



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

January 11, 2021

TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Summary of Provisions of Senate Substitute Amendment 1 to 2021 Assembly Bill 1

On January 11, 2021, SSA 1 to Assembly Bill 1 was introduced.

Attached is a document, prepared by this office, which summarizes the provisions of SSA 1 to 2021 Assembly Bill 1.

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Attachment

# Senate Substitute Amendment 1 to 2021 Assembly Bill 1

## Summary of Provisions

### ADMINISTRATION

#### 1. EMPLOYEE TRANSFER AUTHORITY

Authorize the Secretary of the Department of Administration to transfer any employee from one state agency to another state agency to provide services for the receiving state agency. Require that the receiving state agency pay all salary and fringe benefit costs of the employee during the time he or she is providing services for the receiving state agency. Specify that any transfer remain in effect until rescinded by the Secretary or June 30, 2021, whichever occurs first. Require that the receiving agency may not increase the employee's salary at the time of transfer or during the time he or she is providing services for the receiving agency and the transferring agency may not increase the employee's salary at the time the employee returns to the transferring agency.

Define "state agency" to mean any office, commission, board, department, or independent agency in the executive branch of state government. The provision includes the following independent agencies: (a) Educational Communications Board; (b) Elections Commission; (c) Ethics Commission; (d) Higher Educational Aids Board; (e) Historical Society; (f) Office of Commissioner of Insurance; (g) State of Wisconsin Investment Board; (h) Public Defender Board; (i) Public Service Commission; (j) Board of Regents of the University of Wisconsin System; and (k) Technical College System Board.

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 under the provision. 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.

[Bill Section: 9101(1)]

#### 2. LIMITED-TERM EMPLOYEE HOURS

Specify that the Director of the Bureau of Merit Recruitment and Selection in DOA's Division of Personnel Management may increase or suspend the number of hours for a limited-term appointment for the period beginning March 12, 2020, and ending June 30, 2021. The bill would extend the effective period of an identical provision included in 2019 Act 185, which expired May

10, 2020. Under current law, a limited-term appointment is a provisional appointment for less than 1,040 hours per year.

[Bill Section: 19]

**BOARD OF COMMISSIONERS OF PUBLIC LANDS**

**1. AUTHORIZE TRUST FUND LOANS TO MUNICIPAL UTILITIES**

Allow the Board of Commissioners of Public Lands (BCPL) to offer loans to a city, village, or town to ensure that a municipal utility under the control of the city, village, or town is able to maintain liquidity. Authorize BCPL to issue loans for amounts, terms, and conditions as may be agreed upon by a borrower. Provide no loan may be awarded after April 15, 2021. Further, specify that the Legislature determines the loans serve a public purpose, and that each loan is considered a state trust fund loan for purposes of s. 24.70 of the statutes.

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. In the event a municipality fails to make payment on a loan, s. 24.70 of the statutes requires the DOA to intercept loan payments from state aids otherwise payable to a municipality. The provision is intended to hold harmless the corpus of the trust funds, per constitutional requirements.

The Public Service Commission throughout 2020 has instituted several moratoria on utilities terminating service of customers in arrears. 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.

[Bill Section: 9135(1)]

**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.

[Bill Section: 1]

## **CHILDREN AND FAMILIES**

### **1. CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT**

Provide that any child care and development block grant funds the state receives under the federal Consolidated Appropriations Act (CAA) of 2021 would be credited to two current FED block grant appropriations for child welfare services that fund aids to individuals and state operations costs. Further, provide that no moneys that are credited to these appropriations may be encumbered or expended except as provided under s. 16.54 of the statutes, which would make these additional funds subject to a 14-day passive review by the Joint Committee on Finance.

It is currently estimated that the state may receive an additional \$147.0 million FED in CCDBG funds under the CAA.

[Bill Section: 9106(1)]

## **EMPLOYEE TRUST FUNDS**

### **1. REHIRED ANNUITANTS IN CRITICAL POSITIONS**

Specify that, until the conclusion of a national emergency declared in response to the 2019 novel coronavirus or June 30, 2021, whichever is earlier, a Wisconsin Retirement System (WRS) participant who is hired by a participating employer may elect to not suspend his or her annuity for the duration of the period 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.

[Bill Sections: 4, 5, and 18]

## **GENERAL PROVISIONS**

### **1. COVID-19 LIABILITY EXEMPTION FOR ENTITIES**

Create a liability exemption for an entity for the death of or injury to an individual or damages caused by an act or omission resulting in or relating to exposure (directly or indirectly) to COVID-19 in the course of or through the performance or provision of the entity's functions or services. Specify that the provision would be in addition to, not in lieu of, other immunity granted by law, and would not limit immunity granted under any other provisions of law. Specify that immunity does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct. Specify that reckless or wanton conduct or intentional misconduct does not include noncompliance with any applicable national, state, or local order requiring businesses to close or limit capacity. The provision would apply to claims beginning on March 1, 2020, but not apply retroactively to actions already filed before the effective date of the provision.

For the purposes of the liability exemption create the following definitions:

"COVID-19" means the infection caused by the novel coronavirus SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions associated with the infection.

"Entity" means a partnership, corporation, association, governmental entity, tribal

government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. The term would also include an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or an unpaid volunteer.

[Bill Sections: 42 and 9151(1)]

## **2. IMMUNITY FROM CIVIL LIABILITY FOR HEALTH CARE PERSONNEL AND ENTITIES FOR ACTIONS RELATED TO COVID-19**

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 if all of the following apply: (a) the actions or omissions are committed while providing any services during a period beginning on July 10, 2020, and ending 90 days following the expiration of the public health emergency that was declared by the Secretary of the U.S. Department of Health and Human Services (DHHS) in response to the COVID-19 pandemic; (b) 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, DHHS, or any divisions or agencies of DHHS relied upon in good faith. Specify that this immunity does not apply to claims for action that were filed before the effective date of the bill.

This item provides for immunity from civil liability for health care personnel and entities similar to what was provided under a provision of Act 185, which was applicable during a state of emergency declared by the Governor on March 12, 2020, in response to the COVID-19 pandemic, and extending 60 days following the expiration of that state of emergency. This item applies to actions or omissions retroactively to the expiration of the Act 185 immunity provision. For the purposes of that bill and this item, 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.

[Bill Sections: 43 thru 46, and 9119(5)]

## 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.

[Bill Section: 9119(1)]

### 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 or a supplemental payment 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 or a supplemental payment 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.

[Bill Section: 9119(2)]

### **3. MA COVERAGE OF COVID-19 TESTING AND VACCINATIONS ADMINISTERED BY PHARMACIES**

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 pharmacy. Require DHS to certify pharmacies under MA as necessary for the purposes of complying with this provision.

[Bill Section: 6]

### **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 coverage 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.

[Bill Section: 9119(3)]

## **5. NURSING HOME AND ASSISTED LIVING FACILITY VISITATION BY ESSENTIAL VISITORS**

Require nursing homes and assisted living facilities to allow at least one "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, despite the provision described previously, a nursing home or assisted living facility may refuse to allow access for visitation to any essential visitor who refuses to comply with public health policies of the nursing home or assisted living facility.

Specify that if the federal Centers for Medicare and Medicaid Services (CMS) issues guidance that is more restrictive in allowing visitation than described above, a nursing home or assisted living facility may comply with that guidance instead of complying with the guidance described above.

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 to visit and provide support to the resident in the nursing home or assisted living facility who is designated by a nursing home resident or assisted living facility resident or by the resident's guardian or health care agent under a power of attorney; or (b) the guardian of a nursing home or assisted living facility resident or the health care agent under a power of attorney for health care for a nursing home or assisted living facility resident.

[Bill Section: 7]

## **6. AUTOPSIES AND CREMATION OF BODIES OF PERSONS WHO DIED OF COVID-19**

Include provisions contained in 2019 Act 185 relating to autopsies and the cremation of bodies

of persons who died of COVID-19, which were no longer in effect after the state declaration of a public health emergency under Executive Order 72 expired. Provide that the following provisions would be in effect for the period covered by a national emergency declared by the U.S. President in response to the 2019 novel coronavirus:

- If a physician, coroner, or medical examiner has signed the death certificate of a deceased person and listed COVID-19 as the underlying cause of death, a coroner or medical examiner must issue a cremation permit to cremate the corpse of that deceased person without viewing the corpse;

- If a physician, coroner, or medical examiner has signed the death certificate of a deceased person and listed COVID-19 as the underlying cause of death, a coroner or medical examiner must issue, within 48 hours after the time of death, a cremation permit for the cremation of a corpse of a deceased person;

- If the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate must provide an electronic signature on the death certificate within 48 hours after the death occurs; and

- If an individual who has been diagnosed with COVID-19 dies while he or she is in the legal custody of the Department of Corrections and confined to a correctional facility located in Wisconsin, the coroner or medical examiner may perform a limited examination of the deceased individual instead of a full autopsy, which may include an external examination of the body of the deceased individual, a review of the deceased individual's medical records, or a review of the deceased individual's radiographs.

Define "COVID-19" to mean an infection caused by the SARS-CoV-2 coronavirus.

Under current law, a coroner or medical examiner must view the corpse of a deceased person before issuing a cremation permit, and the corpse may not be cremated within 48 hours after the death, unless the death was caused by a contagious or infectious disease.

[Bill Section: 9119(4)]

## **INSURANCE**

### **1. NO COST SHARING FOR COVID-19 TESTING AND VACCINATION**

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 vaccination and testing for infectious diseases to provide coverage of vaccination and testing for COVID-19 without imposing any copayment or coinsurance on the individual covered under the policy or plan, for any such vaccination and 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. In addition, the Act 185 provision would be modified to extend the requirement to COVID-19 vaccination. 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. Likewise, under provisions of the federal Affordable Care Act and other federal legislation enacted in response to the COVID-19 pandemic, COVID-19 vaccination must be covered without cost sharing.

[Bill Section: 39]

## **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 until June 30, 2021: (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.

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

[Bill Section: 40]

## **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 of facility is reimbursed by the defined network plan or preferred provider plan.

A similar 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.

[Bill Sections: 37 and 38]

#### **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.

[Bill Section: 41]

### **PUBLIC INSTRUCTION**

#### **1. 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, and would not be required to include information related to virtual instruction provided by a virtual charter school.

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 the following dates: (a) April 1, 2021, for reports received for the first semester of the 2020-21 school year; (b) September 1, 2021, for reports received for the second semester of the 2020-21 school year; (c) April 1, 2022, for reports received for the first semester of the 2021-22 school year; and (d) September 1, 2022, for reports received for the second semester of the 2021-22 school year.

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

[Bill Section: 9134(1)]

## **2. WAIVERS FOR PRIVATE SCHOOL CHOICE PROGRAMS, SPECIAL NEEDS SCHOLARSHIP PROGRAMS, AND INDEPENDENT CHARTER SCHOOLS**

Extend DPI's waiver authority related to the special needs scholarship programs, private school choice programs, and independent charter schools that was first granted in 2019 Act 185. Under the extension, the waiver authority would apply until October 31, 2021, rather than October 31, 2020 as under current law. Specify that DPI could do any of the following:

Waive any requirement in Ch. 115 to 121 of state statutes or administrative rules promulgated by DPI related to the special needs scholarship program and the private school choice programs; private schools participating in a choice program or the special needs scholarship program; or independent charter schools for the 2020-21 school year, or both the 2019-20 and 2020-21 school years, in addition to the 2019-20 school year as under Act 185; and

Establish an alternate deadline for any requirement in Ch. 115 to 121 of state statutes or administrative rules promulgated by DPI related to the special needs scholarship program or private school choice programs if the original deadline is either of the following: (a) a deadline that occurs during the period beginning on the first day of the public health emergency declared on March 12, 2020, and ending on October 31, 2021; or (b) a deadline for a requirement that impacts a date during the period beginning on the first day of the public health emergency declared on March 12, 2020, and ending on October 31, 2021.

Prohibit DPI from issuing waivers under this provision relating to the pupil assessment program or the standardized reading assessment for third grade pupils.

Require that each waiver specify the school year or school years to which it would apply.

[Bill Sections: 13 thru 17]

## **SAFETY AND PROFESSIONAL SERVICES**

### **1. AUTHORIZE PHARMACY STUDENTS TO ADMINISTER COVID-19 VACCINE**

Authorize first- and second-year pharmacy students to administer without a prescription order a vaccine against SARS-CoV-2, the virus that causes COVID-19. Further, specify that a first- or second-year pharmacy student who administers a 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.

[Bill Sections: 28 thru 32]

### **2. PRESCRIPTION ORDER EXTENSIONS**

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 on June 30, 2021. 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.

[Bill Sections: 34 thru 36]

### **3. LICENSING AND REGULATION OF THIRD-PARTY LOGISTICS PROVIDERS**

Create an optional license for third-party logistics providers that are located in Wisconsin or

that are located outside the state but that provide third-party logistics provider services in Wisconsin.

*License Applications.* Require a license applicant to submit certain information, prior to licensure, including: (a) the name, business address, and telephone number of the applicant; (b) all trade or business names used by the applicant; (c) names, addresses and telephone numbers of contact persons for all facilities used by the applicant for warehousing, distribution, or other services on behalf of the manufacturer of prescription drugs; (d) the type of ownership or operation for the applicant's business; (e) if the applicant's business is a partnership, the name of each partner and the name of the partnership; (f) if the applicant's business is a corporation, the name of each corporate officer and director, the name of the corporation, and the state of incorporation; (g) if the applicant's business is a sole proprietorship, the name of the sole proprietor and the name of the business entity; (h) a list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to warehouse or distribute prescription drugs, or to provide third-party logistics services; (i) the name, address, and telephone number of a designated representative; and (j) a statement that each facility used for the applicant has been inspected in the three-year period immediately preceding the application by the Board, a pharmacy examining board in another state, the National Association of Boards of Pharmacy, or another accrediting body recognized by the Board, with the date of each inspection.

Require applicants to swear or affirm the truthfulness of each item in the application.

*Personal Information Statement.* For a person identified as a designated representative, require a personal information statement that includes the following: (a) the person's date and place of birth; (b) the person's place of residence for the seven-year period immediately preceding the date of the application; (c) the person's occupations, positions of employment, and offices held during the seven-year period immediately preceding the date of the application; (d) the name and address for each business, corporation, or other entity listed under (c); (e) a statement indicating whether the person has been, during the seven-year period immediately preceding the date of the application, the subject of any proceeding for the revocation of any business or professional license and the disposition of the proceeding; (f) a statement indicating whether the person has been, during the seven-year period immediately preceding the date of the application, enjoined by a court, either temporarily or permanently, from possessing, controlling, or distributing any prescription drug, and a description of the circumstances surrounding the injunction; (g) a description of any involvement by the person during the past seven years with any business, including investments other than the ownership of stock in a publicly traded company or mutual fund, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products or drugs, and a list of any lawsuits in which such a business was named as a party; (h) a description of any misdemeanor or felony criminal offense of which the person was, as an adult, found guilty, whether adjudication of guilt was withheld or the person pleaded guilty or no contest, provided that if the person is appealing a criminal conviction, the application must include a copy of the notice of appeal, and the person must submit a copy of the final disposition of the appeal not more than 15 day after a final disposition is reached; and (i) a photograph of the person taken within the 12-month period immediately preceding the date of the application.

Specify that where operations are conducted at more than one facility, a person acting as a third-party logistics provider or out-of-state third-party logistics provider may apply to obtain a

license from the Board for each such facility. Exempt license applications from current statutory provisions relating to access to records and fees, as provided under s. 19.35 of the statutes, and prohibit their disclosure except as necessary for compliance with and enforcement of these provisions. Specify that license would be renewed on July 1 of each even-numbered year.

Authorize the Board to grant a license if the applicant pays the application fee and the inspections of the business satisfy requirements adopted by the Board. Further, all of the following must apply to the designated representative: (a) the person is at least 21 years old; (b) the person has been employed full time for at least three years in a pharmacy or with a wholesale prescription drug distributor in a capacity related to the dispensing of and distribution of, and record keeping related to, prescription drugs; (c) the person is employed by the applicant full time in a managerial position; (d) the person is physically present at the third-party logistics provider's or out-of-state third-party logistics provider's facility during regular business hours and is involved in and aware of the daily operation of the third-party logistics provider or the out-of-state third-party logistics provider (except that this provision would not preclude the person from taking authorized sick leave and vacation time or from being absent from the facility for other authorized business or personal purposes); (e) the person is actively involved in and aware of the daily operation of the third-party logistics provider or the out-of-state third-party logistics provider; (f) the person is a designated representative for only one applicant at any given time (except if more than one provider is located at the facility and the providers located at the facility are members of an affiliated group); (g) the person has not been convicted of violating any federal, state, or local law relating to distribution of a controlled substance; (h) the person has not been convicted of a felony; (i) the person submits to DSPS two fingerprint cards, each bearing a complete set of the applicant's fingerprints, which the Department of Justice must provide to the Federal Bureau of Investigation for purposes of verifying the identity of the person and obtaining the person's criminal arrest and conviction record.

*Interim Licenses.* Require the Pharmacy Examining Board to grant an interim license to a third-party logistics provider if, in the opinion of the Board, the provider is currently in compliance with federal law relating to third-party logistics providers. Require holders of interim licenses to apply for a regular license on or after the date that emergency rules or permanent rules implementing the third-party logistics provider licenses take effect, whichever is sooner. An interim license granted under this provision expires 90 days after those rules take effect. Provide that no fee is required for an interim license.

*Rules.* Direct the Pharmacy Examining Board to promulgate rules that regulate third-party logistics providers and out-of-state third-party logistics providers that comply with the federal Drug Supply Chain Security Act. However, restrict the Board's authority to promulgate rules to only rules that are equivalent to requirements under the federal Drug Supply Chain Security Act, except rules related to the inspections of facilities and delivery vehicles, and only rules that do not mandate licensing under state law. Authorize the Board to promulgate emergency rules, effective until June 30, 2023, or the date on which permanent rules take effect, whichever is sooner. However, exempt the Board from providing a finding of emergency or evidence that promulgating emergency rules is necessary for the preservation of the public peace, health, safety or welfare.

Require a third-party logistics provider to allow the Board and authorized federal, state, and local law enforcement officials to enter and inspect their facilities and delivery vehicles, to audit

records and written operating procedures, and to confiscate prescription drugs and records to the extent authorized by law, rule, or regulation.

*Applicability.* Specify that these provisions would not apply if the Pharmacy Examining Board determines that the federal Food and Drug Administration has established a licensing program for third-party logistics providers under federal law and that state licensure is not required for a resident third-party logistics provider to provide third-party logistics services in another state.

Under current law, a third-party logistics provider is defined as a person that contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer but does not take title to the manufacturer's prescription drug or have general responsibility to direct the prescription drug's sale or disposition.

[Bill Sections: 20, 22 thru 27, 33, 9138(1)&(2)]

#### **4. HEALTH SERVICES PROVIDERS FROM OTHER STATES**

Provide that a health care provider from another state may provide services within the scope of the credential that the health care provider holds, and DSPS must grant the health care provider a temporary credential to practice, if the health care provider applies to DSPS for a temporary credential within 30 days of beginning to provide health care services for a health care employer.

*Application.* Specify that the health care provider must include in the application an attestation of all of the following: (a) the date on which the health care provider first provided health care services in this state under this provision; (b) that the health care provider holds a valid, unexpired, credential granted in another state; (c) the health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction; (d) the health care provider has applied for a permanent credential granted by DSPS or an examining board, as applicable (although this would not apply during the period covered by a national emergency declared by the U.S. President in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends).

*Employer Attestation.* Specify that if the health care provider provides services other than services provided through telehealth, the health care employer of the health care provider must attest all of the following to DSPS within 10 days of the date on which the health care provider begins providing health care services in this state: (a) the health care employer has confirmed that the health care provider holds a valid, unexpired credential granted by another state; (b) to the best of the health care employer's knowledge and with a reasonable degree of certainty, the health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.

*Provider Rights and Responsibilities.* Provide that a health care provider who practices within the scope of a temporary credential has all rights and is subject to all responsibilities, malpractice insurance requirements, limitations on scope of practice, and other provisions that apply under state statutes to the practice of the health care provider.

*Effective Period and Expiration of Temporary Credential.* Provide that a temporary credential becomes effective on the date identified in the attestation that the health care provider first provided health care services in this state. Specify that a temporary credential would expire on the date that DSPS, or an examining board, as applicable, grants or denies the application for a permanent credential submitted by the health care provider.

Provide that if a health care provider provides health care services only during the period covered by a national emergency declared by the U.S. President in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends, a temporary credential to the health care provider would expire 30 days after the national emergency ends.

*Telehealth Services.* Provide that a health care provider who practices within the scope of a temporary credential granted under this section may provide services through telehealth to a patient located in Wisconsin.

*Definitions.* For these purposes, define a “credential” to mean a license, permit, certificate, or registration and a "health care employer” to mean a system, care clinic, care provider; long-term care facility, or any entity whose employed, contracted, or affiliated staff provide health care service to individuals in this state.

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 that 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.

[Bill Section: 21]

## **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 use hours engaged in an eligible activity to satisfy course requirements to the extent appropriate, as determined by the institution. Eligible 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 bill.

[Bill Sections: 2 and 9347(1)]

## **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 use hours engaged in an eligible activity to satisfy course requirements to the extent appropriate, as determined by the district board. Eligible 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 bill.

[Bill Sections: 3 and 9342(1)]

## **WORKFORCE DEVELOPMENT**

### **1. UNEMPLOYMENT INSURANCE - WAITING WEEK**

Extend the 2019 Act 185 waiver of the unemployment insurance (UI) waiting week requirement through the week ending March 13, 2021. Currently, under Act 185, the waiting week requirement is waived from March 12, 2020, through February 7, 2021. Under Act 185 and this provision, the Department of Workforce Development (DWD) must seek the maximum amount of

federal reimbursement for UI benefits that are payable for the first week of a claimant's benefit year as a result of the application of this provision.

Under current law, a UI claimant's waiting period is the first week of a claimant's benefit year for which the claimant is otherwise eligible for regular benefits. During a claimant's waiting period, no benefits are payable to the claimant. The waiting period does not affect a claimant's maximum benefit amount, which is 26 weeks of regular state benefits. However, claimants who do not reach the state's 26-week limit effectively receive one fewer week of benefits due to the waiting week requirement. A claimant must serve one waiting week per benefit year.

The CARES Act provided temporary 100% federal funding of the first week of regular UI benefits through the week ending December 26, 2020, for states with no waiting week. Under the Continued Assistance for Unemployed Workers Act of 2020, this provision was extended to end on March 14, 2021, but at a 50% federal reimbursement level for weeks starting after December 26, 2020.

[Bill Section: 8]

## **2. UNEMPLOYMENT INSURANCE - BENEFIT CHARGING**

Provide that the non-charging of certain benefits as provided under 2019 Act 185 be extended through the week ending March 13, 2021. Under 2019 Act 185, if a UI benefits claim or work-share plan is related to a public health emergency declared on March 12, 2020, by Executive Order 72, regular benefits for weeks occurring after March 12, 2020, and before December 31, 2020, must not be charged to an employer as normally provided. Instead, UI benefits for those weeks are charged to either: (a) the balancing account of the UI trust fund, for claims attributable to contribution employers subject to regular unemployment payroll taxes; or (b) DWD's interest and penalties account, for claims attributable to employers that pay UI benefits on a reimbursement basis and are not subject to contribution requirements.

Require DWD to presume that an initial claim for benefit years beginning on or after March 15, 2020, through March 13, 2021, relates to the public health emergency declared on March 12, 2020, by Executive Order 72, unless the claimant's most recent separation from employment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault. An employer is not required to submit a request to the Department for charging relief described under this provision.

[Bill Sections: 10 thru 12]

## **3. UNEMPLOYMENT INSURANCE - PLAN TO REDUCE PROCESSING BACKLOG**

Require DWD, no later than 30 days after the effective date of the bill, to develop a plan to reduce the number of weekly claims for UI benefits in processing, adjudication, or appeals to 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 publish the plan on the Department's website.

[Bill Sections: 9150(1)(a) and 9150(1)(b)]

#### **4. UNEMPLOYMENT INSURANCE - CALL CENTER HOURS**

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

[Bill Section: 9150(1)(c)]

#### **5. 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 under 50 USC 1621 in response to the 2019 novel coronavirus remains in effect, but not for work-share plans submitted on or after July 4, 2021.

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 bill would extend these provisions to plans submitted before July 4, 2021, unless a national emergency declared by the U.S. President in response to the 2019 novel coronavirus were to end sooner.

For states with a federally approved work-share program, like Wisconsin, the CARES Act and the Continued Assistance for Unemployed Workers Act of 2020 provide 100% federally funded UI benefits through March 13, 2021.

[Bill Section: 9]