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 SECRETARY

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**Correspondence Memorandum**

**Date:** August 30, 2020

**To:** Employee Trust Funds Board  
 Teachers Retirement Board  
 Wisconsin Retirement Board

**From:** Tarna Hunter, Legislative Liaison

**Subject:** Legislative Update

There has been no legislative activity affecting ETF programs since the last Board meeting. The Department is in the process of preparing ETF's 2021-23 biennial budget request, which will be presented to the ETF Board and subsequently submitted to the Department of Administration.

**Status of 2019-2020 Regular 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 cancelled the March floor period and was planning to hold an extraordinary session during the summer to finish up its regular session work. As of this writing, the Senate has not scheduled an extraordinary session.

**2019 Legislative Session – Acts Signed into Law**

**2019 Act 9** (2019-21 Biennial Budget). The budget provides two positions for ETF's disability program administration, funding for actuarial audits and required federal financial reporting and funding to continue current ETF operations.

**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.

Reviewed and approved by Pam Henning, Assistant Deputy Secretary

*Pamela L Henning*      Electronically Signed 8/30/2020

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- 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 fourth 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 71** authorizes ETF to withhold money from a member's Wisconsin Retirement System (WRS) annuity or lump sum payment if ETF is ordered to do so by a court in a restitution order. The bill provides that ETF distributes any money withheld from an annuity or lump sum payment under a restitution order as directed by the court in the order. The court may issue a restitution under this bill if the crime for which the restitution is ordered is both felony theft and misconduct in public office, the crime resulted in a loss to the defendant's employer and the defendant's employer participates in the WRS. The act takes effect on January 23, 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.

[2019 Act 185](#) (COVID-19 relief legislation) include the following provisions which impact benefit programs administered by ETF:

- 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.
- 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.

## **Other Legislative Proposals**

### **Retirement**

[2019 SB 5](#) and [2019 AB 5](#) make the following changes to the county jailer classification under the Wisconsin Retirement System:

- Classifies county jailers as protective occupation participants under the Wisconsin Retirement System without a requirement that their principal duties involve active law enforcement.
- Provides that county jailers who are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2018, and become protective occupation participants under this bill, are required to pay all employer costs resulting from their classification as a protective occupation participant, including the cost of the duty disability program.
- Provides that county jailers who were classified as protective occupation participants before the bill's effective date and county jailers hired on or after the bill's effective date in counties that classified county jailers as protective occupation participants on July 1, 2018, are not required to pay the additional employer costs.
- Permits a county jailer to elect (irrevocable) at the time of hire not to become a protective occupation participant.
- Amends the Municipal Employment Relations Act regarding county jailers.

2019 SB 5 was introduced by Sen. Marklein and referred to the Senate Committee on Judiciary and Public Safety. 2019 AB 5 was introduced by Rep. Born and referred to the Assembly Committee on Corrections.

On March 19, 2019, the Senate Committee on Judiciary and Public Safety held a public hearing on 2019 SB 5. Also, on March 19, 2019, the Assembly Committee on Corrections held a public hearing on 2019 AB 5.

At this time, neither committee has taken executive action on the bill.

[2019 AB 164](#) and [2019 SB 154](#) would allow WRS participants, both active and inactive, who worked at the Department of Corrections (DOC) for at least five years and who terminates on or after the effective date of the bill to receive military service credits for any military service (current law requires that the service must have been performed prior to 1974). The bill eliminates the current law restriction on receiving military service credit for service that is also used to receive a federal retirement benefit. Additionally, the bill would allow for a participant to receive military service credits if that participant leaves WRS covered employment to enter military service and returns to any WRS covered employment within 180 days of discharge (current law requires the participant to return to the same WRS employer). Finally, the bill requires that DOC make additional contributions as determined by the actuary and approved by the ETF Board to cover the costs of granting the military service credits.

2019 SB 154 was introduced by Sen. Feyen and referred to the Senate Committee on Government Transportation, Veterans and Military Affairs. 2019 AB 164 was introduced by Rep. Thiesfeldt and referred to the Assembly Committee on State Affairs.

At this time, neither bill has been scheduled for a public hearing.

[2019 SB 149](#) and [2019 AB 157](#) allows an annuitant who was a law enforcement officer or fire fighter to return to work with an employer who participates in the WRS, work two-thirds of full-time, and elect to not become a participating employee for purposes of the WRS, and instead continue to receive his or her annuity.

2019 SB 149 was introduced by Sen. Jacque and referred to the Senate Committee on Government Operations, Technology and Consumer Protection. 2019 AB 157 was introduced by Rep. Brandtjen and referred to the Assembly Committee on Labor and Integrated Employment.

At this time, neither bill has been scheduled for a public hearing.

[2019 AB 568](#) and [2019 SB 551](#) make a number of changes to Wisconsin's regional structural collapse team contracted with the Division of Emergency Management in the Department of Military Affairs. The bill changes the team's designation from being a structural collapse team to an urban search and rescue task force and expands the disaster incidents that the team responds to. Currently, the team is comprised of local government firefighters and other technical specialists.

The bill allows DMA to reimburse a local employer for any increase in contributions for duty disability premiums because an employee incurred an injury while performing duties as a member of an urban search and rescue task force.

2019 SB 551 was introduced by Sen. Roth and referred to the Senate Committee on Judiciary and Public Safety. 2019 AB 568 was introduced by Rep. Rohrkaste and referred to the Assembly Committee on Criminal Justice and Public Safety.

On January 9, 2020, the Assembly Committee on Criminal Justice held a public hearing on 2019 AB 568. On February 6, the Committee held an executive session and recommended passage 14-0.

On January 22, 2020, the Senate Committee on Judiciary and Public Safety held a public hearing on 2019 SB 551. On January 30, the Committee held an executive session and recommended passage 5-0.

The Committee on Joint Finance held an executive session on 2019 SB 551 on February 12, 2020 and recommended passage 14-0.

The Assembly did not take action on this bill during the 2019 regular session.

[2019 SB 612](#) and [2019 AB 670](#) make the following changes to the WRS return to work laws and the WRS minimum retirement age:

- Increases the minimum retirement age for general and executive/elected category employees from 55 to 59.5 for members who are under the age 40 on the bill's effective date.
- Changes the return to work requirements that were passed by the Legislature in 2013 by:
  - Providing a three-year grace period from the annuity suspension requirement for those who work more than two-thirds of full time; and
  - Reducing the break-in-service requirement from 75 days to 45 days. Prior to WI Act 20, which passed in 2013, the break in service requirement was 30 days.
- Requires ETF to submit an annual report to the governor and the legislature that provides information about rehired annuitants who elect to not suspend their annuities.

2019 SB 612 was introduced by Sen. Stroebel and referred to the Senate Committee on Government Operations, Technology and Consumer Protection. 2019 AB 670 was introduced by Rep. Felzkowski and referred to the Assembly Committee on State Affairs.

On January 29, 2020, the Senate Committee on Government Operations, Technology and Consumer Protection held a public hearing on 2019 SB 612. On February 12, the Committee held an executive session and recommended passage 3-2.

On January 29, 2020, the Assembly Committee on State Affairs held a public hearing on 2019 AB 670. On February 13, the Committee held an executive session and recommended passage 8-6.

The Assembly did not take action on this bill during the 2019 regular session.

[2019 SB 627](#) and [2019 AB 698](#) make the following changes to the return to work requirements for teachers:

- Eliminates the annuity suspension requirement for teachers of school districts who return to work as a teacher for a school district and work more than two-thirds of full time;
- Reduces the break-in-service requirement for teachers of school districts from 75 days to 30 days; and
- Applies to teachers who terminate employment on the effective date of the bill.

2019 SB 627 was introduced by Sen. Smith and referred to the Senate Committee on Government Operations, Technology and Consumer Protection. 2019 AB 698 was introduced by Rep. Pope and referred to the Assembly Committee on State Affairs.

At this time, neither bill has been scheduled for a public hearing.

[2019 AB 880](#) and [2019 SB 802](#) make the following remedial changes to the WRS and the operation of ETF. The changes clarify current law or codify current practice. These technical changes were proposed by ETF through the Legislature's law revision process.

The following changes are included in this legislation:

- Changes the term beneficiary to named survivor to make the statutes more accurate.
- Deletes outdated language related to ETF's Qualified Domestic Relations Order (QDRO) law.
- Clarifies that only currently employed WRS employees may purchase other governmental service.
- Clarifies that a member cannot be receiving a disability annuity and be considered a participating employee.
- Aligns statutory language regarding employee reimbursement accounts with the federal Internal Revenue Code.
- Provides that ETF may distribute investment gains and losses of the core and variable trust funds accounts by calculating a simple average balance using the

beginning and end of year balances. This change will align statutory language with current administrative practices.

The Assembly did not act on any agency law revision proposals this session. ETF will continue to pursue these legislative changes next session.

## **Health Insurance**

[2019 SB 100](#) and [2019 AB 114](#) allows the commissioner of insurance to regulate a pharmacy benefit manager (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 at the September 17, 2020, Board meeting to answer any questions.