



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #281

Health Insurance Coverage for Domestic Partners of State Employees and State Annuitants (ETF and UW System)

[LFB 2005-07 Budget Summary: Page 155, #10, and Page 500, #12]

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: (1) under the age of 19; (2) age 19 or over but less than age 25, if a full-time student; or (3) 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 purchase family health insurance coverage for their domestic partners. [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: (1) each individual is at least 18 years old and otherwise competent to enter into a contract; (2) neither individual is married to, or in a domestic partnership with, another individual; (3) the two individuals are not related by blood in any way that would prohibit marriage under state law; (4) the two individuals consider themselves to be members of each other's immediate family; and (5) 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, 2006.

Provide \$500,000 GPR annually to the University of Wisconsin (UW) System to fund the costs of extending eligibility for state health care benefits to the domestic partners of UW System employees.

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.

2. If the definition of dependent would be expanded to include a domestic partner, another benefit program, in addition to group health insurance coverage, would be affected by the change. The benefits under the regular and supplemental accumulated sick leave conversion credit programs, under which unused sick leave is converted into a credit amount to pay for future health insurance premiums, could be extended to a domestic partner as "the surviving insured dependent of an eligible employee who is deceased." However, 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 previous domestic partner group health insurance coverage proposals that have been offered during the last few legislative sessions. These evaluations assumed that between 1% and 2% of state employees would utilize the domestic partner benefit. The Board's actuary also indicated 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 estimated 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. Consequently, a 1% utilization rate for the domestic partners benefit should translate into additional health care costs of approximately 1%. ETF indicates that this utilization rate could vary but that these percentages are considered to be reasonable by the consulting actuary. The assumptions governing ETF's estimates are also consistent with those employed by the Congressional Budget Office when that agency developed cost projections in 2003 for H.R. 2426, which would have provided domestic partnership coverage for federal employees.

7. ETF officials indicate that these costing assumptions developed for previous domestic partner health insurance coverage proposals remain valid for the provisions contained in AB 100. Thus, the expansion of group health insurance coverage to include the domestic partners of state employees would result in cost increases proportional to the increased utilization.

8. Accordingly, a 1% to 2% increase in enrollment relating to extending health care coverage to both same-sex and opposite-sex domestic partners would be expected to produce an equivalent increase in health care costs for the state and its employees of between 1% and 2%. In 2004, the annual costs to provide state employee group health insurance coverage, including both employer and employee costs, totaled \$658.5 million (all funds). Therefore, the expected range of total increased costs for state employee coverage for domestic partner is estimated to fall in the range of \$6.6 million to \$13.1 million (all funds) annually.

9. State and employee contributions 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 a higher contribution rate, since there would be no further change to the family coverage rate that already

applied.

10. While state employees contribute a share of health insurance premium costs, depending on the premium tier into which the employee's health plan falls, the state would continue to bear the majority of any increased costs attributable to extending state employee group health insurance coverage to domestic partners. In aggregate, the state paid approximately 96.2% the \$658.5 million expended in 2004 for single and family state employee group health insurance coverage. (This percentage can be expected to drop in future years on the assumption that many of the current state collective bargaining contracts will incorporate language providing for the new three-tier premium structure.)

11. 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.

12. 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.

13. Under federal law, 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. In addition, the taxpayer would have to have provided over 50% of the domestic partner's support for the calendar year in which the taxpayer's taxable year began. With the exception of "d," current state law conforms to the federal provisions. (State tax references to the Internal Revenue Code have not been updated for recent changes under federal law, including the provision described under "d." However, the bill would update state tax provisions to conform to this and most other federal provisions enacted in 2003 and 2004. This proposal is described in a paper entitled "Internal Revenue Code Update.")

14. 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.

15. 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.

16. The University of Illinois 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 (currently \$441.18 per month for one dependent and \$562.88 for two or more dependents). The reimbursement is taxable income for the employee.

17. 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, the City reimburses an employee up to a maximum of \$531.09 per month for the registered domestic partner's health insurance coverage, if the domestic partner does not have access to any employer-sponsored coverage from another source. 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.

18. 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 AB 100 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.

19. A reimbursement program of this type could provide an alternative approach to the provisions in AB 100 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.

20. If it is determined that no statutory changes would first be required, this approach could likely be implemented during the 2005-07 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.

21. 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 AB 100.

UW System Funding

22. While the provisions in AB 100 would authorize a domestic partner of a state employee to obtain state group health insurance coverage, only the UW System would be provided with additional funding to help cover the costs of the benefit. Under the bill, the Governor would provide \$500,000 GPR annually to the UW System for this purpose.

23. The UW System Board of Regents requested the inclusion of domestic partnership benefits for faculty and staff in its 2005-07 pay plan request. Along with competitive compensation, the provision of domestic partnership benefits was 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.

24. Employee group health insurance coverage accounts for approximately 43% of total fringe benefits costs of the UW System. Total UW System health insurance fringe benefit costs were approximately \$263.8 million in 2003-04, including approximately \$109.5 million GPR (41.5%), \$153.4 million PR (58.2%), and \$0.9 million SEG (0.3%). Based on the ETF cost estimate for domestic partner coverage, a 1% to 2% increase in state group health insurance enrollments at the UW System relating to extending health care coverage to same-sex and opposite-sex domestic partners would increase these health insurance costs by an estimated \$2.6 million to \$5.3 million annually (all funds) representing \$1.1 million to \$2.2 million GPR annually.

25. The UW System has not prepared a separate cost estimate of providing domestic partnership health benefits to its employees. However, the UW System has reviewed the domestic

partnership benefit costs experience at institutions in Iowa, Michigan, and Minnesota. For these campuses, the cost of the domestic partnership health insurance benefit and the number enrolled varied due to different health plan options and cost structures.

26. Among the surveyed campuses, total enrollment in the domestic health insurance benefit program was less than 1% of total employment. However, the actual enrollment in the program varied by the types of domestic partners that are eligible for the benefit. The University of Minnesota and University of Michigan offer health insurance for same-sex domestic partners only. Currently 89 couples are enrolled in the program at Minnesota (about 0.6% of approximately 16,000 employees) and 213 at Michigan (0.7% of about 30,000 employees). The University of Iowa offers health insurance to both same and opposite sex domestic partnerships; Iowa has 63 employees enrolled in the program, about 0.5% of its approximately 13,000 employees. Thus, if the UW System experienced comparable utilization rates, the cost projections cited earlier would be correspondingly less.

27. The Committee could approve the Governor's recommendation in order to address the UW System's recruitment concerns, provide an additional \$500,000 GPR annually for the UW System's potential additional costs, and allow for an equitable expansion of health care coverage eligibility for the domestic partners of all state employees. 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 draft language.

28. 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 other than the UW System. This approach has been taken based on the possibility that domestic partner health insurance coverage might be included as an item in state employee collective bargaining agreements and the compensation plan for nonrepresented state employees for the 2005-07 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.

29. 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.

30. In order to treat the UW System in a comparable fashion to other state agencies, the Committee could consider the deletion of the \$500,000 GPR annually provided under bill to the UW System for the domestic partnership benefit. Under this alternative, the additional cost of providing the benefit during the next biennium would be accommodated either from available base level funding (if sufficient fringe benefit funding is available) or through supplementation from

available compensation reserves.

31. 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. Approving the Governor's recommendation under AB 100 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

1. Approve the Governor's recommendation, but correct the bill to include coverage of a domestic partner's minor children dependent on an annuitant for support and maintenance.

2. Modify the Governor's recommendation to delete \$500,000 GPR annually provided to the UW System to fund the costs of domestic partner group health insurance coverage.

Alternative 2	GPR
2005-07 FUNDING (Change to Bill)	- \$1,000,000

3. 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.

Alternative 3	GPR
2005-07 FUNDING (Change to Bill)	- \$1,000,000

4. Delete the Governor's recommendation.

Alternative 4	GPR
2005-07 FUNDING (Change to Bill)	- \$1,000,000

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