. DETF cannot sell any health care coverage under PEHCCP to an employer or enroll any employee in PEHCCP, but DETF must make information about the program available to employers on a statewide basis. DETF or the administrator also must maintain a toll-free telephone number to provide information on PEHCCP.

Health Care Coverage Plans. Every health care coverage plan under PEHCCP is subject to the same insurance laws that apply to group health benefit plans to the same extent as any other group health plan. No plan may provide coverage of a nontherapeutic abortion, which is defined as an abortion that is not directly and medically necessary to prevent the death of a woman, and no insurer is required to offer or provide coverage of an any abortion under PEHCCP. No plan may be combined with a health care coverage plan for state employees.

Premiums. All insurance rates for health care coverage under PEHCCP must be made available to employers and employees in a manner determined by the Board. Rates that apply to coverage for small employers, which means at least two but fewer than 50 employees, must be published annually, at the minimum. The Board must submit an annual report to the appropriate standing committees specifying the average insurance rate for health care coverage under PEHCCP by county or by any other regional factor the Board considers appropriate. The plans are required to have an enrollment period that the Board establishes.

Funding. If DETF has selected an administrator for PEHCCP, then the administrator is required to charge employers who participate in PEHCCP a fee to cover the cost of administrative services for PEHCCP. The administrator must reimburse DETF for the expenses incurred by DETF in designing, marketing, and contracting for administrative services for PEHCCP. The reimbursement funds would be placed in a program revenue appropriation established for PEHCCP.

If DETF has not selected an administrator, DETF is required to charge employers who participate in PEHCCP a fee to cover the costs incurred by DETF in designing, marketing, and providing administrative services for PEHCCP. The fees would be placed in the program revenue appropriation established for PEHCCP.

DETF is authorized to seek funding from any person for the payment of costs incurred by DETF in designing, marketing, and contracting or providing administrative services under PEHCCP, and for lapsing to the general fund any amount required to repay the loan received in the 2001-03 biennium from OCI. Any funds received would be placed in the program revenue appropriation established for PEHCCP. (The Governor's budget bill proposes to eliminate repayment of the loan made by OCI.)

Employers. If an employer participates in PEHCCP, the employer must: (a) offer health care coverage under one or more plans to all of its eligible employees and, if permitted by any plan offered by an insurer under PEHCCP, may offer health care coverage under such a plan to any of its other employees; (b) provide health care coverage under one or more plans to at least 50% of its eligible employees who do not otherwise receive health care coverage as a dependent under any other plan that is not offered by the employer, or a percentage of such employees specified by the Board, whichever percentage is greater; (c) pay for each eligible employee at least 50% of the lowest premium rate for single coverage that is available to the employer for that employee's coverage under PEHCCP; and (d) make premium payments for the health care coverage of its employees in the manner specified by the Board.

Any employer that provides health care coverage for its employees under PEHCCP and that voluntarily terminates coverage under the program is not eligible to participate in the program for at least three years from the date that coverage is terminated.

Insurers. Any insurer that offers a health care coverage plan under PEHCCP is required to provide coverage under the plan to any employer that applies for coverage and to all of the employer's employees who elect coverage under PEHCCP without regard to the health condition or claims experience of any individual who would be covered under PEHCCP if: (a) the employer agrees to pay the premium required for coverage under PEHCCP; and (b) the employer agrees to comply with all provisions of PEHCCP that apply generally to a policyholder or an insured without regard to health condition or claims experience. DETF may limit this requirement to compliance with the insurance laws relating to small employer health insurance.

Only licensed insurance agents may sell health care coverage under PEHCCP. An insurance agent cannot sell any health care coverage under PEHCCP on behalf of an insurer unless the agent is listed by the insurer. The Board is required to set, and may adjust as often as semiannually, the commission rate for the sale of a policy under PEHCCP. The rate must be based on the average commission rate that insurance agents are paid in the state for the sale of comparable health insurance policies at the time that the rate is set or adjusted. The Board also may establish training requirements that an insurance agent must satisfy, in addition to any requirements under the insurance laws, to sell health care coverage under PEHCCP.

Repayment of Loan. Statutory provisions provide for the repayment of the loan made by OCI in the 2001-03 biennium. (However, the Governor's budget bill proposes to eliminate the requirement that the loan be repaid.)

Reports. The Board is required to submit a report annually to the appropriate standing committees and to the Governor regarding the operation of PEHCCP. The report must specify the number of employers and employees participating in PEHCCP, calculate the costs of PEHCCP to employers and their employees, and include recommendations for improving PEHCCP. The Board also must submit a report to the appropriate standing committees and to the Governor by January 1, 2008, that offers recommendations as to whether DETF should continue to be involved in the design, marketing, and contracting for administrative services for PEHCCP. If the Board recommends that DETF not be involved, the Board must submit proposed legislation eliminating DETF's involvement at the time the Board submits the report.