
Wisconsin Legislative Council

INFORMATION MEMORANDUM



IM-2020-07

2019 WISCONSIN ACT 185 PROVISIONS IMPACTED BY EXPIRATION OF PUBLIC HEALTH EXECUTIVE ORDER 72

2019 Wisconsin Act 185 was enacted in response to the COVID-19 pandemic and made numerous changes to state laws and programs, many of which apply for a limited period of time. This information memorandum briefly summarizes provisions of Act 185 that remain in effect only until the public health emergency declared by Executive Order (EO #72) expires on May 11, 2020, or a date specifically linked to expiration of the order.¹ The information memorandum does not describe Act 185 provisions that remain in effect indefinitely or those that expire on a date not explicitly linked to EO #72.²

MAY 11, 2020 EXPIRATION

The following Act 185 provisions expire on May 11, 2020, based on expiration of EO #72:

- Waiver of Personal Appearance. Act 185 authorizes a state entity, including the courts, an institution of higher education, or the Legislature to waive any requirement that an individual must appear in person during the public health emergency.
- Autopsies and Cremation. Act 185 allows the following during the public health emergency relating to the corpse of a person who died of COVID-19: (a) issuance of a cremation permit without viewing the corpse of a person who died of COVID-19; (b) cremation less than 48 hours after death; (c) limited examination of a prisoner, rather than a full autopsy; and (d) electronic signature on the death certificate within 48 hours after the death.
- Liability Insurance for Physicians and Nurse Anesthetists. Act 185 allows out-of-state physicians and nurse anesthetists to meet liability insurance requirements by filing proof of insurance provided by an out-of-state insurer and to be covered by Wisconsin health care liability laws during the public health emergency.
- Prohibiting Certain Prescription Drug Coverage Limits. Act 185 prohibits certain insurers and pharmacy benefit managers from doing the following during the public health emergency: (a) 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 (b) imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply.
- Health Care Credential Fee Waivers. Act 185 authorizes the Department of Safety and Professional Services (DSPS) to waive fees for various health care provider applications for credentials and renewals during the public health emergency.
- Department of Administration (DOA) Transfer of State Employees. Act 185 allows DOA to temporarily transfer an employee from one executive branch office, commission, board, department, or independent agency to another. DOA may only execute a transfer during the

public health emergency, but the transfer itself may remain in effect until rescinded or until 90 days after the public health emergency is terminated, whichever occurs first.

- Employment Provisions for State Employees. Act 185 allows DOA to suspend certain limitations on limited-term employment (LTE) positions and anticipated annual leave, and suspends required in-person meetings and filing deadlines applicable to grievance proceedings during the public health emergency.
- Inspection of Employment Records. Act 185 suspends requirements for an employer to provide an employee access to personnel records within seven working days during normal working hours at a reasonably close location during the public health emergency.
- Wisconsin Retirement System (WRS) Retirees Returning to Work. Act 185 allows annuitants to return to WRS-covered employment in critical positions without limits on hours or suspension of annuities during the public health emergency, subject to some limitations. The act also reduces the required period of separation from service for these WRS retirees during the public health emergency.
- Waiver of Tax Penalties and Interest. Act 185 permits 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 if the date required by law for the remittance of the tax occurs during this period and DOR determines that the person's failure to remit the tax was due to the effects of the COVID-19 pandemic.

JUNE 10, 2020 EXPIRATION

The following Act 185 provisions expire on June 10, 2020, which is 30 days after expiration of EO #72:

- Campaign Finance "50 Piece Rule" Exception. Act 185 creates an exception allowing a state or local official to use public funds for 50 or more communications relating to the public health emergency to be made during or within 30 days after termination of the public health emergency.
- Worker's Compensation Presumption for First Responders. Act 185 creates a presumption that a first responder's COVID-19 diagnosis is employment related, if certain conditions are met, and the illness was caused during the public health emergency or within 30 days after termination of the emergency.
- Suspending Government Deadlines. Act 185 authorizes a state agency or local government to toll, or delay, a deadline or training requirement it administers or enforces if the deadline or requirement falls within the public health emergency or within an additional 30 days.
- Temporary Practice for Emergency Health Care Providers. Act 185 authorizes former health care providers and out-of-state providers meeting specified criteria to practice in Wisconsin without a state license during the public health emergency and 30 days after.
- Drug Prescription Extensions. Act 185 allows a pharmacist to extend an expired prescription order for a drug that is not a controlled substance during the public health emergency and 30 days after, subject to certain limitations.
- Product Returns to Retailers. Act 185 prohibits a retailer who sells food, personal care, cleaning, or paper products from accepting a return of those products during the public health emergency and 30 days after, unless certain limited conditions apply.

JULY 10, 2020 EXPIRATION

The following Act 185 provisions expire on July 10, 2020, which is 60 days after expiration of EO #72:

- Payments for Out-of-Network Providers. Act 185 prohibits a network plan from requiring a person to pay more for a service, treatment, or supply related to COVID-19 diagnosis or treatment from an out-of-network provider, if certain conditions are met, during the public health emergency and for 60 days following termination of the emergency.
- Health Care Provider Immunity. Act 185 provides immunity from civil liability for deaths, injuries, or damages caused by acts or omissions of certain health care workers during the public health emergency and the 60 days following the emergency, if the acts or omissions met particular criteria.
- Renewing Emergency Medical Service (EMS) Credentials. Act 185 prohibits the Department of Health Services from requiring certain EMS and ambulance service providers to renew their credentials until 60 days after the public health emergency terminates.
- Board of Commissioners of Public Lands (BCPL) Loans. Act 185 allows the BCPL to make loans to municipal utilities to maintain liquidity during the public health emergency, plus an additional 60 days.

AUGUST 9, 2020 EXPIRATION

The following Act 185 provision expires on August 9, 2020, which is 90 days after expiration of EO #72:

- Joint Committee on Finance (JFC) Transfers from Sum Sufficient Appropriations. Act 185 grants JFC authority to transfer funds from a sum sufficient appropriation during the public health emergency and ending 90 days after termination of the emergency, if the transfer is used for expenditures related to the emergency and the total amount transferred does not exceed \$75 million.

This information memorandum was prepared by the Legislative Council staff on May 8, 2020.

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¹ EO #72 was issued by the Governor on March 12, 2020. Per s. 323.10, Stats., a state of emergency declared by the Governor may not exceed 60 days unless it is extended by joint resolution of the Legislature.

² Various provisions of Act 185 expire on dates that are not specifically linked to EO #72. Additionally, other provisions are tied to the period of a federal emergency declaration or are applicable during only a particular school year. A full description of all provisions of Act 185 may be found in the Legislative Council Informational Memorandum 2020-05, *COVID-19 Legislation: 2019 Wisconsin Act 185*, available at: https://docs.legis.wisconsin.gov/misc/lc/information_memos/2020/im_2020_05.