



Legislative Fiscal Bureau

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December 1, 2020

TO: Representative Robin Vos
Room 217 West, State Capitol

FROM: Bob Lang, Director

SUBJECT: Proposed Response to the COVID-19 Pandemic

Attached is a summary of the provisions of a proposal in response to the COVID-19 pandemic.

BL/bh
Attachment

Summary of Provisions

ADMINISTRATION

1. RETURN TO WORK FOR STATE EMPLOYEES

Specify that any state employee in the executive branch, other than an employee of the UW System, who was holding a position with duties that were required to be performed at the offices of his or her place of employment with an agency on March 1, 2020, must return to and perform his or her duties at the offices of his or her place of employment with that agency by January 31, 2021. Provide that, until the Secretary of the Department of Administration (DOA) determines that a COVID-19 vaccine is widely available, the requirement to return to work in person does not apply to a state employee who provides a written exemption from a physician or physician assistant licensed in the state. A state employee who receives such an exemption must return to work in person within 60 days after the Secretary of DOA determines that a COVID-19 vaccine is widely available.

2. PUBLIC ACCESS TO STATE BUILDINGS

Specify that state offices in buildings owned or occupied by executive branch agencies, other than the UW System, must be made accessible to the public during normal business hours on all days of the year except Saturdays, Sundays, and the holidays specified under s. 230.35(4) of the statutes, no later than January 31, 2021.

3. EMPLOYEE TRANSFER AUTHORITY

Authorize the Secretary of the DOA to transfer any employee from one executive branch agency to another executive branch agency to provide services for the receiving agency during the national emergency declared in response to the 2019 novel coronavirus. Specify that, with regard to employee transfers, the emergency period may not extend beyond June 30, 2021. Specify that the receiving agency must pay all salary and fringe benefit costs of the employee during the time he or she is providing services for the receiving agency. Further, specify that any transfer would remain in effect until rescinded by the Secretary of DOA or 90 days after the emergency period is terminated, whichever is earliest. Specify that an employee may not receive a salary increase upon transfer to a state agency or during the time the employee is providing services for the receiving agency, nor may an employee receive a salary increase upon return to the sending state agency. Require the Secretary of DOA to submit a report to the Joint Committee on Finance no later than June 1, 2021, that provides information on all employee transfers. Specify that the report identify the number of employees transferred, the title of each employee transferred, the title the employee assumed at the receiving agency, and the reasons for each employee transfer. The proposal would extend a provision included

in 2019 Act 185, which expired May 10, 2020.

BOARD OF COMMISSIONERS OF PUBLIC LANDS

1. AUTHORIZE TRUST FUND LOANS TO MUNICIPAL UTILITIES

Allow BCPL to offer loans from the common school fund and other school trust funds to nonprofit municipal utilities during the state of emergency declared by the President of the United States under 50 USC 1621, but not after April 15, 2021. Specify BCPL may offer loans to ensure that the utility is able to maintain liquidity during the emergency period, and authorize BCPL to issue loans for amounts and conditions as may be agreed upon by a borrower. Further, specify that the Legislature determines the loans serve a public purpose.

Under current law, BCPL makes loans to school districts, municipalities, sewer districts and other public entities from the school trust funds that it manages. BCPL typically offers 10-year loans with low fixed interest rates. Under statute, BCPL loans must have an interest rate greater than 2%. BCPL does not charge a pre-payment penalty.

The Public Service Commission throughout 2020 has instituted several moratoria on utilities terminating service to certain ratepayers who are unable to pay utility charges during the public health emergency. At this time, the yearly moratorium on terminating electric and gas service during cold-weather months is in effect from November 1 to April 15. The provision is intended to allow BCPL to extend loans to municipal utilities so that they may continue to meet obligations in the event of a temporary loss of revenues.

BUDGET MANAGEMENT

1. TRANSFERS FROM SUM SUFFICIENT APPROPRIATIONS

Allow the Joint Committee on Finance (JFC) to transfer up to \$100 million from sum sufficient appropriations until the earlier of the conclusion of a national emergency declared by the U.S. President in response to the COVID pandemic, or June 30, 2021. Transferred funds could be used for expenditures related to the public health emergency.

Under the provisions of 2019 Act 185, JFC was authorized to transfer up to \$75 million from sum sufficient appropriations for expenditures related to the public health emergency. This authority expired on August 9, 2020. The proposal would amend this expired authorization to increase the amount to \$100 million with a revised sunset provision.

2. LAPSE REQUIREMENT AND REPORT

Require the Governor, no later than December 16, 2020, to require state agencies in the executive branch to lapse or transfer to the general fund from GPR and PR appropriations at least \$301.5 million for 2020-21. In addition, no later than December 31, 2020, require the Governor to submit a report to the Joint Committee on Finance identifying the state agencies and the appropriations from which the lapses and transfers are to be made. Require the Committee to ensure that the lapses and transfers are reflected in any summary of appropriations for the 2020-21 fiscal year. In September of 2020, the Governor announced agency budget reduction targets of \$301.5 million in 2020-21.

EMPLOYEE TRUST FUNDS

1. REHIRED ANNUITANTS IN CRITICAL POSITIONS

Specify that a Wisconsin Retirement System (WRS) participant who is hired by a participating employer during the national emergency declared in response to the 2019 novel coronavirus may elect to not suspend his or her annuity for the duration of the period, but no later than June 30, 2021, if: (a) at the time of terminating employment, the participant does not have an agreement with any participating employer to return to employment or enter into a contract to provide employee services; and (b) the position for which the annuitant is hired is a critical position. Further, specify that the current break-in-service requirement of 75 days would not apply to a participant who is hired for a critical position during the period if at least 15 days have elapsed between the termination of employment and becoming a participating employee. Require the head of each state agency and each local health department, based on guidance provided by the Secretary of the Department of Health Services, to determine which positions within the respective state agency or local government are critical, for the purposes of administering the provisions applicable to rehired annuitants. The proposal would extend a provision included in 2019 Act 185, which expired May 10, 2020.

Under current law, any WRS participant who retires on or after July 2, 2013, must suspend their annuity and become a participating WRS employee if they are employed in covered employment, or enter into a contract with a WRS employer, and are expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds. Also under current law, any WRS participant who retires on or after July 2, 2013, has a break-in-service requirement of 75 days between termination of employment and becoming a participating employee with a WRS employer. This separation from WRS employment must occur for an individual who applied for an annuity or lump sum payment to continue to qualify for an annuity or to retain the lump sum payment.

GENERAL PROVISIONS

1. IMMUNITY FROM CIVIL LIABILITY FOR PROVIDERS OF HEALTH SERVICES

Specify that any health care professional, health care provider, or employee, agent, or contractor of a health care professional or of a health care provider is immune from civil liability for the death of, or injury to, any individual or any damages caused by actions or omissions taken in providing services to address or in response to the 2019 novel coronavirus, if the following conditions apply: (1) the actions or omissions do not involve reckless or wanton conduct or intentional misconduct; (2) the actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with either of the following: (a) any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address the COVID-19 outbreak; or (b) any guidance published by the Department of Health Services, the federal Department of Health and Human Services (DHHS), or any divisions or agencies of DHHS relied upon in good faith; and (3) the actions or omissions occur during a period beginning on July 10, 2020, and ending with the earlier of: (a) the conclusion of a national emergency declared by the U.S. President in response to the 2019 novel coronavirus; or (b) June 30, 2021.

Under this provision, the term "health care professional" is defined as an individual who is licensed, registered, or certified by the Medical Examining Board or the Board of Nursing. The term "health care provider" is defined in reference to a current law provision related to health care services review (s. 146.38 of the statutes) but to also include an adult family home.

A similar immunity provision was included in Act 185, ending 60 days following the expiration of the state public health emergency declared by the Governor in response to COVID-19. That period of immunity ended on July 10, 2020. This item, in addition to providing an additional period of immunity into the future, provides retroactive immunity back to the date when the Act 185 immunity provision expired. While this item restricts immunity specifically to actions or omissions committed in providing services to address or in response to COVID-19, the Act 185 immunity provision applied to any action or omission committed while providing services during the applicable period.

2. IMMUNITY FOR INDIVIDUALS AND SCHOOLS RELATED TO COVID-19 STANDARDS AND CLAIMS

Create immunity from civil liability for claims related to COVID-19 for a person who complies with then-applicable federal and state statutes related to COVID-19. Specify that an individual cannot be denied immunity due to an isolated, minor deviation from compliance with such statutes unrelated to the claimed injury. Further specify that the provision would have no impact on the claims or causes of action, the required elements of any claims, worker's compensation rights, remedies, or protections, any other immunity or limitation of liability, or any defenses to liability. In addition, the provision also would not apply to any act or omission committed either the later of: (a) June 30, 2021; or (b) the termination of the national emergency declared by the President of the

United States in response to the 2019 novel coronavirus.

For purposes of civil immunity created by the provision, the following definitions would be applicable:

(a) "COVID-19 claim:" a tort claim or tort cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to exposure or potential exposure to COVID-19, or to conduct intended to reduce transmission of COVID-19. The term would also include a tort claim made by or on behalf of an individual who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child, member of the same household, or other relative of the individual, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the individual's exposure or potential exposure to COVID-19. The term would not include an administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce state statutes and regulations, executive orders, or state agency orders applicable to COVID-19.

(b) "Person:" an individual, partnership, corporation, association, governmental entity, or other legal entity, including a nonprofit charitable organization. The term would also include an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

(c) "Nonprofit charitable organization:" an organization granted tax exempt status by the Internal Revenue Service, if no part of the organization's net earnings inure to the benefit of a private shareholder or individual.

(d) "Conduct intended to reduce transmission of COVID-19:" health screening, testing, contact tracing, and other actions intended to reduce transmission of COVID-19 in a workplace or on other premises.

In addition, create a civil liability exemption for the death of, or injury to, an individual related to the exposure or possible exposure to COVID-19 while on school grounds, attending a school event/activity, or during transport to or from school grounds or a school event/activity for school districts, the authorizer, operator, or governing board of a charter school, the governing body of a private school, and any officer, official, employee, or agent of these entities. Specify that the immunity would be applicable until the end of the 2020-21 school year, and would be in addition to and not in lieu of any immunity currently available to school districts and officers, officials, agents, or employees of school districts. Further, extend the immunity to independent charter and private schools and their officers, officials, employees, and agents with respect to COVID-19 claims.

Under current law, school districts have immunity from intentional acts of its officers, officials, agents, and employees for acts done in the exercise of legislative, quasi-legislative, judicial, or quasi-judicial functions, with certain exceptions.

Immunity established under the bill would first apply to civil actions filed on the effective date of the bill.

HEALTH SERVICES

1. MA PAYMENTS TO HOSPITALS FOR NURSING FACILITY LEVEL OF CARE

Require DHS, during a public health emergency period (as defined below), to reimburse hospitals under medical assistance (MA) for providing nursing facility level of care to individuals if all of the following apply: (a) the individual for whom the hospital provided care is enrolled in MA, has been admitted on an inpatient basis to the hospital, is eligible for discharge after receiving care in the hospital, requires nursing facility level care upon discharge, and due to the hospital being unable to locate a nursing facility that accepts the individual for admission, is unable to be transferred to a nursing facility; (b) the services provided are custodial care for which federal Medicaid financial participation is approved; and (c) the hospital notifies DHS that it is participating as a swing bed hospital under MA. Specify that the reimbursement shall be the statewide average per diem rate paid to nursing facilities or a supplement payment to hospitals for providing nursing-facility-level of care.

Require DHS to use the same standards and criteria for determining whether a hospital is eligible for reimbursement or a supplemental payment as are used by the federal Medicare program for the payment for use of swing beds or, for any hospital that is not a critical access hospital, under the terms of a federal waiver approved under Section 1135 of the federal Social Security Act. Require DHS to seek any approval from the federal government necessary to implement this reimbursement policy. Define a "public health emergency period," for the purposes of this provision, as the period ending on June 30, 2021, or the termination of the federal public health emergency related to COVID-19, whichever is earlier.

Under MA, reimbursement for inpatient hospital services is generally based on the patient's diagnosis, and, with limited exceptions, no additional payments are made for any nursing-level custodial care provided in the hospital after a person is ready for discharge in circumstances where no nursing facility is able to accept the person. This provision would require DHS, pending federal approval, to provide additional reimbursement to the hospital for MA patients on a temporary basis, generally aligning with federal Medicare policy. Medicare provides such payments for critical access hospitals, and also, under a Medicare waiver in effect during the COVID-19 public health emergency, for general medical-surgical hospitals. Because there is currently no reporting by hospitals of custodial care provided to MA beneficiaries under these circumstances, the fiscal effect of this provision is indeterminate.

2. MA PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES

Require DHS, until the expiration of the federal public health emergency related to COVID-19 or until June 30, 2021, whichever occurs first, to provide reimbursement under medical assistance program to a hospital for any outpatient hospital service if all the following criteria are satisfied: (a) the facility at which the outpatient service is performed is operated by the hospital and certified by Medicare (regularly or on a temporary basis under a federal Medicare waiver) for outpatient services; (b) the outpatient service is not provided in the hospital's inpatient facility due to reasons associated

with the COVID-19 pandemic, but normally would be reimbursable when provided in the hospital's inpatient facility; and (c) the outpatient service is one for which federal financial participation is approved. Specify that reimbursement provided in these circumstances shall not include the outpatient access payment. Require DHS to seek any approval from the federal Department of Health and Human Services necessary to provide reimbursement under this provision.

Under current law and under the state's Medicaid plan, a hospital outpatient procedure is reimbursed as an outpatient service only if it is rendered within the licensed inpatient hospital. The outpatient reimbursement is a facility fee; a separate reimbursement payment is made to the physician or other medical professional administering the service, which is paid under a physician/clinic reimbursement schedule. A procedure rendered outside an inpatient hospital (in a doctor's office, for instance) is reimbursed only under the physician/clinic reimbursement schedule. This item would require DHS, on a temporary basis, to provide a facility fee reimbursement for outpatient hospital services that are rendered outside the inpatient hospital if provided in a facility certified as an outpatient facility by Medicare and if the service would be reimbursed as an outpatient hospital service if performed in the inpatient facility. Since the amount of services rendered in these circumstances is unknown, the fiscal effect is indeterminate.

3. MA COVERAGE OF COVID-19 TESTING AND VACCINATIONS ADMINISTERED BY PHARMACISTS

Require the Department of Health Services to ensure that any vaccine against the SARS-CoV-2 coronavirus and any test for COVID-19 that is covered under medical assistance are reimbursed when the vaccine or test is administered by a pharmacist acting under his or her scope of practice. Require DHS to certify pharmacists under MA as necessary for the purposes of complying with this provision.

4. COVERAGE OF VACCINATIONS UNDER SENIORCARE

Require DHS, by January 15, 2021, to cover and provide reimbursement for vaccinations under SeniorCare in accordance with provisions of Act 185, regardless of whether a waiver related to cover or reimbursement of vaccinations is granted by the federal Department of Health and Human Services.

SeniorCare provides financial assistance for the purchase of prescription drugs for enrolled individuals over age 64 who are not eligible for full benefits under the medical assistance program. The state receives federal Medicaid matching funds for prescription drug coverage for some SeniorCare beneficiaries under the terms of a federal waiver. A provision of Act 185 expanded SeniorCare benefits to also cover certain immunizations when not covered by other insurance, such as Medicare. The Department is in the process of seeking an amendment to the federal waiver to account for the Act 185 change. This item would require DHS to provide coverage of vaccinations by January 15, 2021, even if the state does not receive approval of the waiver amendment by that time.

5. VACCINE DISTRIBUTION PLAN -- JOINT FINANCE APPROVAL

Require DHS to submit to the Joint Committee on Finance no later than December 31, 2020, a proposed plan for the state for distributing SARS-CoV-2 coronavirus vaccines. Specify that the plan must prioritize distribution of the vaccines to health professionals and first responders who are providing testing, care, or treatment services to individuals who have or may have COVID-19 and to long-term care facility staff and residents. Specify that the proposed plan must ensure that individuals do not need to travel more than one hour from their residences or places of employment to obtain the vaccine." Further, specify that the plan must include the amount of money to be expended for the vaccine distribution and how that money will be distributed, the amount of money provided by the federal government for vaccine-related purposes, the total expected cost for vaccine distribution, and a description of how any vaccine-related moneys, including moneys received by the federal government are being, or will be, used. Specify that the proposed plan must also include a detailed plan of local health departments in distribution of the SARS-CoV-2 vaccine and continued community testing for COVID-19 and the moneys that will be provided to local health departments for vaccine distribution and community testing. Provide that DHS may implement the vaccine distribution plan only as approved by the Joint Committee on Finance under a 14-day passive review process.

6. INCREASE LOCAL PUBLIC HEALTH STAFF

Require DHS to double the number of individuals performing public health services related to the COVID-19 in Wisconsin, as compared to the number as of November 20, 2020, by providing funding to counties to hire individuals to perform public health services during the COVID-19 epidemic. Direct DHS to allocate funding for this purpose in a manner that provides more funding to increase the number of individuals to perform public health services in those counties that are experiencing the highest rates of COVID-19, or are at the highest risk for exceeding capacity of the health care system due to COVID-19 cases over other counties.

Direct DHS to seek any sources of funding available from the federal government for this purpose and, if federal funding sources are unavailable or insufficient, direct DHS to submit one or more requests to the Joint Committee on Finance to obtain funding to expend for this purpose.

7. RAPID ANTIGEN TESTS -- HOME TESTING

Require DHS to work with private vendors to expand the use of rapid antigen tests for COVID-19 for use by individuals in their residence by providing individuals access to rapid antigen tests, with each individual being allowed to request no more than one rapid antigen test per week.

Provide that, if an individual does not have insurance or other health coverage that covers the cost of the rapid antigen test and is not eligible for a publicly administered health program or other third party assistance that pays for the cost of the rapid antigen test, DHS must provide the rapid antigen test at no cost to the individual. Require DHS to prioritize providing rapid antigen tests to

individuals for which no equipment is needed to process the test results other than the provided test kit.

Specify that these provisions to not apply after June 30, 2021.

8. RAPID ANTIGEN TESTING -- DHS ASSISTANCE

Require DHS to assist entities that receive, through federal funding, antigen tests for COVID-19, including nursing homes, hospitals, and surge testing sites, in administering and processing the rapid antigen tests.

9. PUBLIC HEALTH EMERGENCY DASHBOARD

Modify the Act 185 provision that requires the Department of Administration to contract with the Wisconsin Hospital Association to produce a public health emergency dashboard, using information WHA collects from acute care hospitals so that the requirement would apply during any national public health emergency declared by the Secretary of the U.S. Department of Health and Human Services that is related to an outbreak or epidemic of communicable disease and that applies to any portion of Wisconsin.

Under Act 185, the requirement to prepare and publish a public health emergency dashboard is limited to the public health emergency related to the 2019 novel coronavirus and terminates when that public health emergency ends. The current national public health emergency has been extended through January 20, 2021.

10. LOCAL HEALTH OFFICERS' AUTHORITY TO CLOSE AND IMPOSE CAPACITY RESTRICTIONS ON BUSINESSES

Prohibit a local health officer from ordering the closure of, or capacity restrictions on a type of business unless the closure or capacity restriction applies to all types of businesses. Provide that if a local health officer orders closure or capacity restrictions, the officer must include with the order the justification and scientific reasoning and a timeline or specific date for termination of the closure or restriction. Provide that if a local officer orders a closure or capacity restriction, the order could be in effect for up to two weeks, unless the order is extended by the County Board for an additional period of up to two weeks. Authorize the County Board to provide subsequent extensions of up to two weeks each business.

Chapter 252 of the statutes assigns several duties of local health officers, and requires that they promptly take all measures necessary to prevent, suppress and control communicable diseases, report to the appropriate governing body the progress of the communicable diseases and the measures used against them, and to do what is reasonable and necessary for the prevention of disease, including forbidding public gatherings when deemed necessary to control outbreaks or epidemics.

11. PROHIBIT MANDATORY SARS-COV-2 VACCINATIONS

Prohibit the Department of Health Services and local health officers from requiring individuals to receive a vaccine against the SARS-CoV-2 coronavirus, which causes COVID-19. In addition, prohibit employers from requiring their employees to receive a vaccine against the SARS-CoV-2 coronavirus as a condition of employment.

Under current law, during a public health emergency declared by the Governor, DHS may order any individual to receive a vaccination, except under certain medical circumstances or if the individual objects for religious or conscience reasons. DHS may isolate or quarantine any individual who is unwilling or unable to be vaccinated.

12. DHS AND LOCAL PUBLIC HEALTH AGENCIES' AUTHORITY TO FORBID PUBLIC GATHERING IN CHURCHES

Prohibit the Department of Health Services and local public health departments from prohibiting public gatherings in churches.

13. NURSING HOME AND ASSISTED LIVING FACILITY VISITATION BY ESSENTIAL VISITORS

Require nursing homes and assisted living facilities to allow an "essential visitor," who agrees to comply with any public health policies of the nursing home or assisted living facility, to enter the nursing home or assisted living facility to visit the resident in compassionate care situations, including any of the following: (a) the resident has recently been admitted to the nursing home or assisted living facility and is experiencing difficulty in adjusting to the change in environment and lack of family presence; (b) the resident is grieving the recent death of a friend or family member; (c) the resident is experiencing weight loss or dehydration due to lack of support from family or caregivers when eating or drinking; and (d) the resident is experiencing emotional distress or a decline in ability or willingness to communicate.

Specify that the resident may change the designation of essential visitor no more frequently than every 30 days unless the designated essential visitor becomes unwilling or unable to visit. Further, specify that this section applies at any time the nursing home or assisted living facility limits visitors to the nursing home or assisted living facility due to an outbreak or epidemic of communicable disease in the community in which the nursing home or assisted living facility is located.

Define "essential visitor" to mean: (a) an individual designated by a nursing home resident to visit and provide support to the resident in the nursing home; and (b) the resident's power of attorney.

INSURANCE

1. NO COST SHARING FOR COVID-19 TESTING

Require any self-insured health plan offered by a local government or school district, any health insurance policy, and any state health plan that generally covers testing for infectious diseases to provide coverage of testing for COVID-19 without imposing any copayment or coinsurance on the individual covered under the policy or plan, for any such testing administered prior to conclusion of a national emergency declared by the U.S. President in response to COVID-19 or until June 30, 2021, whichever is earlier.

This item modifies the period of applicability of a provision of 2019 Act 185, which expires on March 13, 2021. A provision of the federal Families First Coronavirus Response Act provides for similar restrictions on cost sharing with respect to COVID-19 testing administered for diagnostic purposes. The federal provision is operative as long as the federal public health emergency related to COVID-19, as determined by the U.S. Secretary of the Department of Health and Human Services, remains in effect.

2. PRESCRIPTION DRUG LIMITS

Prohibit any health insurance policy, state employee health plan, or self-insured health plan offered by a local government or school district, or a pharmacy benefit manager acting on behalf of a policy or plan from doing the following: (a) requiring prior authorization for early refills of a prescription drug or otherwise restrict the period of time in which a prescription drug may be refilled; or (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. Specify that these restrictions do not apply to a prescription drug that is classified as a controlled substance by the Controlled Substances Board. Specify that this provision is applicable until the conclusion of a national emergency declared by the U.S. President in response to COVID-19 or until June 30, 2021, whichever is earlier.

A provision of 2019 Act 185 imposed identical restrictions, applicable during the public health emergency declared by the Governor on March 12, 2020.

3. OUT-OF-NETWORK CHARGES AND PAYMENTS DURING COVID-19 PANDEMIC

Specify that, prior to the conclusion of a national emergency declared by the U.S. President in response to COVID-19 or until June 30, 2021, whichever is earlier, any defined network or preferred provider health plan may not require an enrollee to pay, including cost sharing, for a service, treatment, or supply rendered by a provider that is not in the plan's network more than the enrollee would pay if the service, treatment, or supply is rendered by an in-network provider, if the following apply to: (a) a service, treatment, or supply that is related to a diagnosis or treatment for COVID-19; or (b) any service, treatment, or supply that is rendered by an out-of-network provider because no

in-network provider is available due to the COVID-19 pandemic. Specify that, in these circumstances, the plan must reimburse the out-of-network provider at 225 percent of the rate the federal Medicare program reimburses the provider for the same or a similar service, treatment, or supply in the same geographic area.

Specify that, prior to the conclusion of a national emergency declared by the U.S. President in response to COVID-19 or until June 30, 2021, whichever is earlier, any health care provider or facility that renders a service, treatment, or supply to an enrollee of a defined network plan or preferred provider plan that does not include the health provider or facility in its network must accept as payment in full any payment that is at least 225 percent of the Medicare rate for a similar service, treatment, or supply in the same geographic area. Prohibit the provider from charging the enrollee an amount that exceeds the amount the provider or facility is reimbursed by the defined network plan or preferred provider plan.

An identical provision was included in 2019 Act 185, except that the restrictions expired 60-days following the public health emergency declared by the Governor on March 12, 2020.

4. LIABILITY INSURANCE FOR PHYSICIANS AND NURSE ANESTHETISTS

Specify that any physician or nurse anesthetist for whom Wisconsin is not a principal place of practice but who is authorized to practice in Wisconsin on a temporary basis, may fulfill the state's practice liability insurance requirements by filing with the Office of the Commissioner of Insurance a certificate of insurance for a policy of health care liability insurance issued by an insurer that is authorized in a jurisdiction accredited by the National Association of Insurance Commissioners. Specify that such a physician or nurse anesthetist may elect, in a manner specified by the Insurance Commissioner by rule, to be subject to the state's liability provisions and the state's injured patients and families compensation program. Specify that this provision is applicable until the conclusion of a national emergency declared by the U.S. President in response to COVID-19 or until June 30, 2021, whichever is earlier.

An identical provision was included in 2019 Act 185, applicable during the public health emergency declared by the Governor on March 12, 2020.

LEGISLATURE

1. LEGISLATIVE OVERSIGHT OF FEDERAL COVID-19 FUNDS

Specify that, upon receipt of federal funds related to COVID-19, the Governor must submit a plan or plans to the Joint Committee on Finance for expenditure of those funds. After receiving the plan(s), the Committee's Co-chairs may direct the Governor to implement the plan(s) as submitted. Or, the Co-chairs may convene a meeting of the Committee within 14 days after submittal of the

plan(s) to approve or modify and approve the plan(s). The Governor shall implement the plan(s) as approved by the Committee.

If an expenditure in the approved plan(s) cannot be completed on a timely basis, or if federal funds cannot be expended as proposed in the plan(s), the Governor shall resubmit a revised plan(s) for approval under the process described above.

Currently, with limited exceptions, the Governor is authorized, by statute, to receive and direct the expenditure of federal funds without legislative oversight.

2. LEGISLATIVE AUDIT BUREAU AUDIT OF STATE COVID-19 EXPENDITURES

Require the Legislative Audit Bureau (LAB) to conduct a financial audit of all executive branch state agency expenditures during the 2019-21 fiscal biennium relating to the COVID-19 pandemic. Specify that no later than April 1, 2021, the LAB must submit the results of its audit to the Joint Committee on Legislative Organization and the Joint Committee on Finance. Allow the LAB to charge state agencies for the cost of audits.

PUBLIC INSTRUCTION

1. OPEN ENROLLMENT PROGRAM MODIFICATIONS

Make the following changes to the full-time open enrollment program for the 2020-21 and 2021-22 school years:

a. Specify that if a pupil's parent applies under the "best interest of the pupil" criteria under the alternative application procedure, the pupil's resident school district may not reject the application for any reason.

b. Specify that the three district limit on the number of nonresident school districts to which a parent may submit applications does not apply.

Specify that these provisions would first apply to applications submitted under the alternative application procedure on the effective date of the proposal.

Under the open enrollment program, a pupil may attend a public school located outside the pupil's resident district if the pupil's parent complies with certain application dates and procedures. Under the regular application procedure, the pupil's parent must submit an application to the nonresident district between February and April of the preceding school year. Under the alternative application procedure, the pupil's parent may apply to a nonresident district at any point in the school year if the pupil meets one of the criteria specified in statute.

Under either application procedure, parents are prohibited from submitting applications to more than three nonresident districts in any school year. Also, a pupil can attend a prekindergarten, four-year-old kindergarten, early childhood or school-operated child care program in a nonresident district only if the pupil's resident district offers the same type of program and the pupil is eligible to attend that program in the resident district.

One of the criteria under the alternative procedure is that the parent of the pupil and the resident and nonresident districts agree that attending school in the nonresident district is in the best interests of the pupil. If the resident district does not agree, the parent may appeal the resident district's decision to DPI.

2. PERSONAL ELECTRONIC COMPUTING DEVICE GRANTS

Require that DPI submit a request to the Joint Committee on Finance under s. 13.101 that asks the Committee to transfer at least \$9,187,500 to the appropriation for personal electronic computing device grants in the 2020-21 fiscal year within 30 days of the effective date of the proposal.

Additionally, specify that a school board, operator of an independent charter school, governing body of a private school, or tribal school that receives funding under the Education Stabilization Fund created in the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and uses the funding for purchasing educational technology, including hardware, software, and connectivity, would not be eligible for funding under the personal electronic computing device grant program in 2020-21.

In 2018-19, school districts, independent charter schools, private schools, and tribal schools receive grants equal to \$125 per ninth grade pupil, if they provide equal matching funds. Grants can only be used for the following purposes: (a) to purchase personal electronic computing devices; (b) to purchase software for personal electronic devices; (c) to purchase curriculum which includes content that may be accessed on a personal electronic computing device; or (d) to train staff on how to effectively incorporate personal electronic computing devices into a classroom and into a high school curriculum. Funding for the program was deleted from 2019 Act 9 by partial veto.

3. VIRTUAL INSTRUCTION REPORTS

Require school boards to submit a report to the Department of Public Instruction (DPI) within 30 days of the end of each semester in the 2020-21 and 2021-22 school year regarding virtual instruction provided during the semester. Specify that the end of the semester would be defined as the last day on which instruction is provided to pupils in a semester, or if the district does not use semesters, as the last day of the first half of the school term and the last day of the school term. Define virtual instruction as instruction provided by means of the Internet if the pupils participating in and instructional staff providing the instruction are geographically remote from each other. A school board would not be required to submit a report in the 2021-22 school year for a semester in which virtual instruction is not provided in lieu of in-person instruction.

Require that each report include the following: (a) whether or not virtual instruction was

implemented in the school district during the semester, and, if so, in which grades it was implemented and the process for implementing the virtual instruction; (b) whether or not in-person instruction was provided in the school district during the semester, and if so, which grades it was provided and the number of school days of in-person instruction that were provided in each grade; (c) any challenges or barriers the school board faced related to implementing virtual instruction during the semester; and (d) the total amount by which the school board reduced or increased expenditures in each of the following categories because the school board provided virtual instruction: utilities, transportation, food service, salary and fringe benefits for personnel (including teachers, support staff, and administrators, and including reductions that result from lay-offs), and contract terminations.

Require DPI to compile and submit the information received from the school board reports to the appropriate standing committees of the Legislature no later than January 1, 2022, for reports received for the 2020-21 school year, and January 1, 2023, for reports received for the 2021-22 school year.

A similar report was required for the 2019-20 school year under 2019 Act 185.

4. SPECIAL NEEDS SCHOLARSHIP PROGRAM PARTIAL PAYMENTS

Require that DPI make an additional payment to a private school participating in the special needs scholarship program if an otherwise eligible pupil was not included in the 3rd Friday of September pupil count for the 2020-21 school year because he or she did not have an individualized education program (IEP) or services plan in effect on that date, but does have an IEP or services plan in place by the 2nd Friday of January, 2021. The additional payment would be made in February, 2021, and would be equal to 50% of the amount calculated as follows: (a) determine the number of school days between the date the pupil obtained an IEP or services plan and the 2nd Friday of January, 2021; (b) determine the total number of school days between the start of the school year at the private school and the 2nd Friday of January; (c) divide the amount determined under (a) by the amount determined under (b); and (d) multiply the result by the per pupil payment (equal to \$12,977 in 2020-21).

5. TEACHER INSTRUCTION FROM SCHOOL BUILDINGS

Require school boards to ensure that all hours of direct pupil instruction are provided by a teacher who is physically located in a school building, beginning on January 31, 2021, and ending on the last day of the 2020-21 school term. Specify that this provision would not apply to virtual charter schools. Specify that hours of direct pupil instruction may be provided by a teacher who is not physically located in a school building if the teacher submits to the school board a COVID-19-related written exemption from a physician or physician assistant licensed in the state. Specify that this exception would not apply 60 days after the DOA Secretary determines that a vaccine for COVID-19 is widely available in the state.

Require each school board to certify to DPI by March 5, 2021, whether or not the board complied with the above requirement during the period beginning on January 31, 2021, and ending on February 26, 2021. Provide that if a school board does not comply with the above requirement

during that time period, DPI would be required to withhold the district's March, 2021, equalization aid payment (25% of its total 2020-21 payment).

Require each school board to certify to DPI by June 16, 2021, whether or not the board complied with the above requirement during the period beginning on March 1, 2021, and ending on June 11, 2021. Provide that if a school board does not comply with the above requirement during that time period, DPI would be required to withhold the district's June, 2021, equalization aid payment (35% of its total 2020-21 payment).

6. SCHOOL BOARD APPROVAL OF VIRTUAL INSTRUCTION

Specify that, during the time period beginning on January 11, 2021, and ending June 30, 2022, a school board may not provide virtual instruction to pupils in lieu of in-person instruction unless approved by a two-thirds vote of the board. Provide that such an approval would be valid for 14 days. Specify that a board may extend virtual instruction only by a two-thirds vote of the board and that each extension may not be for more than 14 days.

7. PAYMENTS TO PARENTS FOR VIRTUAL INSTRUCTION

Require that, if a school board provides virtual instruction to a pupil in lieu of in-person instruction during the 2020-21 school year, the board shall pay \$371 to the parent or guardian of the pupil. Specify that this provision would also apply to schools that have virtual instruction for 50% of the semester.

PUBLIC SERVICE COMMISSION

1. LEASE OF BROADBAND INFRASTRUCTURE

Authorize a public utility that provides electricity in Wisconsin to lease infrastructure owned by that utility to any internet service provider on a non-exclusive basis for the purpose of increasing broadband access and quality in Wisconsin. Specify that any such lease would be subject to review and approval by the Public Service Commission.

SAFETY AND PROFESSIONAL SERVICES

1. HEALTH SERVICES PROVIDERS FROM OTHER STATES

Permit a health care provider to provide services within the scope of the credential that the health care provider holds if all of the following apply: (a) practice by the health provider is necessary for an identified health care facility to ensure the continued and safe delivery of health care services; (b) the identified health care facility's needs reasonably prevented the health care provider from obtaining a credential granted under Wisconsin's statutes before beginning to provide health care services at the facility; (c) the health care provider applies for a temporary or permanent credential under Wisconsin's statutes within ten days of beginning to provide health care services at the facility; and (d) the health care facility notifies DSPS within five days of the date on which the health care provider begins providing health care services at the facility.

Authorize any such health care provider to provide services through telehealth to a patient located in Wisconsin that are within the scope of the provider's credential.

For these purposes, define a "health care provider" as an individual who holds a valid, unexpired credential granted by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as the acts than any of the following are licensed or certified to perform: (a) a nurse licensed under Chapter 441; (b) a chiropractor licensed under Chapter 446; (c) a dentist licensed under Chapter 447; (d) a physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subchapter II of Chapter 448; (e) a physical therapist or physical therapist assistant licensed under subchapter III of Chapter 448 or who holds a compact privilege under Subchapter IX of Chapter 448; (f) a podiatrist licensed under subchapter IV of Chapter 448; (g) a dietician certified under subchapter V of Chapter 448; (h) an athletic trainer licensed under subchapter VI of Chapter 448; (i) an occupational therapist or occupational therapy assistant licensed under subchapter VII of Chapter 448; (j) an optometrist licensed under Chapter 449; (k) a pharmacist licensed under Chapter 450; (l) an acupuncturist certified under Chapter 451; (m) a psychologist licensed under Chapter 455; (n) a social worker, marriage and family therapist, or professional counselor certified or licensed under Chapter 457 or a clinical substance abuse counselor certified under Chapter 440' (o) a speech-language pathologist or audiologist licensed under subchapter II of Chapter 459; or (p) a message therapist or bodywork therapist licensed under Chapter 460.

Define a "facility" as a system, care clinic, care provider, long-term care facility, or any other health care facility where health care services are provided. Define a "credential" as a license, permit, certificate, or registration.

2. EXTENSION OF PRESCRIPTIONS BY PHARMACISTS

Authorize a pharmacist to extend a prescription, for up to a 30-day supply, without obtaining an extension of the prescription order from the healthcare professional who wrote the prescription,

if: (a) the prescriber has not explicitly prohibited extensions of the prescription; and (b) the prescribed medicine is not a controlled substance. Provide that a patient may only receive one such extension, and a pharmacist must notify the prescriber after making such an extension.

Provide that this provision would take effect on the proposal's general effective date and end at the conclusion of the national emergency declared by President Trump in response to the 2019 novel coronavirus or on June 30, 2021, whichever is earlier. An identical provision was enacted as part of 2019 Wisconsin Act 185, but terminated 30 days after Executive Order 72 expired.

Under current law, a pharmacist may refill up to a seven-day supply of a prescription without orders from the prescriber under the following, more limited circumstances: (a) the pharmacist must attempt to contact the prescriber before extending the prescription; (b) the patient must have previously refilled the same prescription at the same pharmacy, or a pharmacy in the same chain; and (c) the pharmacist must determine that refilling the prescription is essential to avoid undesirable consequences for the patient's health.

3. AUTHORIZE PHARMACY STUDENTS TO ADMINISTER SARS-COV-2 VACCINES

Authorize first- and second-year pharmacy students to administer vaccines against the SARS-CoV-2 coronavirus under the supervision of a pharmacist. Further, specify that a first- or second-year pharmacy student who administers the vaccine must complete 12 hours of training in vaccine storage, protocols, administration technique, emergency procedures, and record keeping to administer vaccines. Under current law, pharmacy students who have completed two years of pharmacy school may administer vaccines under the supervision of a pharmacist

SHARED REVENUE AND TAX RELIEF

1. INTEREST AND PENALITIES ON 2021 PROPERTY TAXES

For any property taxes payable in 2021 that are due after April 1, 2021, allow taxation districts, after making a general or case-by-case finding of hardship, to waive any interest charges and penalties for a late installment payment, provided that the full amount of the payment is received on or before October 1, 2021. Specify that a taxation district may not waive interest and penalties otherwise due unless the county board of the county where the taxation district is located first adopts a resolution authorizing such a waiver and the taxation district subsequently adopts a similar resolution. Require that the resolution establish criteria for determining hardship. For any property taxes payable in 2021 that are delinquent after October 1, 2021, specify that interest charges and penalties would begin accruing as of October 1, 2021. Consider any payment received on or before October 1, 2021, or by an installment date after October 1, 2021, to be considered timely for the purposes of allowing taxpayers to submit a claim to appeal unlawful taxes, excessive taxes, or for

taxes paid in protest due to an outstanding contested assessment. Require counties that have adopted a waiver resolution to settle any taxes, interest, or penalties collected on or before July 31, 2021, on August 20, 2021, and then settle the remainder of any unpaid taxes, interest, or penalties on September 20, 2021. Specify that the August 20, 2021, settlement is to be distributed proportionally to underlying taxing jurisdictions.

UNIVERSITY OF WISCONSIN

1. ELIGIBLE VOLUNTEER OR WORK ACTIVITY

Require that the Board of Regents ensure that each University of Wisconsin institution offers students an opportunity to satisfy course requirements with related eligible volunteer or work activity to the extent appropriate, as determined by the institution. Eligible volunteer or work activity would be defined as volunteering or working for at least one semester to assist Wisconsin in responding to the COVID-19 pandemic. Specify that this provision would first apply to the first semester beginning after the effective date of the proposal.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

1. HOSPITALITY GRANT PROGRAM

Require the Wisconsin Economic Development Corporation (WEDC) to establish and administer a grant program to award grants to certain businesses in the hospitality industry or part of the supply chain of the hospitality industry, in an amount determined by WEDC, of up to \$15,000. In order for a business to be eligible for a grant, the business must show to WEDC's satisfaction that all of the following conditions are met: (a) the business is in the hospitality industry or is part of the supply chain in the hospitality industry; (b) the business has less than 100 full-time equivalent employees; (c) the business's profits declined by at least 30% after March 16, 2020, due to the Covid-19 pandemic; (d) at least 50% of the ownership interest in the business is held by one or more individuals who are Wisconsin residents; and (e) the business is not a franchise. Require WEDC to develop policies and procedures to administer the grant program.

Specify that a business desiring a grant must submit a grant application on a form prescribed by WEDC and must include any information that WEDC finds necessary to determine a business's eligibility for, and to calculate the amount of, the grant. In order to provide a funding source for the grant program, require that WEDC: (a) seek any sources of funding available from the federal

government to provide grants under this program; and (b) submit a plan to the Joint Committee on Finance for expending the funds. Prohibit WEDC from expending funds unless the Committee has approved WEDC's plan.

WISCONSIN TECHNICAL COLLEGE SYSTEM

1. ELIGIBLE VOLUNTEER OR WORK ACTIVITY

Require that the Wisconsin Technical College System Board ensure that each WTCS college offers students an opportunity to satisfy course requirements with related eligible volunteer or work activity to the extent appropriate, as determined by the district board. Eligible volunteer or work activity would be defined as volunteering or working for at least one semester to assist Wisconsin in responding to the COVID-19 pandemic. Specify that this provision would first apply to the first semester beginning after the effective date of the proposal.

WORKFORCE DEVELOPMENT

1. UNEMPLOYMENT INSURANCE - PLAN TO REDUCE PROCESSING BACKLOG

Require the Department of Workforce Development (DWD), no later than 30 days after the effective date of the proposal, to develop a plan to reduce the number of weekly claims for UI benefits in processing levels comparable to those in January, 2020, and February, 2020. Require the plan to include measures to ensure maintenance of program integrity and fraud detection. Specify that DWD must submit the plan to the appropriate standing committees of the Legislature and published the plan on the Department's website.

2. UNEMPLOYMENT INSURANCE - CALL CENTER HOURS

Require DWD to maintain a call center to provide services and support to claimants for UI benefits under Chapter 108 or federal Pandemic Unemployment Assistance (PUA) benefits via telephone. Require the Department to operate the call center for 12 hours per day, 7 days per week, until the number of weekly claims in process is comparable to those in January and February 2020, as determined by DWD.

3. UNEMPLOYMENT INSURANCE - AUDIT RECOMMENDATIONS

Require DWD to comply with the recommendations specified in the Legislative Audit Bureau's report number 20-13, entitled "Unemployment Insurance Call Centers." The LAB conducted the audit in response to a large majority (93%) of calls to the UI program going unanswered from March 15, 2020, through June 30, 2020. The Audit Bureau recommended DWD: (a) report weekly to the Joint Legislative Audit Committee the number of telephone calls unable to reach the call centers; (b) develop, and submit to the Public Records Board, a policy on the allowable disposal of phone system records, to augment or replace the customary practice of deleting records after six months; (c) enforce contract provisions under which entities that operate call centers report certain required information on their performance.

4. UNEMPLOYMENT INSURANCE - EMPLOYEE INTERCHANGE

Direct the Secretary of the Department of Administration to require any department, agency, or instrumentality of the state to participate as a sending agency in a program of interchange of employees with DWD in a sufficient number to assist in processing and adjudicating benefit claims until the number of weekly claims for benefits in process is reduced to levels comparable to those in January, 2020 and February, 2020.

5. UNEMPLOYMENT INSURANCE - REPORTING REQUIREMENT

Require DWD, no later than 30 days after the effective date of the proposal, to submit a report to the Joint Committee on Finance on the status of the activities described in Workforce Development summary items 1, 2, 3 and 4. Specify that the report must include the number of employees who participated in interchange arrangements and the duration of each employee's interchange.

6. UNEMPLOYMENT INSURANCE - WORK SHARE

Extend the modifications of the work-share program under 2019 Act 185 to work-share plans submitted to DWD through each week that begins while a national emergency declared by the U.S. President in response to the 2019 novel coronavirus remains in effect.

Work-share programs, which are also called "short-term compensation programs" under federal law, are designed to provide a prorated unemployment benefit for employees of employers who voluntarily make an agreement with the state to reduce work hours instead of laying off workers. Under current law, as specified in Act 185, for work-share plans submitted on or after April 17, 2020, and before December 31, 2020: (a) work-share plans must cover at least two positions that are filled on the effective date of the work-share program, rather than at least the greater of 20 positions or 10% of employees in a work unit under the program's standard statutory provisions; (b) the maximum reduction in working hours under a work-share program may be either 60% of the normal hours per week of the employees included under a work-share plan, or any other maximum provided by federal law, whichever is greater, rather than a 50% typical reduction under state law; and (c)

reduced working hours are to be apportioned equitably among employees in the work-share program. The proposal would extend these provisions effectively to run concurrently with a national emergency declared by the U.S. President in response to the 2019 novel coronavirus remains in effect.

For states that have a federally approved work-share program, like Wisconsin, the CARES Act provides 100% federally funded UI benefits through December 31, 2020. Wisconsin's work-share program is normally funded entirely through the employer's UI account.

7. UNEMPLOYMENT INSURANCE - SALARY REDUCTION

Provide that the Joint Committee on Finance may reduce the salary paid to DWD's Secretary, Deputy Secretary, and Unemployment Insurance Division Administrator, by an amount determined by the Committee, if the Committee determines, on the basis of the report submitted to the Committee as described under summary item 5, that DWD has not complied with the provisions described under summary items 1 through 3, relating to the backlog reduction plan, the call center hours, and implementing the audit recommendations. Require that the salary reduction be in effect until the Committee determines that DWD has complied with the provisions described under summary item items 1 through 3.

Require DWD and DOA to take all actions to implement the salary reduction required by the Joint Committee on Finance under this provision.

Specify that an appointing authority may not take any action to increase the salary paid to the DWD Secretary, DWD Deputy Secretary, and DWD Unemployment Insurance Division Administrator that was established by the Joint Committee on Finance. Under this provision, an appointing authority has the meaning given in s. 230.03 (4), which defines appointing authority as the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the Wisconsin Constitution or statutes.

Under current law, any adjustment of salary for certain incumbent positions, including state agency heads, deputies and division administrators, is governed by the provisions of the state compensation plan concerning executive salary groups as adopted by the Joint Committee on Employment Relations. The proposal would waive statutory provisions and any applicable part of the 2019-21 state compensation plan adopted under s. 230.12 (3) for actions taken by the Committee under the provision.