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February 12, 2019

JOE CHRISMAN, STATE AUDITOR
LEGISLATIVE AUDIT BUREAU
22 E MIFFLIN ST SUITE 500
MADISON WI 53703

Re: Audit of the Group Insurance Board and ETF

Dear Mr. Chrisman:

Thank you for the opportunity to review and comment on the Legislative Audit Bureau's (LAB) evaluation of the oversight the Group Insurance Board (GIB) provided for group insurance programs the Department of Employee Trust Funds (ETF) administered and the State Group Insurance Programs. Overall, this report documents the fact that the GIB has kept health insurance costs in check and satisfaction among employers is high. ETF is pleased that no significant concerns were identified.

This response, it should be noted, reflects only the comments of ETF as we were not allowed to share the draft Audit Report with the GIB. Accordingly, while ETF has already implemented changes that will address some of the recommendations included in the Report, we will provide a full response to the Audit's recommendations by November 22, 2019, after we've had the opportunity to discuss them with the GIB.

The LAB's report covers a wide-range of topics concerning large, multifaceted insurance programs. Rather than address every topic and recommendation, this response instead focuses on the four areas where we either disagree with LAB's conclusion or recommendations or believe additional information would provide readers additional necessary context. Absent this context, the reader may not have a complete picture of the administration of the group health insurance programs.

<u>Administration of Group Insurance Programs</u>

Since 2010, the Group Health Insurance Program (GHIP) has gone through significant change and the role of the GIB has expanded. While the Report provides useful facts and figures on the annual costs and demographics of the GHIP, it does not provide any meaningful analysis of how the program has changed and the many things ETF and the GIB have done to adapt to those changes. It is important to note that many of the Report's findings are the by-product of a program, Board and agency evolving to accommodate those changes.

ETF and the GIB work collaboratively to administer the group health insurance program. The GIB meets at least four times a year for at least four to six hours. Before each meeting, board members are expected to review numerous staff, consultant and vendor generated reports and are asked to approve premiums, program changes, reserve draws and member appeals, as well as periodically selecting vendors through the RFP process. Members are reimbursed for their necessary expenses in attending GIB meetings and receive a per diem of $25 for each meeting.

Before 2010, the GIB's primary responsibility was negotiating contracts with health insurance plans. The GIB had limited authority to modify benefits, and, as noted above, primarily focused on cost containment through the negotiation process. Since 2011, considerable legislative and administrative energy has been focused on the GHIP. The GIB progressed to meet these new responsibilities, becoming a much more active board, and ETF has supported the GIB in this effort.

Beginning in 2011, Act 10 required the GIB to reduce the cost of health plans by at least 5%. For the first time, the GIB implemented employee paid co-insurance and deductibles for the health insurance programs. 2011 Act 10 also required that employers pay no more than 88% of the average premium cost. This ensured that employees would pay a larger portion of future premium increases. Additionally, employees were responsible for paying an increased portion of the health insurance premiums. ETF was tasked with implementing these changes and communicating the changes to employers and employees, along with implementing other changes included in Act 10 affecting public employee retirement benefits.

In 2013, the GIB was provided authority to modify benefits to maintain or reduce premiums. Before this law change, the GIB was not authorized to enter into an agreement to modify or expand any group insurance coverage in a manner that conflicts with laws or rules promulgated by the ETF or that materially affects the level of premiums or the level of benefits under any group insurance coverage. Additionally, as noted above, the 2013 legislative sessions included several directives that the GIB and ETF were responsible for implementing, including: creating a wellness initiative, creating high deductible health plans and health savings accounts, and conducting a study to exclude domestic partners from the health insurance program.

In addition to implementing legislatively mandated programs, since 2011, the administration and legislature have directed the GIB to decrease the state's cost of the program. The GIB has successfully met mandated insurance savings included in multiple biennial budgets. In 2015, Act 55 directed the GIB to work with its benefits consultant to make appropriate changes to realize $81 million in efficiencies and savings over the biennium. To meet this mandate, significant plan design changes were introduced in 2016, including increasing employee paid deductibles and out of pocket maximums. These changes significantly decreased the actuarial value of the plan and what the state pays for health insurance. The changes again increased what employees are required to pay. The 2015 biennial budget also created, and ETF implemented, an employee incentive to opt-out of the state health insurance program to further reduce costs to the state.

The 2017 proposed budget directed the GIB to find at least $63.9 million in savings. The GIB and ETF implemented $72.6 million in savings mainly through plan design changes and negotiating with health plans. The GIB and ETF recognized that public employees have seen significant changes to their health insurance and sought to achieve these savings with minimal impact to employee benefits.

As noted above, over this time period, the Group Health Insurance Program was used as one of the tools to help balance the budget. Due to these budgetary directives, the primary focus of the GIB and ETF was on identifying ways to implement cost savings versus further improving program administration. That being said, even though the focus was on cutting cost, the GIB and ETF made great strides looking for ways to improve the program, create a healthier workforce and achieve administrative efficiencies.

Cost Effective and Satisfying

Overall, the Group Health Insurance Program has used a managed competitive market model to keep costs in check. The report notes that costs increased from approximately $1.3 billion in 2009 to $1.7 billion in 2017, an average annual increase of 3.7%. According to the PricewaterhouseCoopers Medical Cost Trend, the national average increase over the same time period was 7.7%. The increases in the GHIP are substantially less than the industry trend. If the group health insurance costs would have been consistent with industry trend, the state health insurance spend would be hundreds of millions of dollars higher.

ETF and the GIB have been able to limit cost growth through competitive negotiations with the health plans. Negotiations with health plans reduced estimated premium expenditures by approximately $31 million annually and the GIB used reserves to further limit premium increases in 7 of the 9 years.

In addition to managing costs through competitive negotiations, since 2011, the GIB has been required to generate substantial savings to help meet the State's Biennial Budget targets. As noted above, the GIB has successfully met mandated insurance savings included in multiple biennial budgets.

The Report clearly shows that almost all state and local government employers are satisfied with the program and ETF and the GIB's efforts.

Providing Consultant's Information and Recommendations to the GIB

To meet their changing roles, ETF and the GIB hired a benefits consultant (Segal Consulting) in 2014 to examine the GHIP and make recommendations for program changes designed to reduce both short-term and long-term costs. The Audit Report suggests that ETF did not consistently advise the GIB on which recommendations to implement. ETF disagrees with this.

All board members were provided the full reports from Segal in March and November 2015. The consultants attended these meetings and walked the GIB through the full reports in detail. At these meetings, board members asked clarifying questions, requested additional information and provided ETF directives on what they would like to pursue. In February 2016, ETF presented a proposed implementation plan to the GIB regarding Segal's recommendations. This memo discussed the proposed recommendations of the consultants, resource availability for ETF and asked the GIB to provide direction on its priorities. In response to the two Segal reports, the GIB identified pursuing a shift to Self-Insurance as its top priority and directed staff to prepare and issue an RFP. In addition, the GIB approved creating a uniform statewide wellness program, implementing a data warehouse and analytics function, re-contracting for the state's pharmacy benefit manager and a delayed implementation of a Medicare Advantage plan for retirees. In addition, the GIB determined it appropriate to minimize benefit changes during these initiatives. ETF provided numerous memos on the status of these initiatives to the GIB. ETF staff are always responsive to inquiries and additional analysis when requested by the Board. In late 2018, with the completion of most of these initiatives and the rejection by the Legislature of a shift to self-insurance in 2017, ETF provided an update to the GIB on the remainder of the recommendations of the benefit consultant and potential next steps.

Providing Materials to the GIB

The Audit Report noted that ETF did not consistently provide GIB materials in advance of meetings when it observed that one report was provided to GIB members at the August 2018 meeting and not prior to it. ETF's goal is to provide GIB materials to members one to two weeks prior to the meeting. In 2016, during the heat of the self-insurance evaluation when the GIB met eight times during the year, the GIB was provided 107 ETF and consultant generated documents. Only 16 of those were provided the day of the meeting. In 2018, out of the 103 documents provided to GIB, only 3 were provided the day of the meeting. ETF does everything possible to ensure that GIB receives accurate and relevant information in a timely manner. When substantive reports are provided on the day of the meeting, ETF staff or the consultants who generated the report are at the meeting and present the materials to the GIB and are available to answer questions. Overall, the vast majority of materials are provided at least a week in advance of the meeting.

Performance Measures for Programs

The Audit Report notes that ETF and the GIB did not determine program goals for several of the GHIP programs, namely the Wellness Program and High Deductible Health Plan. Both programs were legislative initiatives and no program goals were identified in the legislation. ETF and the GIB, in an overall effort to provide these additional tools to control health care costs, focused on implementing these mandates in a short time period. As detailed below, ETF and the GIB have made a number of changes to improve these programs and continue to see improved performance.

HDHP Plan – The GIB was directed by the Legislature to implement HDHP options beginning with the 2015 plan year. ETF created and implemented a communications plan and tools to educate employees on the benefits of the HDHP plan. Enrollment has increased each year since the program started. **Plan year 2019 experienced a 37% increase in HDHP enrollment** over plan year 2018. ETF continues to work with employers to educate benefits staff and employees about the HDHP plan option. Based on anecdotal evidence, ETF believes that the lack of prefunding the employer share of the Health Savings Account may be a barrier to further significant expansion of the HDHP program.

Wellness Program – While the 2013 budget included a directive to develop a wellness plan, the GIB's benefit consultant, Segal, recommended a total health management program as an integral part of a long-term plan to better manage health care costs. The GIB adopted a program to contract for a single wellness vendor to consolidate the offering of incentives to members who complete a health screening, a health risk assessment and participate in wellness improving activities.

Since contracting with a wellness vendor**, enrollment in wellness programming has increased significantly, from 28,762 in 2016 to 49,064 for 2018 – a 70% increase**. The overall risk of the state employee group has decreased during the same time frame, and a number of wellness programs have been initiated including a blood pressure management program, a back-health program and a pilot program aimed at helping employees with weight management. For 2019, the wellness vendor is partnering with the state's pharmacy benefits manager to improve diabetes management and to improve compliance with medication management for persons with asthma and other chronic breathing programs. Programming for 2019 also includes a program on improving member sleep quality and additional access to mobile programming to assist members. The 2019 wellness contract includes performance metrics, as well as a return on investment (ROI) evaluation.

Contract Administration Authority

The Report suggests that the ETF Secretary does not have the authority to sign amendments to contracts for actuarial services. ETF disagrees with this interpretation. Under state law, authority with respect to contracts for actuarial services is blended between the ETF Board and the ETF Secretary. Specifically, state law indicates that contractual agreements for actuarial services run to the Department. The law further requires the ETF Board to direct the ETF Secretary to sign, on behalf of the Department, contractual agreements for actuarial services that have been approved by the board.

This overlapping authority exists because both the board and ETF as a Department are required to engage the actuaries to perform services for them. For example, the contractual agreements with the actuaries contemplate work as needed for ETF. In addition, by law, the actuaries serve as technical experts to the Department.

The ETF Secretary has all of the powers necessary to carry out the purposes of Chapter 40, except as otherwise specified by state law. Nothing in law prohibits the Secretary from signing amendments to these contractual agreements with the actuaries and signing such amendments is consistent with Chapter 40.

Accordingly, the ETF Secretary signed each of the 5 contract amendments with the actuary for the Group Health Insurance program and each of the seven contract amendments with the actuary for the Income Continuation Insurance, Long-term Disability Insurance, and Life Insurance programs that are discussed in the Audit Report.

The twelve amendments concern four types of activity:

1) Four of the amendments involved annual inflationary increases for the retainer fee allowed for in the RFPs which are part of the contracts. ETF had authority to sign these contract amendments because the ETF Board and Group Insurance Board approved the RFPs that allowed for the inflationary increase in the retainer fee.
2) Four of the amendments included scope expansion for additional actuarial work to assist ETF. ETF informed the Group Insurance Board or the ETF Board, as appropriate, about the content and purpose of each amendment. That action by ETF occurred at board meetings and is documented by board agendas, board minutes, memoranda provided to the boards, and in certain instances there were presentations to the boards by either the actuaries or ETF staff.
3) Two of the amendments contained inflationary increase for the retainer fee and expanded the scope of the contract. For the reasons noted in #1 and #2, ETF had the authority to sign these contract amendments.
4) Two of the amendments accommodated another State agency (DOA) through an interagency agreement for actuarial work related to the State's CAFR. The interagency agreement was between ETF and DOA. Consequently, the two boards did not need to authorize that action.

Going forward, in order to improve transparency for the Boards, ETF has instituted a quarterly report to the Boards regarding amendments signed between board meetings along with a brief explanation of each amendment and the cost impact, if any. In addition, ETF will better document the source of its authority to sign contractual agreements with the actuaries.

Contract Administration – Performance Goals

The Report states that ETF 1) did not sufficiently specify how to calculate performance measures; 2) did not determine the extent to which vendors achieved contractually specified performance goals and assess financial penalties for failure to meet the goals and 3) the October 2018 RFP for auditing services did not specify how to calculate performance measures. These findings do not fully explain ETF's efforts regarding performance based contracting. ETF has made a number of changes to improve its contract administration as the programs have evolved and continues to improve its performance-based service contracting.

Since the implementation of an effective performance program can be challenging in the health care arena, ETF continues to work on developing meaningful metrics that are realistic, measurable, and enforceable. This work includes 1) fully dedicating two positions to contract administration; 2) developing and tracking vendor deliverables and 3) providing the GIB a report of all contract activity including any assessment of penalties. Additionally, ETF's Office of Internal Audit has begun working on a scheduled review of the contract administration function for ETF to ensure effective contract administration.

Tracking Employee Time

The Audit Report recommends that ETF staff track the amount of time expended to complete work for each group insurance program. We were surprised by this recommendation and believe the potential bureaucracy required to comply with it is an unwarranted cost to the programs. ETF employs a reasonable approach to allocating internal costs to the programs administered by ETF. Every year as part of ETF's Financial Audit, LAB staff reviews ETF's methodology and financial calculations for allocating administrative costs and there has never been concern regarding the methodology. ETF allocates costs using a consistent and reasonable methodology.

Most group insurance program staff time is allocated to the specific programs they manage. The time of other staff that work on higher level broad issues and/or are involved in tasks related to multiple programs are also allocated to the programs but in a proportion based on the insurance program staff time. We do not believe tracking time would lead to a material change in the administrative costs charged to the programs. However, we will periodically reassess our allocation methodology for opportunities to improve it. As in the past, we will share any proposed changes in the methodology with the LAB financial auditors.

Approach to Managing Reserves

The GIB's use and administration of health insurance program reserves is a key issue of interest for the Legislature and we are pleased to see that LAB's independent actuary concluded that the reserve methodology used by the GIB and its actuary is reasonable. One of the main purposes of the reserves is to stabilize premiums so as to avoid large premium swings from year to year. As noted above, the LAB's independent auditors found that the GIB's reserve methodology is reasonable and appropriate. Segal proposed a four-year plan for spending the reserves which was approved by the Board in 2017. This plan does not require the GIB to use a certain amount each year, but serves as a guide. ETF, Segal and the GIB evaluate how successful the negotiations process has been in that year and what they believe may be some of the future cost challenges to the GHIP when deciding how much of the reserves to use in a given year. The GIB has used reserves in nine of the 11 past years. Reserves were not used in two years because the GIB was preparing to move the GHIP program to a self-insured model, which requires a significantly higher reserve balance.

The report recommends that the reserve calculation include projected investment income. While we believe that this approach will add complexity and volatility to the reserve model, and we note that it was not recommended by LAB's actuarial consultant, we will discuss the matter with Segal Consulting and the GIB.

Additionally, program reserves information is included in ETF's Comprehensive Annual Financial Report (CAFR). The CAFR is audited by LAB and published each fall. The transmittal letter in the CAFR highlights reserves as a percentage of annual expenses by program with additional details within the report. ETF will continue to provide this reporting.

The Audit Report also recommends that ETF provide the GIB with ETF's written analysis of the information provided by the actuary regarding the estimation and use of the reserves. This recommendation seems to be based on a misunderstanding of the roles of the actuary and staff. ETF staff have never attempted to supplant the actuary's role because the actuary is hired based on his or her industry expertise, actuarial skill and knowledge, and availability of specialized resources. By law, the actuary serves as the expert consultant to both the GIB and ETF. ETF and the actuary are in regular communication and work to support the GIB in its responsibilities. Should the actuary recommend something to the GIB that ETF disagrees with, we will bring that to the GIB's attention.

Member Privacy and Data Security

<u>Data Information Requests</u>

The Audit Report notes that at times, ETF took longer than anticipated to provide the data that LAB requested as part of the audit. ETF was surprised by this finding and disagrees with it. Federal law required ETF to disclose only the minimum necessary protected health information to LAB in response to their requests for private member information, including demographic, employment, and medical claims.

LAB's own Protection of Information Policy is consistent with ETF's limitations under federal law, as that policy indicates that only data needed to complete audit work should be obtained or accessed and that LAB Staff should work with agencies so that only pieces of information needed are obtained.

To provide additional context, because ETF administers health insurance-related programs, ETF is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA). That means that ETF is required to protect ETF member data in connection with the health programs that ETF administers. For the purpose of LAB's evaluation, ETF had the difficult task of harmonizing the requirements of federal privacy law and LAB's statutory authority under state law.

As a covered entity, ETF must safeguard HIPAA protected health information (PHI). PHI includes identifiers such as name, Social Security Number and demographic information when tied to health insurance enrollment. See 45 C.F.R. 160.103. Additionally, federal law requires that information provided for health oversight activities, like audits, must also comply with the minimum necessary provisions of the Privacy Rule. Because of the federal rules and LAB's policy, we were surprised that ETF's efforts to ensure compliance resulted in an observation in the report.

In late March, LAB requested ETF's health insurance enrollment file. That file contains identifying information including names and Social Security Numbers, as well as the address, participant status (active, annuitant, dependent), employer, and ETF Member ID for all State Group Health Insurance Program participants.

The request led to ongoing discussions (April-July) with LAB's auditors, attorney, and IT staff to: (1) clarify their request; (2) draft a Memorandum of Understanding; and (3) ensure the information LAB needed was provided in a secure manner. ETF believed that ETF and LAB had successfully arrived at an agreement that would provide LAB the information needed for its evaluation, and that would allow ETF to comply with federal law.

Audits of Information Technology Controls

The Audit Report recommends that ETF work with the GIB to establish sufficient policies pertaining to audits of IT controls of its vendors. ETF initiated more rigorous vendor controls in 2017. These efforts started with ETF strengthening the security related requirements of ETF contracts, with the first contract going into effect the fall of 2017. Since then, ETF has updated the audit and security language included in all ETF standard contracts. As of January 1, 2019, all the new contracts and amendments to existing contracts require vendors to submit audits of IT controls to ETF. Additionally, ETF formalized the Service Organization Control 2 (SOC 2) review process in 2018 and will follow this process to collect and review vendor's 2018 plan year IT audit reports in 2019.

Electronic Communication of Confidential Information

The Audit Report noted that ETF communicated confidential information to the LAB over the state's email system and that the email system is an inappropriate means of communicating confidential information. The staff's communication of social security numbers was not consistent with ETF policy or the protocol we had in place with LAB to exchange information. However, the message was still sent securely, and the staff person was reminded of the appropriate communication mechanism for this type of information. ETF believes that the state's email is a secure and appropriate means of communicating certain types of confidential information between state agencies. We believe the LAB does, too, as it routinely transmits confidential information to ETF over the state's email system.

While LAB cites the possibility of mistakenly sending an email containing confidential information to a person outside of the system, the state's email system used by ETF contains a software program (IronPort) which stops emails with confidential information from being sent to external recipients without message encryption. In addition, the Report notes that the emails could be subject to a phishing attempt. Based on the common definition of phishing, phishing is the fraudulent practice of sending emails, sometimes purporting to be from a reputable company, in order to induce individuals to reveal personal information or to infect the recipient's computer with malware. That does not seem to apply to the emails identified by the Report.
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Redesign of Disability Programs

The Audit Report notes that reserves for the state component of the Income Continuation Insurance Program were in a deficit from 2008 through 2017. Reasons for this decline include increased expenditures from long-term benefit claims and decreased enrollment, possibly due to employees paying higher amounts for employer provided health and retirement benefits. In response to this program deficit, the GIB increased premiums every year, except one, since 2010. In the report, the LAB states that funds may be inadequate to pay future benefits. We disagree. According to the program actuary, the deficit is expected to be eliminated by 2021 due to the increased contributions. Furthermore, as discussed below, ETF has proposed several changes to the ICI program that will provide sustainability and ensure that the program will be able to pay future benefits.

In 2013, ETF contracted with an actuary to evaluate ETF's disability programs. ETF staff worked with the actuaries to redesign the programs, which streamlines, simplifies, and reduces duplication of the state's disability programs. The end goal is to restructure the disability programs to have one short-term disability program (ICI) and one long-term disability program (Disability Retirement Annuity under s.40.63 Wis. Stats.). ETF has achieved most of the changes through modifications to administrative rules and contracts. The final pieces of the redesign require legislative change, which were included in ETF's 2019-21 budget request.

Finally, the Report notes that ETF did not follow statutory requirements to set premiums for the ICI program and charged employers and employees more than what was statutorily stipulated. The Report does not fully explain that DOA required ETF to round the premiums because, at the time, DOA's human resources system was unable to charge employers the non-rounded premiums. Once the state's new IT system, STAR, was implemented and DOA informed ETF that the rounding rules were no longer required, ETF immediately began providing premiums without rounding.

ETF Recommendations Concerning the GIB for Legislative Consideration

ETF offers the following recommendations for Legislative consideration:

Terms: Public members of the GIB serve two-year terms expiring on May 1 of odd-numbered years. In some years in which a change of administration occurs, like 2019, it is possible for the GIB to experience total or near total turnover. The loss of institutional memory on the GIB can be problematic for the programs it oversees. We recommend that public members of the GIB have staggered four-year terms.

Per diem: Given the responsibilities of the GIB, it seems that the $25 per diem is inadequate. We recommend that GIB members be eligible for a higher per diem.

Reporting relationships: Recently, the GIB had two employees of the Office of Commissioner of Insurance as members. One was a statutory ex officio member and the other was appointed by the Governor. While their expertise in insurance matters was welcome, having a board member who reports for employment purposes to another board member may affect the appearance of independence that all board members are expected to exercise. We recommend such reporting relationships be prohibited on the GIB.

We appreciate the time and level of effort that was necessary by LAB staff to complete this expansive audit.

Sincerely,

Robert J. Conlin
Secretary