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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2020-05

### **COVID-19 LEGISLATION: 2019 WISCONSIN ACT 185**

On April 14 and 15, 2020, the Wisconsin Legislature convened in virtual extraordinary session and passed 2019 Assembly Bill 1038, relating to the state government response to the COVID-19 pandemic. This legislation was signed into law by Governor Evers on April 16, 2020 and enacted as 2019 Wisconsin Act 185.

Act 185 affects a wide variety of state laws and programs. Numerous provisions were included in the act in order to receive federal aid under both the Family First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Certain provisions of the act only apply during the public health emergency declared on March 12, 2020, by Executive Order #72 (EO 72), and in some instances, also for a certain period of time after the order expires. EO 72, unless extended, will expire on May 11, 2020.

### **CAMPAIGN FINANCE/50-PIECE RULE**

Current law prohibits a person elected to state or local office who becomes a candidate for national, state, or local office from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed after the first day for circulation of nomination papers. This prohibition is often called the “50-piece rule” and is subject to certain exceptions. For example, the 50-piece rule does not apply to use of public funds for the costs of answers to communications of constituents or communications up to 500 pieces by members of the Legislature relating solely to the subject matter of a special session or extraordinary session.

Under the act, the 50-piece rule does not apply to communications made during, or within 30 days after termination of, the public health emergency declared by EO 72, if the communications relate to the public health emergency.

### **EDUCATION**

#### **School Report Card Exemption**

The Department of Public Instruction (DPI) is required to publish a school and school district accountability report each year. These reports are commonly referred to as “school report cards.” DPI must publish the report cards by November 30 for the past school year, and must assign each school district and individual school to one of five performance categories ranging from “Significantly Exceeds Expectations” (five stars) to “Fails to Meet Expectations” (one star).

The act creates a one-year exemption such that DPI will not issue report cards for the 2019-20 school year. The act accomplishes this exemption by prohibiting DPI from publishing a school and school district accountability report in the 2020-21 school year. Because DPI will not issue report cards for the 2019-20 school year, the act makes additional statutory changes so the

provisions refer to the most recent accountability reports, rather than reports issued in a particular school year or school years.

## **State Assessments**

Current law requires school districts, independent charter schools, and private schools participating in any of the three parental choice programs to administer state assessments at 4<sup>th</sup> grade, 8<sup>th</sup> grade, 9<sup>th</sup> grade, 10<sup>th</sup> grade, and 11<sup>th</sup> grade, and to administer a state 3<sup>rd</sup> grade reading test. A private school participating in the Special Needs Scholarship Program must administer a state assessment to a student in the program, but only if the student's parent requests it, and if the school administers state assessments to any student at the school.

The act provides that the state assessment requirements described above do not apply in the 2019-20 school year.

## **Educator Effectiveness Evaluations**

Public schools, including charter schools, must evaluate teachers and principals under a DPI educator effectiveness evaluation system or under an alternative evaluation process. The DPI evaluation system assigns a score to each teacher and principal based, in part, on student performance measures including state assessments and district-wide assessments. The evaluation system must place each teacher and principal in a performance category.

The act provides that teacher and principal evaluations for the 2019-20 school year cannot consider student performance on statewide assessments, and cannot include student assessments in the score assigned to a teacher or principal.

## **Waiver of Requirements and Deadlines for Choice Schools and Independent Charter Schools**

Current law imposes numerous requirements on public schools, more limited requirements on charter schools and private schools participating in choice programs, and a small number of requirements on other private schools. Current law also creates a process for individual school districts to request a DPI waiver from requirements in the education statutes (chs. 115 to 121, Stats.) and related administrative rules. However, DPI cannot waive statutes and rules relating to specific topics, such as required state assessments and the health or safety of students. Further, the current waiver process applies only to school districts and school district charter schools, and not to independent charter schools or private schools.

The act authorizes DPI to waive requirements for private schools participating in the Special Needs Scholarship Program, the Wisconsin Parental Choice Program, the Racine Parental Choice Program, or the Milwaukee Parental Choice Program (collectively, "choice programs") beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020. Specifically, the act allows DPI to waive any requirement in the education chapters or DPI administrative rules related to a choice program, a private school participating in a choice program, or an independent charter school. A DPI waiver of a requirement applies only to the 2019-20 school year.

The act also authorizes DPI to establish alternate deadlines for any statutory or administrative rule requirement related to a choice program, if the original deadline is either: (1) a deadline that occurs during the period beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020; or (2) a deadline for a

requirement that affects a date during the period beginning on the first day of the public health emergency declared on March 12, 2020, by EO 72, and ending on October 31, 2020.

Under the act, DPI must notify the Legislative Reference Bureau (LRB) of each waiver of a requirement and each alternate deadline it establishes, and LRB must publish a notice of the waiver or alternate deadline in the Wisconsin Administrative Register. DPI must also post each waiver and alternate deadline on the agency's website.

## **Waiver of Required Hours for Private Schools**

Current law requires private schools to provide 875 hours of instruction each school year, and requires private schools participating in the Wisconsin Parental Choice Program, the Racine Parental Choice Program, or the Milwaukee Parental Choice Program to provide additional hours. To participate in one of these parental choice programs, a private school must provide at least 1,050 hours of direct student instruction in grades 1 to 6, and at least 1,137 hours in grades 7 to 12.

The act allows a private school to request a waiver of the hours of instruction requirements in the 2019-20 school year. Under the act, a private school may request that DPI waive any requirement related to providing hours of instruction in chs. 115 to 121, Stats., or in DPI administrative rules.

## **Choice School Payments and Participation**

Current law requires private schools to meet certain requirements to participate in a choice program. If a private school meets the requirements, DPI pays the school a specified amount for each qualifying student attending under one of the choice programs. However, DPI may bar a private school from participating in a choice program if it engages in certain behavior, including intentionally misrepresenting information to DPI, routinely failing to submit a financial audit, or failing to refund any overpayments to the state within 60 days. DPI may also withhold payment from a private school for violating the statutory requirements of the program.

The act prohibits DPI from withholding payments or barring a private school from participating in a choice program during the current school year or the following school year, if certain conditions apply. The exception is triggered if a private school is closed for at least 10 school days in a school year by the Department of Health Services (DHS) or a local health officer during the public health emergency declared on March 12, 2020, by EO 72.

Under the act, DPI cannot withhold payment or bar a school's participation for failure to comply with a program requirement if: (1) the private school submits information explaining how the school closure impacted the school's ability to comply with the requirement and action the school took to mitigate the consequences of not complying; and (2) DPI determines the private school's noncompliance was caused by the closure.

## **Choice School Reserve Balance**

Under current law, a private school participating in a choice program must maintain a cash and investment balance that is at least equal to its reserve balance.

The act provides that the requirement does not apply to a school year that occurs during the public health emergency declared on March 12, 2020, by EO 72.

## **Wisconsin Parental Choice Program Application Deadlines**

Current law provides that a private school participating in the Wisconsin Parental Choice Program (WPCP) may only accept applications from qualifying students between February 1 and April 20. The private school must then report to DPI by May 1 the number of students applying and the names of applicants with siblings who also applied.

The act extends the WPCP application and reporting deadlines by several weeks. Under the act, a private school participating in the WPCP may accept applications for the 2020-21 school year until May 14, 2020, and must report to DPI by May 29, 2020.

## **Open Enrollment Application Deadlines**

Current law allows a student to attend a school district other than the district in which the student lives (“nonresident school district”) under the open enrollment program, and provides a series of deadlines related to the application process for the program:

- To participate in open enrollment, a student must generally apply to a nonresident school district between the first Monday in February and the last week day of April in order to attend in the following school year. The nonresident school district must then send a copy of the application to the student’s resident school board and DPI by the end of the first week day following the last week day in April.
- If a student is a child with a disability, the student’s resident school board must send a copy of the student’s individualized education program (IEP) to the nonresident district where the student applied by the first Friday following the first Monday in May.
- A nonresident district may not act on any application until May 1, and must notify a student whether the district has accepted the student’s application by the first Friday following the first Monday in June. A resident district must notify a student and nonresident school district of a denial, and the reason for the denial, by the second Friday following the first Monday in June.
- A student’s parent must notify the nonresident school board of whether the student intends to attend the school in the following school year by the last Friday in June, or within 10 days of receiving a notice of acceptance if the student was selected from a waiting list. The nonresident school board must then notify the student’s resident school board that he or she was accepted for open enrollment by July 7.
- A student’s resident school board must provide records and items related to expulsion or pending disciplinary proceedings for the student to the nonresident school board by the first Friday following the first Monday in May.
- By the second Friday following the first Monday in May, DPI must provide low-income parents who are requesting transportation reimbursement with an estimate of the amount of reimbursement the parent will receive.

The act extends the open enrollment deadlines for the 2020-21 school year by approximately one month. Under the act:

- A student must apply to a nonresident school district by May 29, 2020. The nonresident school district must send a copy of the application to the student’s resident school board and DPI by June 1, 2020.

- If a student is a child with a disability, the resident school board must send a copy of a student's IEP by June 8, 2020.
- A nonresident district may not act on any application before June 1, 2020, and must notify a student of whether the student's application was accepted by July 2, 2020, and a resident school board must notify a student and nonresident school board of a denial by July 9, 2020.
- A student's parent must notify a nonresident school district of the student's intent to attend in the 2020-21 school year by July 31, 2020, or within 10 days of receiving a notice of acceptance if selected from a waiting list. The nonresident school board must report the name of a student it accepted to the student's resident school board by August 7, 2020.
- A student's resident school board must provide expulsion or discipline-related records to the nonresident school district by June 5, 2020.
- By June 12, 2020, DPI must provide parents of low-income students applying for transportation reimbursement with an estimate of the amount of reimbursement the parent will receive.

## Virtual Instruction Reports

The act requires school boards to report information to DPI regarding virtual instruction and other school district operations during the public health emergency,<sup>1</sup> and requires DPI to report the information to the Legislature. Under the act, each school board must report the following to DPI:

- Virtual Instruction. Whether or not virtual instruction was implemented in the district during the public health emergency, and if so, in which grades.
- Implementation Process. The process for implementing virtual instruction, if it was implemented during the public health emergency.
- Percentage of Curriculum Provided Virtually. The average percentage of 2019-20 school year curriculum provided in-person and virtually for each grade level.
- Content Provided Over the Summer. Whether anything was provided to students during the summer to help them learn content missed because of the public health emergency, and if so, what was provided.
- Best Practices. Recommendations for best practices for transitioning to and providing virtual instruction when schools are closed.
- Barriers to Virtual Instruction. Any challenges or barriers the school board faced related to implementing virtual instruction during the public health emergency.
- Staff Layoffs. The number of staff members who were laid off during the public health emergency by position type.
- Lunches Provided. The number of lunches the school board provided during the public health emergency.
- Reductions in District Expenditures. The total amount by which the school board reduced expenditures during, or because of, the public health emergency in each of the following

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<sup>1</sup> Act 185 defines "public health emergency" for these purposes as the period during the 2019-20 school year when schools are closed by DHS under s. 252.02 (3), Stats.

categories: (1) utilities; (2) transportation; (3) food service; (4) personnel (including reductions resulting from layoffs); and (5) contract terminations.

DPI must compile the information it receives from school districts and submit it to the appropriate standing committees of the Legislature by January 1, 2021.

The act also requires DPI to post guidance for schools on best practices related to transitioning from virtual instruction to in-person instruction on its website by June 30, 2020.

## **EMPLOYMENT**

### **Worker's Compensation**

Generally, under current law, an employee who suffers an employment-related injury or illness is eligible to receive worker's compensation. An employee must generally demonstrate that the injury or illness occurred during, or was caused by, the employee's performance of work duties.

The act creates a presumption that a first responder's diagnosis of COVID-19 is employment related, for purposes of worker's compensation eligibility if certain conditions are met. Under the act, a "first responder" includes an employee or volunteer for an employer that provides law enforcement, firefighting, or medical treatment of COVID-19, and who has regular contact or proximity to patients or members of the public who require emergency services.

The presumption applies to a diagnosis of COVID-19 that was caused during the declared public health emergency through 30 days after the termination of the order, if the person was exposed to persons with confirmed cases of COVID-19 in the course of employment. The presumption may be rebutted by evidence that the exposure occurred outside of the first responder's work for the employer.

### **Unemployment Insurance - Waiver of Waiting Period**

Generally, a person who has been laid off from employment or who otherwise experienced an involuntary loss of work is eligible for unemployment benefits if the person had been employed and received wages, and the employer had paid federal and state unemployment taxes on those wages. If all eligibility requirements are met, a person may receive benefits for up to 26 weeks within the 52-week benefit year that follows the date of filing an initial claim. Benefits are not immediately paid for the first week, which is referred to as a waiting period, but are paid out if the person has claimed benefits for the full 26 weeks of the person's benefit year.

The act temporarily waives the one-week waiting period for benefit years beginning after March 12, 2020, and before February 7, 2021, which allows the state to be eligible for certain grants and additional funding under both the FFCRA and the CARES Act. The act directs the Department of Workforce Development (DWD) to seek the maximum amount of federal reimbursement for benefits that are payable for the first week of a claimant's benefit year.

### **Employers' Unemployment Insurance Accounts**

Generally, private sector employers (contribution employers) are required to contribute money to the unemployment reserve fund, collected through taxes; the payments are credited to individual employer accounts and when an employee qualifies to receive unemployment insurance benefits, the benefits are charged to the employer's account. DWD determines the amounts that contribution employers are required to pay; under current law, contribution

employers pay the lowest rate, on a four-grade scale developed by DWD, toward the unemployment reserve fund.

Certain employers, such as governmental entities and nonprofit organizations (reimbursable employers), do not make contributions to the unemployment reserve fund, but instead are billed when an employee receives unemployment benefits that are charged to the reimbursable employer's account.

The act temporarily shifts responsibility for benefit payments to the state, if certain requirements are met. The act first requires DWD to determine if a claim for unemployment insurance is related to the public health emergency declared on March 12, 2020. If the claim is so related and if the benefits are payable for weeks beginning after March 12, 2020, and before December 31, 2020, DWD must charge the benefit payments against either the balancing account of the unemployment insurance reserve fund (for contribution employers) or DWD's administrative interest and penalties account (for reimbursable employers).<sup>2</sup>

Under the act, benefits would be charged as under current law, rather than being shifted to the state, in any of the following circumstances: (1) if the employer fails to provide the requested information to indicate that the claim is related to the declared public health emergency; (2) if any benefits are paid or reimbursed by the federal government, including the portion of any benefits reimbursed by the federal government for reimbursable employers under the CARES Act; (3) if a claim for regular benefits is a combined wage claim; (4) if the claim includes work-share benefits reimbursed by the federal government; or (5) if the benefits are otherwise chargeable based on employment with the federal government.

The act requires DWD to seek advances from the federal government to the unemployment reserve fund, to the extent possible, to allow contribution employers to continue to pay the lowest unemployment contribution rates for unemployment taxes through the end of calendar year 2021.

## **Work-Share Programs**

Under current law, an employer may utilize a "work-share" structure to keep a business open and keep workers employed who would otherwise be laid off. The program uses partial unemployment benefits combined with continued, but reduced, work hours. To implement a work-share program, an employer must submit a plan to DWD for approval. The plan must meet certain state and federal requirements, including certification by the employer that retirement and health benefits will be continued for all participating employees.

A plan must provide for inclusion of at least 10 percent of employees in an affected work unit when the plan is submitted, and at least 20 positions must continue to be covered or the plan will be terminated. Hours may not be reduced by more than 50 percent, and the reductions must be shared equitably among the employees.

General requirements include apportioning the reduced work hours equitably among employees in the work unit, and excluding seasonal, temporary, or intermittent employees from the plan. Eligible employees must be regularly employed by the employer and have been employed for at least three months with the employer. The employer must also provide general information on

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<sup>2</sup> The unemployment insurance reserve fund is a pooled account financed by all contribution employers who pay contributions and is used to pay benefits that are not chargeable to any employer's account. The interest and penalties account is an administrative account maintained by DWD and may be used for paying benefits under certain circumstances involving benefits that are not chargeable to reimbursable employers.

how notice will be given to employees, whether training will be included to enhance job skills, and how many layoffs would occur without implementation of the plan.

A plan will take effect on the second Sunday after it is approved by DWD and may be in place for up to six months.

The act creates a temporary, more accessible, modified work-share program for employers to utilize in lieu of laying persons off. The modified requirements apply to a work-share plan that is submitted by an employer between the bill's enactment and December 31, 2020. The act also allows an employer with a work-share plan that was approved by DWD prior to the act becoming law to submit a plan modification that would be subject to the modified program requirements.

The specific requirements for an employer's work-share plan that are relaxed under the act include allowing the plan to:

- Apply to all employees, not only those in a specified work unit.
- Cover as few as two employees, rather than 20.
- Reduce hours by up to 60 percent, rather than 50 percent.
- Begin on the first Sunday after the plan is approved by DWD, rather than the second Sunday.

The plan is not required to apportion the reduced work hours equitably among the employees.

The general requirements for a work-share plan continue to apply, such as the exclusion of seasonal, temporary, or intermittent employees, and the required minimum three-month work history.

## **State Employees**

### **Transfer Authority of Executive Branch Personnel**

The act authorizes the Secretary of the Department of Administration (DOA) to temporarily transfer an employee from one executive branch office, commission, board, department, or independent agency ("agency") to another. The transferred employee will provide services to the receiving agency.

The receiving agency pays all salary and fringe benefit costs of the transferred employee. The act prohibits both the transferring agency and the receiving agency from increasing the salary of a transferred employee at the time of transfer, during the time the employee is performing services for the receiving agency, and at the time the employee returns to the transferring agency.

The secretary's authority to execute a transfer applies during the period covered by the public health emergency declared by EO 72. Any transfer under this provision may remain in effect only until rescinded by the Secretary of DOA or until 90 days after the public health emergency is terminated, whichever occurs first.

The act requires the secretary to submit a report to the Joint Committee on Finance (JCF) on the number of employees who were transferred under this authority, the title of each employee transferred, the title the employee assumed at the receiving agency, and the reasons for each transfer.



### **Limited-Term Employees**

Under current law, the Division of Personnel Management (DPM) in DOA may provide rules for the selection and appointment for limited-term employment, commonly referred to as LTE positions. LTE positions are provisional appointments for less than 1,040 hours per year.

The act allows DPM to increase or suspend the number of hours for an LTE position for the duration of the public health emergency declared on March 12, 2020, by EO 72.

### **Annual Leave**

Under current law, a state employee may use annual leave in a current calendar year that is anticipated but has not yet accrued, with approval of the appointing authority. However, an employee who has not yet completed the first six months of a probationary period may not use annual leave (other than leave that accrued while serving in a different position in the unclassified service).

The act allows an employee to take anticipated annual leave within the first six months of a probationary period during the declared public health emergency. If an employee uses annual leave in that time, but terminates employment before the anticipated annual leave has accrued, the cost of the unearned annual leave must be deducted from the employee's final pay.

### **Grievance Proceedings**

Under current law, a state employee may file a complaint to challenge an adverse employment decision to demote, lay off, suspend without pay, discharge, or reduce pay for the employee. If the employee files a complaint, the investigation of the complaint must include an in-person meeting with the employee. The complaint must be filed within 14 days of being informed of the adverse employment decision, and further appeals to the DPM and then to the Wisconsin Employment Relations Commission must each be filed within 14 days of those decisions, or the right to challenge at each stage is waived.

The act specifies that an in-person meeting while investigating an employee's complaint to challenge an adverse employment decision is not required during the public health emergency declared on March 12, 2020, by EO 72. The act also suspends the appeal deadlines and resumes counting applicable filing periods 14 days after a declared public health emergency terminates.

### **Employment Records**

Generally, employers are required to permit an employee to inspect any personnel records relating to the employee. An employer is required to provide the employee with the opportunity to inspect the employee's personnel records within seven working days after the employee makes the request, at a location reasonably near the employee's place of employment and during normal working hours.

Under the act, during the public health emergency, an employer is not required to provide an employee's personnel records within seven working days after an employee makes a request to inspect his or her personnel records, and an employer is not required to provide the inspection at a location reasonably near the employee's place of employment during normal working hours.

## **GENERAL GOVERNMENT PROCEDURES**

### **Suspension of Deadlines and Training Requirements**

The act authorizes a state agency or unit of local government to toll, or suspend, a deadline administered or enforced by that agency or unit if the deadline falls within the period covered by the public health emergency declared by EO 72 plus an additional 30 days. The agency or unit may also suspend any training requirement associated with any program the agency or unit administers or enforces during that same time period.

The act defines “deadline” broadly to mean any date certain by which an action or event is required to occur or any other limitation as to the time within which an action or event is required to occur. If an agency or unit tolls a deadline, it may not charge any interest or penalties that would otherwise apply with respect to that deadline.

The act gives this authority to any office, department, agency, institution of higher education, association, society, authority, the Legislature, the courts, or any other body in state government created or authorized to be created by the constitution or any law, and any political subdivision, special purpose district, or agency or corporation of a political subdivision or special purpose district.

The act does not authorize the tolling of a deadline with respect to the date on which a public primary or election is held, or to any deadline related to a public primary or election. The act also does not authorize the tolling of a deadline with respect to the filing or payment of a tax for which the revenue is deposited or is expected to be deposited in the general fund, a tax or fee for which the revenue is deposited or is expected to be deposited in the transportation fund, or a property tax.

### **Waiving Personal Appearance Requirements**

Under current law, certain individuals must appear in person before state entities in order to conduct business or satisfy legal requirements. Examples of personal appearance requirements exist in diverse areas, including probate proceedings, where an individual must appear before a court; certain driver licensing actions, where an individual must appear before the Department of Transportation; and appeals of administrative discipline of a veterinarian, where an individual must appear before the Veterinary Examining Board.<sup>3</sup>

Under the act, the head or governing body of a state entity may waive the requirement for an in-person appearance during the public health emergency declared by EO 72 if that head or governing body finds that the waiver assists in the state’s response to the public health emergency or that enforcing the requirement may increase the public health risk. The act extends this authority to the following state entities: any state agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law that is entitled to expend appropriated funds, including the Legislature, the courts, and any authority.

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<sup>3</sup> In other circumstances, current law may allow a personal appearance requirement to be waived. For example, in lieu of requiring a property owner to appear in person to object to a property tax assessment, a board of review may allow the property owner to appear by telephone or to submit a written statement. [s. 70.47 (8), Stats.]

## **HEALTH SERVICES**

### **Suspension of Medicaid Provisions to Qualify for Enhanced Federal Matching Percentage**

The act allows DHS to suspend certain Medical Assistance (MA) requirements to satisfy criteria for enhanced funding under the FFCRA and the CARES Act.

#### **Background**

The MA program, or Medicaid, provides health care and long-term care services to individuals who qualify under state law. Medicaid is funded jointly with the federal government. Generally, for every dollar of spending, 59.36 percent derives from federal funds and 40.64 percent from state funds. The contribution amounts are based on the applicable Federal Medical Assistance Percentage (FMAP), as determined by the Centers for Medicare and Medicaid Services (CMS) in accordance with federal law.

#### **2017 Wisconsin Act 370 – Changes to Childless Adults**

2017 Wisconsin Act 370 required DHS to make several changes to Medicaid provisions related to premiums, a health risk assessment, and community engagement requirements for childless adults. Specifically, changes to these provisions under Act 370 included the following:

- Require persons with incomes of at least 50 percent of the federal poverty level (FPL) to pay a premium of \$8 per month as a condition of Medicaid eligibility. A person who fails to pay a required premium must generally be disenrolled from Medicaid for six months.
- Require a health risk assessment and reduce premiums by up to one-half if a person avoids certain behaviors that increase health risks or attests to actively managing certain unhealthy behaviors.
- Require persons, except exempt individuals, who are at least 19 years old but have not attained the age of 50 to participate in 80 hours per calendar month of qualifying community engagement activities. If a person does not participate for 48 aggregate months in a required community engagement activity, DHS must disenroll him or her from the Medicaid program for six months.

The department implemented the monthly premiums and health risk assessment requirements beginning on February 1, 2020. Implementation of the community engagement provision has not yet been approved by CMS; however, it must be implemented by April 29, 2020, according to Act 370.

#### **Section 6008 – Enhanced Federal Matching Percentage**

Section 6008 of FFCRA, as modified by the CARES Act (hereinafter “Section 6008”) provides a temporary 6.2 percent increase to the FMAP to enhance states’ ability to respond to the COVID-19 coronavirus outbreak. This would raise the generally applicable FMAP to 65.56 percent. According to a projection from the Legislative Fiscal Bureau, this would be expected to generate \$150 million in additional federal matching funds in each quarter in which the enhanced FMAP applied.

Under Section 6008, qualifying states may apply the enhanced FMAP from January 1, 2020, through the end of any calendar-year quarter in which the nationwide public health emergency declared by the Secretary of the federal Department of Health and Human Services remains in

effect. However, in order to qualify, a state must do all of the following for the duration of the emergency period:

- Maintain eligibility standards and procedures for the Medicaid program that are no more restrictive than as of January 1, 2020.
- Not charge premiums that exceed those as of January 1, 2020.
- Provide coverage with no cost-sharing requirements of testing, services, and treatments related to COVID-19, including vaccines, specialized equipment, and therapies.
- Provide continuous coverage to all individuals who were enrolled in Medicaid on March 18, 2020, or thereafter, regardless of any change in circumstances that otherwise would terminate eligibility, unless an individual requests a voluntary termination or is no longer a resident of the state.

Significantly, Section 6008 also includes an exception related to the requirement to not charge premiums that exceed those as of January 1, 2020. The exception provides that if a premium is not in compliance with the requirement, but was in effect as of the date of FFCRA's enactment, the state will not be deemed ineligible for the enhanced FMAP during the period before April 17, 2020.

The act allows DHS to suspend certain requirements under the Medicaid program to satisfy criteria for the enhanced FMAP during the period to which it applies. The act authorizes DHS to suspend the monthly premiums and health-risk assessment requirements required under Act 370. Additionally, it authorizes a delay in the implementation of the community engagement requirement under Act 370 until 30 days after the last day of the calendar-year quarter in which the nationwide public health emergency remains in effect, or until 30 days after CMS has approved implementation of the provision, whichever is later. Finally, the act provides that DHS may offer continuous coverage to all individuals who were enrolled in Medicaid throughout the emergency period, regardless of any change in circumstances that otherwise would terminate eligibility, as described above.

## **Legislative Oversight of Requests Related to Nationwide Public Health Emergency**

State law prohibits DHS from submitting a request for a waiver, amendment to a waiver, or other federal approval unless certain requirements related to legislative oversight have been met. These include provisions in 2017 Wisconsin Act 370 requiring that legislation be enacted specifically directing the submission of the request. The act provides authority to DHS to make certain requests for a waiver, amendment to a waiver, or other federal approval during the nationwide public health emergency in response to the 2019 novel coronavirus. No waiver, amendment, or approval requested under the act may extend beyond the emergency period, unless DHS has requested an extension or renewal in compliance with Act 370 requirements and, if applicable, review of state plan amendments.

With respect to a Medicaid waiver, amendment to a waiver, or other approval that is not otherwise specifically directed in legislation, the act provides that DHS may request the following:

- Allowing providers to receive payments for services provided in alternative settings to recipients affected by 2019 novel coronavirus.

- Waiving preadmission screening and annual resident review requirements when recipients are transferred.
- Allowing hospitals that hold a state license but have not yet received accreditation from the Joint Commission to provide Medicaid services during the nationwide public health emergency.
- Waiving application fees for temporary enrollment of providers until after 90 days, or until termination of the nationwide public health emergency, whichever is longer.
- Waiving pre-enrollment criminal background checks to allow providers enrolled in the federal Medicare program to provide Medicaid services until after 90 days, or until termination of the nationwide public health emergency, whichever is longer.
- Waiving site visit requirements to temporarily enroll providers until after 90 days, or until termination of the nationwide public health emergency, whichever is longer.
- Ceasing revalidation of providers who are enrolled in Medicaid or otherwise directly impacted by the nationwide public health emergency until after 90 days, or until termination of the nationwide public health emergency, whichever is longer.
- Waiving the requirement that physicians and other health care professionals be licensed in the state in which they are providing services if they have equivalent licensing in another state or are enrolled in the federal Medicare program.
- Waiving prior authorization requirements for access to covered state plan or waiver benefits.
- Expanding authority regarding nonemergency transportation under federal law to allow for reimbursement of any eligible individual under Medicaid, additional vendors, transportation for caregivers going to provide services to recipients, and meal delivery to Medicaid recipients.
- Waiving public notice requirements that would otherwise be applicable to state plan and waiver changes.
- Modifying the tribal consultation timelines specified in the Medicaid state plan to allow for consultation at the next future tribal health director meeting.
- Modifying the requirement under federal law to submit the Medicaid state plan amendment by March 31, 2020, to obtain an effective date during the first calendar quarter of 2020.
- Simplifying program administration by allowing for temporary state plan flexibilities rather than requiring the state to use the state plan amendment submission and approval process.
- Waiving timely filing requirements for billing under federal law to allow time for providers to implement changes.
- Expanding hospital presumptive eligibility to include the population over age 65 and disabled.
- Allowing flexibility for submission of electronic signatures on behalf of a Medicaid recipient by application assistors if a signature cannot be captured in person.
- Waiving requirements for managed care organizations for initial and periodic recredentialing of network providers if the providers meet provider enrollment requirements during the nationwide public health emergency.

- Requiring managed care organizations to extend preexisting authorizations through which a Medicaid recipient has received prior authorization until the termination of the nationwide public health emergency.
- Waiving sanctions under federal law relating to limitations on physician referral.
- Allowing flexibility in how a teaching physician is present with the patient and resident including real-time audio and video or access through a window.
- Waiving certain equipment requirements in hospital equipment maintenance requirement guidance issued on December 20, 2013, to maintain the health and safety of the hospitals' patients and providers.
- Creating provisions allowing for additional flexibilities to allow for the use in nursing homes of physician extenders in place of medical directors and attending physicians and telehealth options.
- Waiving notice of transfers within a nursing home due to medically necessary protection from the 2019 novel coronavirus.
- Waiving requirements to document sufficient preparation and orientation to residents to ensure a safer and orderly intrafacility nursing home transfer.
- Waiving requirements for a nursing home bed hold policy.
- Waiving requirements for nursing home in-service education under federal law.
- Waiving nurse staffing information and posting of that information for nursing homes.
- Suspending the requirement that a pharmacist go monthly to the nursing home to do record review.
- Waiving or lessening requirements for a paid feeding assistant program in nursing homes and setting guidelines for training to assist with the 2019 novel coronavirus pandemic.
- Waiving the annual and quarterly screening of fire extinguishers and any other annual maintenance review for nursing homes.
- Allowing specified clinical hours required under federal law to be online simulation.
- Waiving specified provisions of the Nurse Aide Training and Competency Evaluation Program.
- Waiving requirements under federal law for training of paid feeding assistants.
- Allowing home health agencies to perform certifications, initial assessments, and determine homebound status remotely or by record review.
- Waiving life safety codes for intermediate care facilities for individuals with intellectual disabilities under federal law and for hospitals, hospices, nursing homes, critical access hospitals, and intermediate care facilities for individuals with intellectual disabilities relating to fire alarm system maintenance and testing; automatic sprinkler and standpipe system inspection, testing, and maintenance; and inspection and maintenance of portable fire extinguishers.

With respect to a Family Care, IRIS, and Children's Long-Term Supports waiver, amendment to a waiver, or other approval that is not otherwise specifically directed in legislation, the act provides that DHS may request the following:

- Allowing all waiver services and administrative requirements that can be provided with the same functional equivalency of face-to-face services to occur remotely.
- Removing the requirement to complete a six-month progress report to reauthorize prevocational service.
- Removing the limitation that quotes from at least three providers must be obtained and submitted for home modifications.
- Removing the limitation preventing supportive home care from being provided in adult family homes and residential care apartment complexes.
- Removing the limitation preventing personal or nursing services for recipients in residential care apartment complexes.
- Removing the limitation that participants cannot receive other waiver services on the same day as receiving respite care.
- Allowing adult day service providers, prevocational providers, and supported employment providers to provide services in alternate settings.
- Allowing up to three meals per day for home-delivered meals for Family Care and IRIS program enrollees and adding home-delivered meals as a benefit in the Children's Long-Term Supports waiver.
- Removing the limitation on using moneys to relocate individuals from an institution or a family home to an independent living arrangement.
- Allowing any individual with an intellectual or developmental disability to reside in a community-based residential facility with more than eight beds.
- Modifying the scope of the child care benefit to allow for the provision of child care payments for children under the age of 12 in the program for direct care workers and medical workers who need access to child care during the emergency.
- Allowing waiver services to be provided in temporary settings.
- Allowing waiver services to be provided temporarily in an acute care hospital or in a short-term institutional stay.
- Allowing payment for waiver services provided in settings outside the state.
- Allowing general retailers to provide assistive technology or communication aids.
- Allowing providers certified or licensed in other states or enrolled in the Medicare program to perform the same or comparable services in this state.
- Delaying provider licensing or certification reviews.
- Allowing DHS to waive provider qualifications as necessary to increase the pool of available providers.
- Allowing four-year background checks to be delayed.
- Expanding transportation providers to include individual and transportation network companies.

- Allowing noncertified individuals to provide home-delivered meals.
- Allowing nursing students to provide allowable nursing services.
- Allowing parents to be paid caregivers for minor children in the Children's Long-Term Supports program for services that would otherwise have been performed and paid for by a provider.
- Allowing for qualified individuals to provide training to unpaid caregivers.
- Waiving choice of provider requirements.
- Waiving the managed care network adequacy requirements under federal law.
- Waiving requirements to complete initial and required periodic credentialing of network providers.
- Adding a verbal and electronic method to signing required documents.
- Allowing the option to conduct evaluations, assessments, and person-centered service planning meetings virtually or remotely in lieu of face-to-face meetings.
- Allowing the lessening of prior approval or authorization requirements.
- Allowing for data entry of incidents into the incident reporting system outside of typical timeframes.
- Waiving the requirement to distribute member-centered plans to essential providers.
- Allowing DHS to draw a federal financing match for payments, such as hardship or supplemental payments, to stabilize and retain providers who suffer extreme disruptions to their standard business model or revenue streams as a result of the 2019 novel coronavirus.
- Allowing DHS to waive participant liability for room and board when temporarily sheltered in noncertified facilities.
- Allowing payment for waiver services that are not documented in the recipient's plan.
- Allowing managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting DHS to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements and give enrollees more time to request a fair hearing.
- Waiving public notice requirements that would otherwise be applicable to waiver changes.
- Modifying the tribal consultation timelines to allow for consultation at the next future tribal health directors meeting.
- Waiving timelines for reports, required surveys, and notifications.
- Allowing extension of the certification period of level-of-care screeners.
- Allowing waiver of requirements related to home and community-based settings on a case-by-case basis in order to ensure the health, safety, and welfare of affected beneficiaries under federal law.
- Applying any provisions under this paragraph automatically to the concurrent 1915 (b) waiver.
- Allowing the waiver enrollment or eligibility changes based on a completed functional screen resulting in a change in level-of-care.



- Allowing for continued enrollment in Children’s Long-Term Supports past ages 18 and 21.
- Allowing suspension of involuntary disenrollment.

### **Medicaid Incentive Payments**

The act requires DHS to develop, beginning in the 2021 rate year, a performance-based payment system to incentivize Medicaid providers to participate in health information data sharing to facilitate better patient care, reduced costs, and easier access to patient information. DHS is directed to seek any available federal funds, including any moneys available for this purpose under the CARES Act, to assist small, rural providers with the costs of information technology setup to participate in the health information exchange.

### **Public Health Emergency Dashboard**

The act requires the Wisconsin Association Information Center (WAIC) to, during the period of the public health emergency declared by the state or federal government related to COVID-19, prepare and publish a public health emergency dashboard using a health care emergency preparedness program information collected by the state from acute care hospitals. The dashboard must include information to assist emergency response planning activities, and WAIC and DHS must enter into an agreement regarding sharing and use of dashboard data.

### **Coverage of Vaccinations Under SeniorCare**

The act requires DHS to include coverage of vaccinations through the SeniorCare program. Specifically, the act incorporates coverage through the SeniorCare program of all vaccinations recommended for administration to adults by the federal Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices and approved for administration to adults by DHS. The act requires DHS to provide payments to health care providers that administer the vaccinations and submit claims for payment in the manner required. Additionally, DHS may provide payment for a vaccination only after deducting the amount of any payment for the vaccination available from other sources.

### **Hours of Instructional Program for Nurse Aides**

Current DHS administrative code requires that an instructional program for nurse aides must include no less than 120 hours of total training with at least 32 of those hours being supervised clinical training.

The act prohibits DHS from requiring an instructional program for nurse aides to exceed the federally required minimum total training hours or minimum hours of supervised practical training specified in the federal regulation. The current federal regulation requires no less than 75 hours of training with at least 16 of those hours being supervised clinical training.

### **Immunity From Civil Liability for Health Care Providers**

The act provides immunity from civil liability for health care professionals and providers, and their employees, agents or contractors, for certain actions or omissions committed during, or within 60 days after the termination of, the state of emergency by EO 72.

Specifically, under the act, any health care professional,<sup>4</sup> health care provider,<sup>5</sup> or employee, agent, or contractor of a health care professional or provider, is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following conditions:

- The act or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared by EO 72 or the 60 days following the date on which the state of emergency terminates.
- The actions or omissions either relate to health services provided, or not provided, in good faith or actions or omissions that are substantially consistent with: (1) any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or respond to the emergency; or (2) any guidance published by DHS, or the U.S. Department of Health and Human Services or its divisions or agencies, relied upon in good faith.
- The actions or omissions do not involve reckless or wanton conduct or intentional misconduct.

The immunity created under the act does not apply if other state law provisions providing indemnification or immunity apply.

## **Immunity From Civil Liability for Donations or Sales of Emergency Medical Supplies**

Under current law, any person engaged in the processing, distribution, or sale of food products or the manufacturing, distribution, or sale of qualified emergency household products, is immune from civil liability for the death of, or injury to, an individual caused by qualified food or qualified emergency household products that are donated or sold under certain circumstances. With respect to qualified food, the immunity applies to donations or sales to a charitable organization, food distribution service, or governmental unit. With respect to qualified emergency household products, the immunity applies to donations or sales to a charitable organization or governmental unit in response to a state of emergency declared under state law. If the qualified food or emergency household products are sold, rather than donated, the price must not exceed overhead and transportation costs for the sale to qualify for immunity.

Any charitable organization that distributes, free of charge, any food or emergency household products it received under the circumstances described above is also immune from civil liability for the death of, or injury to, a person caused by the product. A person is not immune for donating or selling food or emergency household products, under any of the provisions discussed above, if the death or injury was caused by willful or wanton acts or omissions.

The act provides immunity from civil liability related to donating or selling emergency medical supplies, similar to the immunity for donating or selling qualified food and qualified emergency household supplies.

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<sup>4</sup> Under the act, individuals licensed, registered, or certified by the Medical Examining Board under subch. II of ch. 448, Stats., or the Board of Nursing under ch. 441, Stats., constitute “health care professionals” for purposes of immunity.

<sup>5</sup> The act defines “health care provider” as provided under s. 146.38 (1) (b), Stats., and includes an adult family home, as defined in s. 50.01(1), Stats.

Under the act, any person engaged in the manufacturing, distribution, or sale of emergency medical supplies<sup>6</sup> who donates or sells emergency medical supplies is immune from civil liability for the death of, or injury to, an individual caused by the emergency medical supplies if all of the following apply:

- The supplies are donated or sold to a charitable organization or governmental unit.
- If sold, rather than donated, the price does not exceed the cost of production, which is defined to mean “the cost of inputs, wages, operating the manufacturing facility, and transporting the product.”
- The sale or donation is to respond to the public health emergency related to the 2019 novel coronavirus pandemic, which is defined, generally, to mean the period covered by the public health emergency declared by the Secretary of the federal Department of Health and Human Services on January 31, 2020 or the national emergency declared by the President of the United States on March 13, 2020.

The act also extends the immunity described above to any charitable organization that distributes, free of charge, any emergency medical supplies it received under the circumstances, described above.

## **Autopsies and Cremation**

### **Viewing of a Corpse to be Cremated**

State law prohibits a deceased person from being cremated in this state unless a coroner or medical examiner (ME) has issued a cremation permit authorizing the cremation of the corpse. The cremation permit must include a statement by the coroner or ME that he or she has viewed the corpse.

Under the act, for the duration of the public health emergency declared on March 12, 2020, by EO 72, a coroner or ME is required to issue a cremation permit to cremate the corpse of that deceased person **without** viewing the corpse if a physician, coroner, or ME has: (1) signed the death certificate of a deceased person; and (2) listed COVID-19 as the underlying cause of death.

### **Time for Cremation**

State law prohibits a person from cremating a deceased person within 48 hours after the death, or the discovery of death, of the deceased person unless the cause was caused by a contagious or infectious disease.

The act authorizes a coroner or ME, for the duration of the public health emergency declared on March 12, 2020, by EO 72, to issue a cremation permit for the cremation of a corpse of a deceased person within 48 hours after the time of death if a physician, coroner, or ME has: (1) signed the death certificate of a deceased person; and (2) listed COVID-19 as the underlying cause of death.

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<sup>6</sup> For the purposes of this immunity, the act specifies that “emergency medical supplies,” means “any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the public health emergency related to the 2019 novel coronavirus pandemic, including life support devices, personal protective equipment, cleaning supplies, and any other items determined to be necessary by the secretary of health services.”

### **Examination of the Body of an Inmate Who Has Died of COVID-19**

If an individual dies while in the legal custody of the Department of Corrections (DOC) and confined to a correctional facility in the state, the coroner or ME of the county where the death occurred must perform an autopsy on the deceased individual.

Under the act, the coroner or ME is authorized, for the duration of the public health emergency declared on March 12, 2020, by EO 72, to perform a **limited examination** of the deceased individual instead of a full autopsy, which may include an external examination of the body of the deceased individual, a review of the deceased individual's medical records, or a review of the deceased individual's radiographs, if the deceased individual was diagnosed with COVID-19.

### **Electronic Signatures on Death Certificates**

Under the act, during the public health emergency declared on March 12, 2020, by EO 72, the person who is required under current law to sign the death certificate must provide an electronic signature on the death certificate within 48 hours after the death occurs if the underlying cause of death is determined to be COVID-19.

## **HEALTH INSURANCE**

### **Payments for Services by Out-of-Network Providers**

The act prohibits a defined network plan, including a health maintenance organization, or preferred provider plan from requiring an enrollee of the plan to pay more for a service, treatment, or supply provided by an out-of-network provider than what the enrollee would pay for a service, treatment, or supply provided by a provider in the plan's network. However, this prohibition applies only to a service, treatment, or supply that is related to diagnosis or treatment for COVID-19 and that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency. The act specifies how a plan must reimburse out-of-network providers under these circumstances.

The act also provides the manner in which any health care provider or facility that provides a service, treatment, or supply to an enrollee of a defined network or preferred provider plan, but is not a participating provider of that plan, must accept payment for such services, treatments, or supplies.

The act provides that these provisions apply only during the public health emergency declared by the Governor under EO 72 and for the 60 days following the date that the state of emergency terminates.

### **Prohibiting of Coverage Discrimination on the Basis of COVID-19 Diagnosis**

The act prohibits insurers that offer an individual or group health benefit plan, pharmacy benefit managers, and self-insured governmental health plans from doing any of the following based on a current or past diagnosis or suspected diagnosis of COVID-19:

- Establishing rules for the eligibility of any individual, employer, or group to enroll or remain enrolled in a plan or for the renewal of coverage under the plan.
- Cancelling coverage during a contract term.

- Setting rates for coverage.
- Refusing to grant a grace period for payment of a premium that would generally be granted.

### **Prohibiting Certain Prescription Drug Coverage Limits**

The act prohibits insurers that offer health insurance, self-insured governmental health plans, and pharmacy benefit managers from requiring prior authorization for early refills of a prescription drug or otherwise restricting the period of time in which a prescription drug may be refilled and from imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply. These prohibitions do not apply if the prescription drug is a controlled substance.

### **Liability Insurance for Physicians and Nurse Anesthetists**

As it relates to liability insurance for physicians and nurse anesthetists, the act provides that, during the public health emergency declared under EO 72, financial responsibility requirements may be shown by an alternative method. Specifically, a physician or nurse anesthetist for whom Wisconsin is not a principal place of practice but who is temporarily authorized to practice in Wisconsin, may fulfill financial responsibility requirements by filing a certificate of insurance for a policy of health care liability insurance. These providers may also elect to be covered by Wisconsin's health care liability laws.

### **Coverage of COVID-19 Testing Without Cost-Sharing**

The act requires every health insurance policy and every self-insured governmental health plan that generally covers testing for infectious disease to provide coverage of testing for COVID-19 without imposing any copayment or coinsurance before March 13, 2021.

### **Public Employee Insurance Continuation**

Under current law, a state or local public employee may arrange to continue health insurance coverage that is provided through the state's group health insurance program during an unpaid leave of absence. Upon returning to work, the employee again becomes eligible for employer contributions when the unpaid leave is deemed to have "ended" as defined in the statutes. A leave of absence is not ended or interrupted if the employee returns to work until the employee has resumed working for 30 consecutive calendar days for at least 50 percent of what is considered that employee's normal work time with that employer.

Under the act, for the purposes of group health insurance offered by the Group Insurance Board to an employee, an employee who returned from a leave of absence, but who had not yet been working for at least 30 consecutive calendar days on March 12, 2020, when the public health emergency was declared, is deemed to have ended or interrupted the leave of absence on that date. An employee in that circumstance is consequently eligible for employer contributions for health insurance offered by the board as of that date.

## **LOCAL UNITS OF GOVERNMENT**

### **Board of Commissioners of Public Lands Loans**

The Board of Commissioners of Public Lands (BCPL) was established under the Wisconsin Constitution to sell certain lands granted to Wisconsin by the federal government and to invest and manage the proceeds of those sales for the benefit of common (public K-12) schools and a

state university. Current law authorizes BCPL to provide loans from its trust funds to school districts, municipalities, sanitary districts, lake districts, and various other public entities.

The act further authorizes BCPL to make loans to municipal utilities to ensure that municipal utilities are able to maintain liquidity during the emergency period. The act defines the emergency period as the period of EO 72 plus 60 days (i.e., the period from March 12, 2020, to July 10, 2020). The monetary value, duration, and conditions of these loans may be agreed upon between the board and the borrower. Additionally, the act provides that the Legislature finds and determines that the loans authorized under the act serve a public purpose.

### **Eligibility for Fair Aid**

Under state law, agricultural societies, associations, or boards are eligible to receive state fair aid provided by the Department of Agriculture, Trade and Consumer Protection if certain conditions are met. One of these conditions specifies that agricultural societies, boards, and associations which received fair aid provided in 1950 continue to remain eligible for those funds so long as they continue to operate a fair each year in accordance with state law.

The act provides that, notwithstanding this provision, each agricultural society, board, or association that received state fair aid in 1950 must continue to remain eligible for those funds even if a fair is not held during 2020 because of the public health emergency declared under EO 72.

### **Waiver of Property Tax Penalties and Interest**

Current law specifies interest of one percent per month or fraction of a month for delinquent property taxes and authorizes a county, or the City of Milwaukee, to impose a penalty of up to 0.5 percent per month or fraction of a month on delinquent property taxes in addition to the interest due.

The act specifies that a taxation district (a city, village, or town) may, after making a finding of general or case-by-case hardship, waive interest and penalties on installment payments of property taxes due and payable after April 1, 2020, if the total amount due and payable in 2020 is paid on or before October 1, 2020. Under this provision, interest and penalties shall accrue from October 1, 2020, for any taxes payable in 2020 that are delinquent after that date.

The act further specifies that a taxation district may not waive interest and penalties as described above unless the county board where the taxation district is located first adopts a resolution authorizing such waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution. If interest and penalties are waived under this provision, the act also specifies that the county shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under s. 74.29 (1), Stats., and shall settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020 settlement must be distributed proportionally to the underlying taxing jurisdictions.

### **Postponement of Annual Town Meeting**

Under current law, each town is required to hold an annual town meeting. The meeting ordinarily must be held on the third Tuesday of April; however, the town, at an annual meeting, may schedule the next annual meeting for another date within 10 days after the third Tuesday in April.

The act authorizes the town board or, if the town board is unable to promptly meet, the town chair, to postpone the 2020 annual meeting to a date that is not during the period beginning on the date of the public health emergency declared by EO 72 (March 12, 2020) and ending 60 days after the termination of that order.

### **Board of Review Proceedings**

Under current law, the board of review of each city, town, and village must meet annually during the 45-day period beginning on the fourth Monday of April in order to examine the roll of property assessed within that jurisdiction and to hear objections to assessments. If the roll is not completed before the expiration of this period, the board of review must adjourn until such time as the roll is complete.

The act provides that, regardless of whether the 2020 roll is complete during the period described above, a board of review may publish notice that it has adjourned and will proceed with its business as provided under current law.

### **LOW-INCOME ENERGY ASSISTANCE PROGRAM APPLICATION**

Under current law, DOA manages the Wisconsin Home Energy Assistance Program (WHEAP), which provides cash benefits and other services to assist low-income households in meeting their energy needs. Funding for WHEAP consists of federal funds through the federal low-income energy assistance program and state funds from the segregated utility public benefits funds. Additional low-income home energy assistance program funding was provided in the federal CARES Act.

Current law provides that a household may apply for heating assistance after September 30 and before May 26 of any year. The act provides that a household may apply for such assistance at any time during calendar year 2020.

### **OCCUPATIONAL REGULATION**

#### **Temporary Practice by Emergency Health Care Providers**

The act authorizes former health care providers and health care providers from other states to practice temporarily in Wisconsin without obtaining a Wisconsin credential until 30 days after the conclusion of the period covered by the public health emergency declared in EO 72. To qualify, a former health care provider must have held the credential at any time within the prior five years and the credential cannot have ever been revoked, limited, suspended, or denied renewal. A health care provider from another state must hold an out-of-state credential that authorizes or qualifies him or her to perform acts that are substantially the same as the acts authorized under the Wisconsin credential.<sup>7</sup>

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<sup>7</sup> Specifically, the temporary practice provisions apply to the following health care providers: nurses, dentists, physicians, physician assistants, perfusionists, respiratory care practitioners, psychologists, social workers, marriage and family therapists, professional counselors, clinical substance abuse counselors, chiropractors, physical therapists, physical therapy assistants, podiatrists, dietitians, athletic trainers, occupational therapists, occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, speech-language pathologists, audiologists, massage therapists, and bodywork therapists.

In addition, all of the following criteria must be met:

- The health care provider's practice must be necessary for an identified health care facility to ensure the continued and safe delivery of health care services.
- The identified health care facility's needs must reasonably prevent the health care provider from obtaining a credential before beginning to provide health care services at the facility.
- The health care provider must apply for a temporary credential or permanent credential within 10 days of first providing health care services at a health care facility.
- The health care facility must notify the Department of Safety and Professional Services (DSPS) within five days of the date on which the health care provider begins providing health care services at the facility.

### **Credentialing Fee Waivers**

The act authorizes DSPS to waive fees for applications for an initial credential or renewal of a credential for various health care providers during the period covered by the public health emergency declared by EO 72.<sup>8</sup>

### **Prescription Order Extensions**

The act provides that, until 30 days after the conclusion of the period covered by the public health emergency declared in EO 72, a pharmacist may extend an expired prescription order as long as the pharmacist has not received and is not aware of written or oral instructions from the prescribing health care provider prohibiting further dispensing. The pharmacist may not, however, extend a prescription for a controlled substance. Under this exception, the pharmacist may make only one extension and may not dispense more than a 30-day supply, except that the pharmacist may dispense a larger quantity if the drug is typically packaged in a form that requires dispensing in a larger quantity.

### **Credential Renewals for Emergency Medical Service Providers**

The act prohibits DHS from requiring credential renewals for ambulance service providers, emergency medical services practitioners, or emergency medical responders until 60 days after the termination of the public health emergency declared by EO 72. A renewal that occurs after that time is not considered late if the application is received before the next applicable renewal date. In addition, at the next renewal, DHS may waive or reduce continuing education requirements or other conditions for renewal.

## **PLAN AND REVIEW**

### **Wisconsin Economic Development Corporation**

The act requires the Wisconsin Economic Development Corporation to submit a report to the Legislature and the Governor by June 30, 2020. The report must include a plan for providing support to the major industries in this state that have been adversely affected by the COVID-19

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<sup>8</sup> The fee waiver provisions apply to registered nurses, licensed practical nurses, nurse-midwives, dentists, physicians, physician assistants, perfusionists, respiratory care practitioners, pharmacists, psychologists, clinical social workers, independent social workers, social workers, marriage and family therapists, professional counselors, and clinical substance abuse counselors.



public health emergency, including tourism, manufacturing, agriculture, forest products, construction, retail, and services.

## **Legislative Audit Bureau Review**

During fiscal year 2020-21, the act requires the Legislative Audit Bureau (LAB), using risk-based criteria, to review selected programs affected by the act and selected expenditures authorized by the act. LAB must report the results of its review to the Legislature and the Joint Legislative Audit Committee at least quarterly.

## **RETIREMENT**

### **Wisconsin Retirement System Annuities for Certain Annuitants Returning to Work During Public Health Emergency**

Current law provides that when a Wisconsin Retirement System (WRS) annuitant<sup>9</sup> returns to employment with a WRS-participating employer to a position in which he or she is expected to work at least two-thirds of what is considered full-time employment as defined by the Department of Employee Trust Funds (ETF), his or her annuity is suspended and no annuity is payable until after the participant terminates WRS-covered employment. This provision effectively limits WRS annuitants who seek to return to WRS-covered employment to positions where work is expected to involve less than 1,200 hours annually<sup>10</sup> or to suspend their annuities and return to WRS-covered employment.

The act permits annuitants to return to WRS-covered employment during the public health emergency declared on March 12, 2020, without a limit on hours or suspension of their annuities when they are hired for critical positions. A critical position is defined as a position that, based on guidance provided by the Secretary of DHS, the head of each state agency, and each local health department determines to be critical within the respective state agency or unit of local government, when the Governor declares a state of emergency related to a public health emergency. The act also requires that the returning annuitant, at the time he or she terminates employment with a WRS-participating employer, may not have an agreement with any WRS-participating employer to return to WRS-participating employment or contract to provide employee services for a WRS-participating employer.

Current law also provides that a WRS participant does not qualify for an annuity,<sup>11</sup> or receive benefits that are conditioned on receipt of an annuity, unless 75 days have elapsed between the termination of WRS-covered employment and the return to WRS-covered employment. Payments made in violation of this provision must be retained from future annuity payments unless voluntarily repaid by the participant. This separation-from-service statute is based on federal law requirements that a qualified state plan must contain a provision under which employees demonstrate a good-faith intent to terminate employment at the time of retirement.

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<sup>9</sup> These provisions also apply to disability annuitants who have attained their normal retirement dates.

<sup>10</sup> Two-thirds of what is considered full-time employment as used under ss. 40.22 and 40.26, Stats., has been determined by ETF as 1,200 hours for employees who are not teachers or educational support personnel. These categories of employees have a lower defined hourly standard due to the school year. Two-thirds of full-time employment is defined as 880 hours for these categories.

<sup>11</sup> This provision also applies to the lump sum payments of participants whose pension balances are not sufficient to receive a monthly annuity.

The act reduces the 75-day separation from service to 15 days, during the public health emergency declared on March 12, 2020, for individuals who are returning to WRS-covered employment in critical positions, as described above.

## **RETURNS OF CERTAIN PRODUCTS**

The act, with two exceptions, prohibits a retailer who sells food products, personal care products, cleaning products, or paper products at retail from accepting a return of those products during the public health emergency declared under EO 72 or within 30 days after the emergency ends. The exceptions to this prohibition allow a retailer to accept returns of these types of products if the product is returned within seven days of purchase, or the product is adulterated or defective as a result of a production error or defect. Under the act, retailers are allowed to accept returns of other types of products.

## **STATE TAXATION**

### **Updates to the Definition of Internal Revenue Code**

State tax law generally references the Internal Revenue Code (IRC) as it was in effect on December 31, 2017.

The act updates current law references to the IRC to include certain tax provisions of the CARES Act. These provisions include:

- An exemption from penalties for withdrawals from certain qualified retirement accounts for the purposes of coronavirus-related illness.
- An increase in qualified employer plan loan limits.
- A partial deduction for certain individual charitable contributions.
- A suspension of limitations on certain individual and corporate charitable contributions.
- A clarification that a health plan does not lose its status as a high-deductible health plan even if it fails to provide a deductible for telehealth and other remote care services.
- An expansion of qualified medical expenses for the purposes of certain health savings accounts to include menstrual care products.
- Loan forgiveness for certain paycheck protection loans under the Small Business Administration's loan guarantee program.
- An exclusion from income for certain employer payments for student loans made on behalf of the employee.
- A correction to a drafting error to provide a 15-year recovery period for qualified improvement property under the Tax Cuts and Jobs Act of 2017.

### **Department of Revenue Authority to Waive Penalties and Interest**

Under current law, unpaid taxes generally bear interest at the rate of 12 percent per year from the due date until paid and delinquent taxes bear interest at the rate of 1.5 percent per month until paid. Varying late filing fees may also be assessed based on the specific tax unpaid.

The act permits the Secretary of the Department of Revenue (DOR) to waive, on a case-by-case basis, penalties or interest on general fund taxes or transportation fund fees or taxes due that

accrue during the period covered by the public health emergency declared by EO 72. The date required by law for the remittance of the tax must be during this period and the secretary must determine that the person's failure to remit the tax was due to the effects of the COVID-19 pandemic.

## **STATE FUNDING**

### **State Debt Refinancing**

The act increases the amount of state public debt that may be contracted to refund any unpaid indebtedness used to finance tax-supported or self-amortizing facilities by \$725 million, from \$6.785 billion to \$7.510 billion. The act retains the prior law requirement that bonds may be issued under this authority only if the true interest cost to the state is reduced.

### **Transfers From Sum Sufficient Appropriations**

Under current law, JCF has the authority to transfer certain appropriations. For example, JCF may transfer appropriations between different fiscal years of a fiscal biennium or between an appropriation of one agency and an appropriation of a different agency. This authority does not include the authority to transfer from a sum sufficient appropriation, which is an appropriation that is expendable from the indicated source in whatever amount is necessary to accomplish the purpose specified.

The act extends to JCF temporary authority to transfer from a sum sufficient appropriation. The authority applies during the public health emergency declared by EO 72 and ending 90 days after the termination of that order. Any transfer must be used for expenditures related to the emergency and the total amount transferred may not exceed \$75 million.

### **Child Care Development Block Grant Funds**

Wisconsin currently receives federal Child Care Development Block Grant (CCDBG) funds that are used to support Wisconsin Shares, a child care subsidy program, and other programs to improve child care quality. The CARES Act provided an additional \$3.5 billion for the CCDBG to provide assistance to child care providers, of which Wisconsin is estimated to receive an additional \$51.3 million.

The act credits any additional CCDBG funds that Wisconsin receives under the CARES Act to two federal block grant appropriations that fund aids to individuals and state operations costs. The act further provides that those credited funds may not be encumbered or expended except as provided under s. 16.54 (2) (a) 2., Stats., which generally subjects proposed expenditures of block grant funds to a 14-day passive review by JCF.

This information memorandum was prepared by the Legislative Council staff, on April 21, 2020.