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Correspondence Memorandum

Date: May 10, 2020

To: Group Insurance Board

From: Tarna Hunter, Government Relations Director

Subject: Legislative Update

This memo is for informational purposes only. No Board action is required.

Status of Regular Legislative Session

The 2019-2020 Regular Legislative Session ended on March 26, 2020. The State Senate was scheduled to hold its last meeting at the end of March; however, due to the COVID-19 pandemic, the Senate postponed the March floor period and instead is planning to hold an extraordinary session in the next few months to finish up its regular session work.

COVID-19 Extraordinary Session

In response to the COVID-19 pandemic, the Legislature held an extraordinary session in the middle of April and passed COVID-19 relief legislation. Governor Evers signed 2019 Act 185 on April 15, 2020.

2019 Act 185 includes the following provisions affecting benefit programs administered by the Department of Employee Trust Funds:

- Allows a WRS annuitant who is hired for a critical position during the public health emergency starting on March 12, 2020, to return to work and elect to not suspend their annuity for the duration of the public health emergency. The employee may not have an agreement with any WRS employer to return to work or enter into a contract to provide employee services for the employer. Additionally, the bill reduces the break-in-service requirement from 75 days to 15 days for a WRS annuitant who is hired for a critical position during the public health emergency beginning on March 12, 2020.

Reviewed and approved by Pamela Henning, Assistant Deputy Secretary
Pamela L Henning Electronically Signed 05/10/20

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- Allows an employee who is on a leave of absence from an employer that participates in the state or local group health insurance program and who returns to work during the March 12, 2020 public health emergency to be immediately eligible for the employer contribution for the Group Health Insurance Program (GHIP), instead of having to be actively employed for 30 days.

Additionally, 2019 Act 185, includes the following provisions related to health insurance coverage:

- Requires the State of Wisconsin Group Health Insurance Program to provide coverage of testing of COVID-19 without imposing any copayment or coinsurance before March 13, 2021.

- Prohibits the health insurance program 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.

- Prohibits the health insurance program 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; or refusing to grant a grace period for payment of a premium that would generally be granted.

- Prohibits plans participating in the program from requiring a member to pay more for a service, treatment, or supply provided by an out-of-network provider than the member would have to pay if the services were provided in-network. This prohibition applies to services received related to COVID-19 and applies if the member saw an out-of-network provider because a participating provider was not available.

2019-20 Legislative Session – Acts Signed into Law

2019 Act 12 sets requirements insurers must follow when they use a step therapy protocol, provides that a step therapy protocol must use clinical review criteria based on clinical practice guidelines, and requires the following exceptions to be granted for prescription drug coverage:

- The patient previously tried the drug or a similar drug and its use by the patient was discontinued under circumstances described in the act.

- The drug is expected to be ineffective based on the known clinical characteristics of the patient and the known characteristics of the prescription drug regimen.
- The required prescription drug is not in the best interest of the patient, based on medical necessity.
- The patient is stable on a prescription drug selected by their health care provider.
- The drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

Finally, the law outlines an appeal process and would give insurers three business days to deny the request or the exception is granted.

The act takes effect on the first day of the 4th month beginning after publication (November 1, 2019). Additionally, for policies and plans containing provisions inconsistent with this act, the act first applies to policy or plan years beginning on January 1, 2020.

2019 Act 154 requires the Department of Health Services (DHS) in consultation with ETF, to develop and implement a plan to reduce the incidence of diabetes in Wisconsin, improve diabetes care, and control complications associated with diabetes. DHS may also consult with the Department of Public Instruction and Department of Corrections in the development of the plan.

DHS must submit a biennial report to the Legislature (first report by January 1, 2021) that includes:

- An assessment of the financial implications of diabetes upon DHS, the state and localities.
- An assessment of the benefits of implementing programs and activities to control diabetes.
- A description of the level of coordination existing within DHS and between DHS and other entities and organizations on activities and communication relating to diabetes.
- The development or revision of a detailed action plan with a range of actionable items for the Legislature to consider.
- A proposed budget for the plan.

Other Proposed State Legislation

2019 SB 100 and **2019 AB 114** allows the commissioner of insurance to regulate a pharmacy benefit manger (PBM) by requiring them to register. The bill also establishes certain price transparency requirements and requirements on contracts the PBM enters into with pharmacies, pharmacists, or health benefit plan sponsors. The bill primarily focuses on the PBM's relationship with the pharmacies and the insurance commissioner. There are a number of provisions in the bill that may impact the group

health insurance program, including changes to the regulation of prescription drug charges and choice of providers, restricting the PBM from collecting fees from pharmacies for the adjudication of claims and inclusion or participation in the PBM's pharmacy networks, restricting requiring the use of mail order pharmacies and limiting the PBM's ability to audit pharmacies that participate in their network.

2019 SB 100 was introduced by Sen. Erpenbach and referred to the Senate Committee on Health and Human Services. 2019 AB 114 was introduced by Rep. Schraa and referred to the Assembly Committee on Health.

On February 5, 2020, the Assembly Committee on Health held a public hearing on a Substitute Amendment to the bill. The Substitute Amendment made a number of changes to the bill, including removing the provisions that would directly impact the state's group health insurance program. On February 12, 2020, the Senate Committee on Health and Human Services held a public hearing on the Substitute Amendment to the bill.

On February 13, the Assembly Committee on Health held an executive session and recommended passage of the Substitute Amendment, 15-0. On February 18, the Assembly passed 2019 AB 114, 96-0.

Staff will be available during the May 13, 2020, Board meeting to answer any questions.